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**Subject:** Consistency of Textile Industry / Labor Proposal with Arrangement regarding international Trade in Textiles and related U.S. Bilateral Agreements

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J. Roberts ✓

**U.S. Department of Justice**

**Office of Legal Counsel**

Office of the
Deputy Assistant Attorney General

*Washington, D.C. 20530*

DEC 13 1983

MEMORANDUM FOR FRED F. FIELDING
COUNSEL TO THE PRESIDENT

Re: Consistency of Textile Industry/Labor Proposal With Arrangement Regarding International Trade in Textiles and Related U.S. Bilateral Agreements

You have asked us to provide you with an analysis whether the textile industry/labor proposal for guidelines for implementation of U.S. rights under textile agreements, attached to this Memorandum [hereafter "the Proposal"], is consistent with the United States' legal obligations under the Arrangement Regarding International Trade in Textiles of Dec. 20, 1973, 25 U.S.T. 1001, T.I.A.S. No. 7840, extended by Protocol of Feb. 1, 1978 and Protocol of Dec. 22, 1981 [hereafter "Multi-Fibre Arrangement" or "MFA"] and related U.S. bilateral agreements.

As you know, we have not had time to examine the issue exhaustively. Our preliminary view is that the Proposal, as currently worded, contains numerous ambiguities and inconsistencies. However, if the Proposal can be modified to eliminate these ambiguities, we believe that it could be defended in a United States court against the charge that it is inconsistent on its face with those international agreements. We can envision situations in which the Proposal might be applied in a manner inconsistent with those agreements, however, should its implementation not be rigorously supervised. For this reason, we cannot render an unqualified opinion at this time that a modified Proposal would be consistent with U.S. international obligations in all circumstances, although we believe it would be defensible in a court if applied within guidelines which we discuss in more detail in Parts III and IV of this Memorandum.

[illegible] 25

## I. BACKGROUND

Since 1974, the Multi-Fibre Arrangment has been the principal multilateral arrangment for the supervision, management, and control of international textiles trade. See generally Perlow, "The Multilateral Supervision of International Trade: Has the Textiles Experiment Worked?", 75 Am. J. Int'l L. 93 (1981). The MFA establishes an international regime within the framework of the General Agreement on Tariffs and Trade ("GATT") to govern the imposition of textile trade restraints. A number of supervisory organs, most prominently the Textiles Surveillance Body ("TSB"), supervise that regime. The People's Republic of China is not an MFA member.

The MFA's central provisions are Articles 3 and 4 and Annexes A and B. Broadly speaking, Art. 3 permits a participating importing country to impose unilateral or bilateral import restraints, if, in the "opinion" of the importing country, its "market . . . is being disrupted by imports" of certain textile products "not already subject to restraint." Art. 3(3). Art. 4 additionally permits member nations to conclude bilateral agreements imposing import restraints based upon a somewhat looser factual trigger -- the existence of "real risks of market disruption." Art. 4(2). Annex A to the MFA sets forth the conditions justifying the determination of a situation of "market disruption;" significantly, however, it does not independently define when a "real risk of market disruption" exists.

In general, an MFA country may not impose import restraints under either Arts. 3 or 4 unless it has first made a "call," or request for consultations, upon the country whose exports are allegedly disrupting its market. Under Art. 3, each such request for consultations "shall be accompanied by a detailed factual statement of the reasons and justification for the request, including the latest data concerning elements of market disruption." Art. 3(3). An importing country that requests consultations under Art. 3 then has 60 days in which to reach a mutual understanding or bilateral agreement with the exporting country fixing an import restriction at a level not lower than that indicated in a detailed formula set out in Annex B to the MFA. See Art. 3(5)(i). 1/ Failure to

1/ Moreover, "[i]n highly unusual and critical circumstances," where imports of textile products during the sixty-day period "would cause serious market disruption giving rise to damage difficult to repair," the importing country may apply temporary unilateral restraints at a level higher than that indicated in Annex B. See Art. 3(6).

reach such an agreement entitles the importing nation unilaterally to "decline to accept imports" of the disruptive products at a level not less than that provided for in Annex B. See id.

Art. 4 further authorizes importing countries to conclude bilateral agreements "on overall terms . . . more liberal than measures provided for in Article 3," Art. 4(3), in order "to eliminate real risks of market disruption (as defined in Annex A)." Art. 4(2). Pursuant to Section 204 of the Agricultural Act of 1956, as amended, 7 U.S.C. § 1854 (1982), 2/ the United States has negotiated numerous bilateral agreements under Art. 4, most of which contain "call" or consultation mechanisms analogous to those found in Article 3 of the MFA. Since 1977, the use of bilaterally negotiated agreements under Art. 4 has "increasingly overshadowed resort to unilateral measures" under Art. 3 to the extent that "bilateral restraint agreements have become virtually the sole means of controlling textile trade." Perlow, supra, 75 Am. J. Int'l L. at 115.

The factual trigger for imposition of Art. 3 restraints is "market disruption" "in the opinion of [the] importing country." Annex A declares that "[t]he determination of a

2/ That section provides:

> "The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States of any . . . textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such . . . textiles, or textile products to carry out any such agreement. In addition, if a multilateral agreement has been or shall be concluded under the authority of this section among countries accounting for a signficant part of world trade in the articles with respect to which the agreement was concluded, the President may also issue, in order to carry out such an agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement. . . ."

situation of 'market disruption' . . . shall be based" upon three elements: (1) the existence of serious damage to domestic producers or the actual threat thereof (2) demonstrably caused by 3) two factors that "generally appear in combination." Those factors are: (1) rapid import growth, or "a sharp and substantial or imminent increase of imports of particular products from particular sources," Annex A, ¶ II(i), and (2) a price gap, i.e., an offering of the imported products "at prices which are substantially below" prevailing market prices. Annex A, ¶ II(ii). Annex A further specifies that the existence of "damage," the first element of market disruption, shall be based on examination of ten "appropriate factors having a bearing on the evolution of the state of the industry in question," "[n]o one or several of [which] can necessarily give decisive guidance." Annex A, ¶ I. The consultation clauses in most bilateral agreements negotiated under Art. 4 generally incorporate the "market disruption" standard found in the MFA.

The present controversy arises out of a countervailing duties ("CVD") petition filed against the People's Republic of China ("PRC") in the summer of 1983 by the four major U.S. textile industry groups. The petitioners argued that the Government of the PRC had conferred a subsidy upon Chinese textile export trade, justifying imposition of countervailing duties under § 303 of the Tariff Act of 1930, 19 U.S.C. § 1303 (1982), upon Chinese textiles imported into the United States. The industry petition raised the novel legal question whether countervailing duties should be imposed upon goods produced in a government-owned non-market economy that maintains a dual exchange rate.

The Commerce Department held hearings on the question in November, 1983, and was obliged by statute to issue a preliminary decision by December 7, 1983 on the question whether a subsidy had been conferred. While hearings were pending, the PRC warned publicly that it would regard imposition of countervailing duties as a breach of U.S. assurances that no limits would be imposed upon Chinese textile imports above and beyond those agreed upon in a five-year bilateral textile agreement concluded between the two countries on August 19, 1983. It was also reported that U.S. imposition of countervailing duties upon PRC textile imports could possibly jeopardize a planned exchange of visits by the heads of state of the U.S. and the PRC.

Shortly before the Commerce Department's decision was to issue, Commerce Department and industry representatives

negotiated the attached seven-point Proposal, whereby the petitioners agreed to withdraw their CVD petition in exchange for the Administration's adoption of new domestic guidelines to implement U.S. rights under its international textile agreements.

As Chairman of CITA, the interagency Committee for the Implementation of Textile Agreements, 3/ the Commerce Department agreed to adopt the Proposal on an ad referendum basis. Upon referral, however, three CITA agencies -- the Departments of State, Treasury, and the United States Trade Representative -- opposed adoption. The Commerce Department then negotiated an interim agreement whereby the industry petitioners agreed temporarily to withdraw their CVD petition, on the condition that if no settlement were reached by December 16, 1983, petitioners could refile and receive an expedited ruling. On December 6, 1983, the Commerce Department sought our advice on the question whether the Proposal is facially consistent with the MFA and related U.S. bilateral agreements. On December 7, the Department withdrew its request. Your Office has now sought our advice on the same question.

## II. AMBIGUITIES IN THE LANGUAGE OF THE MFA AND THE BILATERAL AGREEMENTS

Before examinining the Proposal, we must note some of the ambiguities in the definition of "market disruption" contained in the MFA and bilateral agreements negotiated under it.

First, the language of Annex A offers no guidance as to whether the first element of market disruption -- "the existence of serious damage to domestic producers or actual threat thereof" -- must be shown on a case-by-case and product-by-product

3/ Executive Order No. 11651, 37 Fed. Reg. 4699 (Mar. 4, 1972), as amended by Exec. Order No. 12188, 45 Fed. Reg. 989 (Jan. 4, 1980), delegates the President's authority to supervise the implementation of United States textile trade agreements to CITA, which is chaired by the Commerce Department and comprised of representatives from the Departments of State, Treasury, Commerce, Labor and the United States Trade Representative. With certain exceptions, Section 1(b) of Exec. Order No. 11651 provides that CITA may not take actions to which a majority of the voting members object.

basis as a prerequisite to each and every request for consultation. An alternative possible construction of Annex A would be that a whole series of calls may be justified by a generalized showing that, under the ten factors stated in Annex A, ¶ I, adverse economic conditions prevail throughout the domestic textile industry.

Second, Annex A nowhere specifies how direct a "causal link" must be shown between damage or threat of damage to domestic industry and the two causal factors -- import growth and price gap -- stated in Annex A, ¶ II. Third, Annex A's statement that those two causal factors "generally appear in combination" leaves ambiguous whether both must be proven in any particular case, or whether proof of one of the causal factors would be sufficient.

Additional areas of ambiguity arise when the consultation clauses in Art. 4 bilateral agreements are examined. In at least three respects, those clauses appear to give contracting parties greater discretion to make calls than does Art. 3 standing alone. First, a number of these clauses state that consultations may be requested when the importer "believes" that imports threaten to impede the orderly development of bilateral trade. Second, a number of these clauses state that consultations may be requested not only in the event of market disruption, but also when there is a "threat" thereof. Third, Art. 4(2) of the MFA itself declares that bilateral restraints negotiated under its terms need not address actual market disruption, but should "eliminate real risks of market disruption." (Emphasis added.)

Taken together, these three qualifying factors could be construed to allow an importing country considerable flexibility to request consultations. While under Art. 3, an importing country may request consultations only when, in its "opinion," "market disruption" exists, under Art. 4 bilateral agreements, an importing country may request consultations in circumstances where it "believes" that foreign imports would create "real risks" of a "threat" of "market disruption," a phrase itself defined in terms of a "threat of serious damage" to domestic producers.

These ambiguities in the MFA and the bilateral agreements make it exceedingly difficult to predict whether the TSB would declare any particular request for consultation inconsistent with the MFA. In our view, however, the existence of so many ambiguities regarding the proper interpretation of the MFA reduces the likelihood that any prospective guidelines

for requesting consultations -- particularly calls made pursuant to Art. 4 bilateral agreements -- would be declared inconsistent on their face with the MFA.

## III. AMBIGUITIES IN THE TEXTILE INDUSTRY/LABOR PROPOSAL

Like the MFA, the seven-paragraph Proposal attached to this Memorandum employs many ambiguous terms. These ambiguities raise questions regarding its proper interpretation.

For example, as currently drafted, the Proposal leaves unclear exactly which government agencies will be bound to obey its conditions. While paragraphs 1, 3, and 4 purport to bind "the Government," paragraph 2 expressly binds only "CITA," while paragraph 7 binds only the Departments of Commerce and Treasury. This raises the question whether CITA and the Government are interchangeable for purposes of the Proposal, or whether the Proposal intends or anticipates action by agencies other than the CITA members.

Similarly, the Proposal leaves unclear exactly which countries the Government should take action against. Each sentence in paragraphs 3 & 4 refers to "growing low-wage suppliers" without specifying exactly who those suppliers are. Paragraph 4 discusses product/categories that are "already import impacted in which imports exceed 20 percent of U.S. production in that category" without defining the phrase "already import impacted." Nor does that langage clarify whether the clause "in which imports exceed 20 percent of U.S. production" is intended to define a subcategory of "import impacted" product categories, or whether that clause is simply redundant.

The Proposal likewise leaves ambiguous exactly what types of government action are being contemplated. Each paragraph of the Proposal refers to a different form of government action. See, e.g., ¶ 1 ("action to establish import limits"), ¶ 2 ("request consultations . . . to establish limits on imports"), ¶¶ 3 and 4 ("act to limit imports), ¶ 5 ("E-system calls on each supplier will be made"), ¶ 6 (called categories "shall remain under control"), ¶ 7 ("develop an import licensing system"). If, for example, the phrases "act to limit imports" and "take action to establish limits" in paragraphs 1, 3, and 4 are intended to mean "will request consultations," we see no reason why the more precise term should not be used (as it already is in paragraph 2). Nor do

we understand whether the phrase "shall remain under control" in paragraph 6 is meant to encompass only requests for consultation, or quantitative import restrictions and other forms of import control as well.

Similar comments and questions could be raised with respect to virtually every individual paragraph of the Proposal. What, for example, is the proper relationship between the first and second sentences of paragraph 3? If the second sentence is intended to limit the first, the point could be made more clearly by inserting the word "only" between "supplier" and "when imports" in the second sentence. In much the same way, if the second sentence of paragraph 4 is meant to limit the first, that point could be clarified by inserting the word "these" between the words "taking" and "actions." Finally, paragraph 5 must be reworded to clarify the relationship between the clause beginning with "and" and the rest of the sentence. These ambiguities have the combined effect of making the Proposal particularly difficult to understand.

For three reasons, we see no advantage -- and numerous serious disadvantages -- in preserving the existing ambiguities in the wording of the Proposal. First, differing interpretations of the terms of the Proposal would engender confusion among the agencies charged with implementing it. Second, the ambiguities in the Proposal would enhance, rather than reduce, the likelihood of domestic litigation if the industry groups and the Government held markedly different understandings of the Government's obligations under the Proposal. Third, preservation of certain language would render the Proposal more vulnerable to the charge that it prima facie violates particular provisions of the MFA and U.S. bilateral agreements. E.g., compare Proposal ¶ 6 (once a product category is called, it shall "remain under control for the life of the bilateral agreement") with MFA Art. 3(8) and Art. 8(d) of the Agreement between the Government of the United States of America and the People's Republic of China relating to Trade in Textiles and Textile Products of August 19, 1983 (setting durational limits of one year on certain import restraints imposed after consultations).

## IV. FACIAL CONSISTENCY OF A MODIFIED PROPOSAL WITH THE MFA AND BILATERAL AGREEMENTS

If the Proposal is redrafted or modified to eliminate its ambiguities, the relevant question would be whether the modified Proposal could be defended as facially consistent with the MFA or the bilateral agreements.

In addressing this question, we confine our analysis to Paragraphs 3 and 4 of the Proposal, which we understand

to be its major substantive provisions. Those paragraphs provide benchmarks that would automatically trigger calls on particular products from particular sources when growth in total imports in certain product categories or the resulting import/domestic production ratio exceeded certain fixed percentages and imports from particular countries in those categories reached certain minimum consultation levels. We address only those legal challenges to such provisions as might arise in a United States court, as opposed to the TSB or some other international forum. 4/ In our view, the most likely claim would be that Section 204 of the Agricultural Act of 1956, see note 2 supra, authorizes the President, or his delegate (CITA), only to act domestically "to carry out" our international textile agreements. This argument would assert that the Government lacks statutory authority to "carry out" our international obligations by a procedure that is facially inconsistent with those obligations. 5/

4/ We do not address the questions whether the Proposal, if adopted, would be challenged in the TSB or another international forum, and if so, whether those international bodies would resolve those challenges based upon considerations other than purely legal ones. In our view, the CITA agencies are better situated than this Office to advise you regarding these policy questions.

5/ As a threshold matter, we must note that a United States court would have to consider and dispose of numerous jurisdictional and justiciability issues before it could consider this question on the merits. In American Association of Exporters and Importers- Textile Apparel Group v. United States, No. 82-11-01581 (U.S. Ct. Int'l Trade, 1982), a domestic textile industry group has asserted numerous facial challenges to the existing procedures whereby the United States Government initiates and pursues negotiations with foreign governments regarding international trade in textiles.

In addition to the question whether the existing program exceeds the President's statutory authority to "carry out" our international agreements under Section 204, the Justice Department is actively litigating the questions whether the court lacks subject matter jurisdiction, whether plaintiff failed to exhaust administrative remedies, whether plaintiff lacks standing, and whether plaintiff's claims are nonjusticiable because their adjudication would require judicial intrusion into the Executive's negotiation and implementation of international agreements.

In such a context, we believe that the Executive Branch could reasonably argue that adoption of an automatic trigger mechanism for initiating consultations, as opposed to an automatic trigger mechanism for imposing permanent import restraints, is not facially inconsistent with either the MFA or U.S. bilateral textile agreements. One such argument would proceed as follows:

The MFA accords participating importing countries considerable discretion in establishing internal procedures governing the issuance of calls, particularly when those calls are made under bilateral agreements negotiated under Art. 4. See Part II supra. Because Annex A defines "market disruption," but does not separately define "threat of market disruption" or "real risks of market disruption," Annex A does not provide the definitive standards for evaluating the legality of prospective domestic guidelines governing the initiation of consultations. So long as such guidelines reasonably reflect the importing country's considered "opinion" or "belief" that certain levels of import growth or import penetration accurately signal a "threat" or "real risk" of market disruption, as that term is defined in Annex A, and so long as the importing country subsequently takes a hard look at each of the factors indicated in Annex A before imposing permanent import restraints in particular cases, the use of an automatic trigger mechanism for calls would be reconcilable with the MFA.

The foregoing argument necessarily makes four assumptions. First, it assumes that adoption of the Proposal would not require the automatic imposition of any permanent import restraints upon any product categories. Second, it assumes that each "triggered" consultation would address the question whether permanent import restraints should be imposed at all, as well as the question of the level of restraints to be imposed. Third, it assumes that the United States has not previously taken a position that temporary imposition of import restraints during ongoing consultations constitutes a prima facie violation of the MFA. 6/ Fourth and finally,

6/ We understand that EEC countries have concluded bilateral agreements in the past containing "automatic trigger" clauses authorizing the EEC to request immediate consultations to agree upon quantitive limits when the imports of an unrestrained product exceed a certain specified percentage of total imports. See Perlow, supra, 75 Am. J. Int'l L. at 117 n.110. We therefore assume that the CITA member agencies can advise you more fully as to any legal position that the United States Government may have taken before the TSB with regard to this issue.

it assumes that CITA would not impose any permanent import restraints on any product categories until the end of the consultation process, and even then would impose permanent restraints only in cases where detailed market studies substantiated both the existence of a threat of damage to domestic producers based upon a careful examination of each of the ten factors listed in Paragraph I of Annex A and a conclusion that such threat of damage was demonstrably caused by the two factors listed in Annex A, Paragraph II.

## V. CONCLUSION

In sum, our preliminary view is that the Proposal should be modified to eliminate existing ambiguities. Assuming (1) that these ambiguities are eliminated, (2) that ambiguous terms in the MFA and bilateral agreements are themselves construed in a light favorable to the Proposal, and (3) that the modified Proposal is implemented in the manner described above, we believe that Paragraphs 3 and 4 of the Proposal would be defensible in a United States court against a charge that they were facially inconsistent with U.S. international obligations.

In the event that the Proposal is modified, we would be glad to advise you further as to whether we believe those modifications are sufficient to resolve the ambiguities that we have noted in this Memorandum.

Robert B. Shanks
Deputy Assistant Attorney General
Office of Legal Counsel

Attachment
cc: John G. Roberts, Jr.
Associate Counsel to the President

PROPOSED EXECUTIVE ORDER

(1) The Government will immediately take action to establish import limits on basket Categories 359, 369, 659, and 669 from Hong Kong, Taiwan, South Korea, and the PRC. Additionally, action will be taken on Category 459 for Korea and 369 for India.

(2) CITA will immediately request consultations with the PRC to establish limits on imports in Categories 638, 444, 442, 699 pt. (polybags), 659 pt. (man-made fiber headwear), and 613.

(3) The Government will act to limit imports from growing low-wage suppliers in any product/category when total growth in imports in that product/category is more than 30 percent in the most recent year ending or the total growth in imports would lead to an import to domestic production ratio of 20 percent or more. These limits will be established on any growing low-wage supplier when imports from any such supplier reach the minimum consultation level in that product/category.

(4) The Government will act to limit imports from growing low-wage suppliers in any product/category already import impacted in which imports exceed 20 percent of U.S. production in that category. In taking actions to limit imports, the Government will limit all growing low-wage suppliers that have greater than the higher of the minimum consultation level or 1 percent of total imports in any category.

(5) With respect to Hong Kong, Taiwan and South Korea, E-system calls on each supplier will be made on any product/category when E's issued in that particular product/category reaches 65 percent of the maximum formula level and in a category with an I/P ratio of 20 percent or more, or total imports or anticipated total imports would increase the I/P.

(6) Once any category is called under the textile import program, it shall remain under control for the life of the bilateral agreement that governs our textile relations with the called country.

ATTACHMENT A

(7) The Departments of Commerce and Treasury shall develop an import licensing system for implementation in calendar year 1984 to effectively monitor and control imports of textiles and apparel from all sources.

5. The Textiles Surveillance Body shall complete its review of such reports within ninety days of their receipt. In its review it shall consider whether all the actions taken are in conformity with this Arrangement. It may make appropriate recommendations to the participating countries directly concerned so as to facilitate the implementation of this Article.

Article 3

1. Unless they are justified under the provisions of the GATT (including its Annexes and Protocols) no new restrictions on trade in textile products shall be introduced by participating countries nor shall existing restrictions be intensified unless such action is justified under the provisions of this Article.

2. The participating countries agree that this Article should only be resorted to sparingly and its application shall be limited to the precise products and to countries whose exports of such products are causing market disruption as defined in Annex A taking full account of the agreed principles and objectives set out in this Arrangement and having full regard to the interests of both importing and exporting countries. Participating countries shall take into account imports from all countries and shall seek to preserve a proper measure of equity. They shall endeavour to avoid discriminatory measures where market disruption is caused by imports from more than one participating country and when resort to the application of this Article is unavoidable, bearing in mind the provisions of Article 6.

3. If, in the opinion of any participating importing country, its market in terms of the definition of market disruption in Annex A is being disrupted by imports of a certain textile product not already subject to restraint, it shall seek consultations with the participating exporting country or countries concerned with a view to removing such disruption. In its request the importing country may indicate the specific level at which it considers that exports of such products should be restrained, a level which shall not be lower than the general level indicated in Annex B. The exporting country or countries concerned shall respond promptly to such request for consultations. The importing country's request for consultations shall be accompanied by a detailed factual statement of the reasons and justification for the request, including the latest data concerning elements of market disruption, this information being communicated at the same time by the requesting country to the Chairman of the Textiles Surveillance Body.

4. If, in the consultation, there is mutual understanding that the situation calls for restrictions on trade in the textile product concerned, the level of restriction shall be fixed at a level not lower than the level indicated in Annex B. Details of the agreement reached shall be communicated to the Textiles Surveillance Body which shall determine whether the agreement is justified in accordance with the provisions of this Arrangement.

5. (i) If, however, after a period of sixty days from the date on which the request has been received by the participating exporting country or countries, there has been no agreement either on the request for export restraint or on any alternative solution, the requesting participating country may decline to accept imports for retention from the participating country or countries referred to in paragraph 3 above of the textiles and textile products causing market disruption (as defined in Annex A) at a level for the twelve-month period beginning on the day when the request was received by the participating exporting country or countries not less than the level provided for in Annex B. Such level may be adjusted upwards to avoid undue hardship to the commercial participants in the trade involved to the extent possible consistent with the purposes of this Article. At the same time the matter shall be brought for immediate attention to the Textiles Surveillance Body.

(ii) However, it shall be open for either party to refer the matter to the Textiles Surveillance Body before the expiry of the period of sixty days.

(iii) In either case the Textiles Surveillance Body shall promptly conduct the examination of the matter and make appropriate recommendations to the parties directly concerned within thirty days from the date on which the matter is referred to it. Such recommendations shall also be forwarded to the Textiles Committee and to the GATT Council for their information. Upon receipt of such recommendations the participating countries concerned should review the measures taken or contemplated with regard to their institution, continuation, modification or discontinuation.

6. In highly unusual and critical circumstances, where imports of a textile product or products during the period of sixty days referred to in paragraph 5 above would cause serious market disruption giving rise to damage difficult to repair, the importing country shall request the exporting country concerned to co-operate immediately on a bilateral emergency basis to avoid such damage, and shall, at the same time, immediately communicate to the Textiles Surveillance Body the full details of the situation. The countries concerned may make any mutually acceptable interim arrangement they deem necessary to deal with the situation without prejudice to consultations regarding the matter under paragraph 3 of this Article. In the event that such interim arrangement is not reached, temporary restraint measures may be applied at a level higher than that indicated in Annex B with a view, in particular, to avoiding undue hardship to the commercial participants in the trade involved. The importing country shall give, except where possibility exists of quick delivery which would undermine the purpose of such measure, at least one week's prior notification of such action to the participating exporting country or countries and enter into, or continue, consultations under paragraph 3 of this Article. When a measure is taken under this paragraph either party may refer the matter to the Textiles

Surveillance Body. The Textiles Surveillance Body shall conduct its work in the manner provided for in paragraph 5 above. Upon receipt of recommendations from the Textiles Surveillance Body the participating importing country shall review the measures taken, and report thereon to the Textiles Surveillance Body.

7. If recourse is had to measures under this Article, participating countries shall, in introducing such measures, seek to avoid damage to the production and marketing of the exporting countries, and particularly of the developing countries, and shall avoid any such measures taking a form that could result in the establishment of additional non-tariff barriers to trade in textile products. They shall, through prompt consultations, provide for suitable procedures, particularly as regards goods which have been, or which are about to be, shipped. In the absence of agreement, the matter may be referred to the Textiles Surveillance Body, which shall make the appropriate recommendations.

8. Measures taken under this Article may be introduced for limited periods not exceeding one year, subject to renewal or extension for additional periods of one year, provided that agreement is reached between the participating countries directly concerned on such renewal or extension. In such cases the provisions of Annex B shall apply. Proposals for renewal or extension, or modification or elimination or any disagreement thereon shall be submitted to the Textiles Surveillance Body, which shall make the appropriate recommendations. However, bilateral restraint agreements under this Article may be concluded for periods in excess of one year in accordance with the provisions of Annex B.

9. Participating countries shall keep under review any measures they have taken under this Article and shall afford any participating country or countries affected by such measures, adequate opportunity for consultation with a view to the elimination of the measures as soon as possible. They shall report from time to time, and in any case once a year, to the Textiles Surveillance Body on the progres made in the elimination of such measures.

## Article 4

1. The participating countries shall fully bear in mind, in the conduct of their trade policies in the field of textiles, that they are, through the acceptance of, or accession to, this Arrangement, committed to a multilateral approach in the search for solutions to the difficulties that arise in this field.

2. However, participating countries may, consistently with the basic objectives and principles of this Arrangement, conclude bilateral agreements on mutually acceptable terms in order, on the one hand, to eliminate real risks of market disruption (as defined in Annex A) in importing countries and disruption to the textile trade of exporting countries, and on the other hand to ensure the expansion and orderly development of trade in textiles and the equitable treatment of participating countries.

3. Bilateral agreements maintained under this Article shall, on overall terms, including base levels and growth rates, be more liberal than measures provided for in Article 3 of this Arrangement. Such bilateral agreements shall be designed and administered to facilitate the export in full of the levels provided for under such agreements and shall include provisions assuring substantial flexibility for the conduct of trade thereunder, consistent with the need for orderly expansion of such trade and conditions in the domestic market of the importing country concerned. Such provisions should encompass areas of base levels, growth, recognition of the increasing interchangeability of natural, artifical and synthetic fibres, carry forward, carryover, transfers from one product grouping to another and such other arrangements as may be mutually satisfactory to the parties to such bilateral agreements.

4. The participating countries shall communicate to the Textiles Surveillance Body full details of agreements entered into in terms of this Article within thirty days of their effective date. The Textiles Surveillance Body shall be informed promptly when any such agreements are modified or discontinued. The Textiles Surveillance Body may make such recommendations as it deems appropriate to the parties concerned.

## Article 5

Restrictions on imports of textile products under the provisions of Article 3 and 4 shall be administered in a flexible and equitable manner and over-categorization shall be avoided. Participating countries shall, in consultation, provide for arrangements for the administration of the quotas and restraint levels, including the proper arrangement for allocation of quotas among the exporters, in such a way as to facilitate full utilization of such quotas. The participating importing country should take full account of such factors as established tariff classification and quantitative units based on normal commercial practices in export and import transactions, both as regards fibre composition and in terms of competing for the same segment of its domestic market.

## Article 6

1. Recognizing the obligations of the participating countries to pay special attention to the needs of the developing countries, it shall be considered appropriate and consistent with equity obligations for those importing countries which apply restrictions under this Arrangement affecting the trade of developing countries to provide more favourable terms with regard to such restrictions, including elements such as base level and growth rates, than for other countries. In the case of developing countries whose exports are already subject to restrictions and if the restrictions are maintained under this Arrangement, provisions should be made for higher quotas and liberal growth rates. It shall, however, be borne in mind that there should be no undue prejudice to the interests of established suppliers or serious distortion in existing patterns of trade.

ANNEX A TO MULTIFIBER ARRANGEMENT

Definition of Market Disruption

I. The determination of a situation of "market disruption", as referred to in this arrangement, shall be based on the existence of serious damage to domestic producers or actual threat thereof. Such damage must demonstrably be caused by the factors set out in paragraph II below and not by factors such as technological changes or changes in consumer preference which are instrumental in switches to like and/or directly competitive products made by the same industry, or similar factors. The existence of damage shall be determined on the basis of an examination of the appropriate factors having a bearing on the evolution of the state of the industry in question such as: turnover, market share, profits, export performance, employment, volume of disruptive and other imports, production, utilisation of capacity, productivity and investments. No one or several of these factors can necessarily give decisive guidance.

II. The factors causing market disruption referred to in paragraph I above and which generally appear in combination are as follows:

(i) a sharp and substantial increase or imminent increase of imports of particular products from particular sources. Such an imminent increase shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries;

(ii) these products are offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country. Such prices shall be compared both with the price for the domestic product at comparable stage of commercial transaction, and with the prices which normally prevail for such products sold in the ordinary course of trade and under open market conditions by other exporting countries in the importing country.

III. In considering questions of "market disruption" account shall be taken of the interests of the exporting country, especially in regard to its stage of development, the importance of the textile sector to the economy, the employment situation, overall balance of trade in textiles, trade balance with the importing country concerned and overall balance of payments.

U.S. DEPARTMENT OF COMMERCE

December 9, 1983

To : Interested Department/Agency Counsel

From: Shirley Coffield

Attached for your information is a copy of a memorandum I received today on the issue of legal conformity of proposed changes in the textile program with the MFA and U.S. law.

Attachment

TRANSMITTAL FORM CD-82A (10-67)
PRESCRIBED BY DAO 214-2

USCOMM-DC 1838-P67
GPO : 1976 O - 216-459

LAW OFFICES

VERNER, LIIPFERT, BERNHARD AND McPHERSON
CHARTERED
SUITE 1100
1660 L STREET, N. W.
WASHINGTON, D. C. 20036

CABLE ADDRESS
VERLIP

(202) 452-7400

# M E M O R A N D U M

TO: W. Ray Shockley

FROM: John D. Greenwald
Alan W. Wolff
Ann K. Simon
Elaine M. Frangedakis

DATE: December 9, 1983

SUBJECT: MFA-Conformity of the Proposed Executive Order

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## I. INTRODUCTION

The proposed Executive Order (Attachment A) represents a commitment by the United States to more aggressively use its international rights to eliminate market disruption or the risk of market disruption. Neither the Multifiber Arrangement nor U.S. domestic law poses any obstacles to the implementation of the proposed Order.

## II. MARKET DISRUPTION IN THE TEXTILE APPAREL INDUSTRY

### A. The Current State of Market Disruption

U.S. textile imports have recently increased at a very rapid rate. This deteriorating position is evident from the table below. Total imports, and imports from each of the five largest sources, have each increased sharply in recent months, building upon a substantial increase over the last year.

| Source | Year Ending 10/82 | Year Ending 10/83 | Change Yr. Ending 10/82-10/83 | Jan-Oct 1982 | Jan-Oct 1983 | Change Jan-Oct 1982-Jan-Oct 1983 |
|---|---|---|---|---|---|---|
| | (mill sq. yds.) | | % | (mill sq. yds.) | | % |
| World | 5906.1 | 7094.0 | 20 1 | 5007.1 | 6165.7 | 23.1 |
| Taiwan | 901.3 | 1189.2 | 31.9 | 785.1 | 1036.0 | 32.0 |
| Korea | 734.2 | 947.9 | 29.1 | 660.0 | 844.0 | 27.9 |
| Hong Kong | 861.7 | 931.9 | 8.1 | 710.3 | 799.5 | 12.6 |
| PRC | 670.9 | 748.7 | 11.6 | 573.7 | 651.8 | 13.6 |
| Japan | 525.6 | 617.2 | 17.4 | 431.6 | 537.4 | 24.5 |

Source: Major Shippers Report.

The surge of imports of textile products in general has had a very substantial adverse effect on the U.S. industry, particularly as it has come at a time of very little growth in U.S. consumption. As imports have captured increasing shares of

the U.S. market, domestic shipments have fallen, profits have dropped sharply, a significant number of plant shutdowns have occurred, and unemployment has climbed:

-- U.S. mill fiber consumption fell from 11.6 billion pounds in 1981 to 10.1 billion pounds in 1982. At 5.9 billion pounds for the first half of 1983, mill fiber consumption remains lower than in the years prior to 1981.

-- While the average production of all manufacturing industries in 1982 stood at 137.5 percent of the 1967 level, textile production was 124.4 percent, down from 135.7 percent in 1981. In June 1983, the index for all manufacturing industries stood at 146.8, while that for textile mill products stood at 142.0.

-- Total production of broad woven goods (cotton, manmade fibers and wool) fell by 15.4 percent, from 15.2 billion square yards to 12.9 billion square yards, between 1981 and 1982.

-- Textile sales fell 14 percent between 1981 and 1982, and shipments fell from $52.3 billion to $49.34 billion.

-- Profits fell 26 percent between 1981 and 1982. The average profit margin on textile sales before taxes

averaged 2.1 percent in 1982, down from 2.4 percent in 1981 (compared with 3.5 and 4.8, respectively, for all manufacturing industries).

-- Plant closings and lay-offs pushed the unemployment rate in March 1983 to 11.5 percent for the textile industry, and 16.3 percent for the apparel industry.

-- Textile prices have risen very slowly compared to other sectors. The producer price index for textile and apparel stood at 204.6 percent in 1982 (with 1975 at 100), compared to 312 percent for all industrial commodities. In July 1983 the index for textiles stood at 205.1 percent, compared to 316.6 percent for all industrial commodities.

-- The textile trade deficit has grown, climbing from $4.0 billion in 1980 to $5.7 billion in 1981, and $7.2 billion in 1982. 1/ The deficit in the first half of 1983, at $4.2 billion, was 33.5 percent greater than the deficit in the first half of 1982.

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1/ Textile Hi Lights (ATMI, March 1983).

## III. THE LEGAL STANDARD

### A. The Multifiber Arrangement

The more active consultation policy described in the proposed order would be well within the authority of the MFA, the bilateral textile agreements that the United States has concluded and U.S. law. While the MFA sets out several factors to be considered in evaluating market disruption or risk thereof, neither the Arrangement nor U.S. law specifies the extent to which any of those factors must be present in order to substantiate a claim, and both leave wide scope for administrative discretion. Moreover, the protocol that emerged from the 1981 MFA renewal process recognized the need for stricter control over imports, and expanded the ability of importing countries to limit import growth.

Article 3:3 of the Multifiber Arrangement (Attachment B) authorizes an importing country to seek consultations with an exporting country "if, in the opinion of any participating importing country, its market in terms of the definition of market disruption in Annex A is being disrupted." Article 4:2 authorizes participating countries to conclude bilateral agreements on mutually acceptable terms in order to "eliminate real risks of market disruption." While market disruption or the

threat of market disruption is required under Article 3, actions under Article 4 may be triggered by a risk of "serious damage or threat thereof," for which no proof is required. 2/

The definition of market disruption, contained in Annex A to the MFA, (Attachment C) is broadly worded. 3/ Market disruption is defined as either "the existence of serious damage to domestic

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2/ See Perlow, The Multilateral Supervision of International Trade: Has the Textiles Experiment Worked? 75 American Journal of International Law, 93,102 (1981); International Trade: Extension of the Multifiber Arrangement, 23 Harvard International Law Journal 150 (1982).

3/ Little has been added in the way of further definition or elaboration to the concept of market disruption as originally expressed by a GATT Working Party in 1960. Based on a report of the working party, a decision of the Contracting Parties (Decision of 19 November, 1960, GATT, BISD, 9th Supp. 26, 1961) stated that situations of market disruption "generally" contain the following elements in combination:

> (i) a sharp and substantial increase or potential increase of imports of particular products from particular sources;
>
> (ii) these products are offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country;
>
> (iii) there is serious damage to domestic products or threat thereof;
>
> (iv) the price differentials referred to in paragraph (ii) above do not arise from governmental intervention in the fixing or formulation of prices or from dumping practices.

producers" or "actual threat thereof." The factors that cause market disruption are (1) "a sharp and substantial increase or imminent increase of imports of particular products from particular sources," or (2) those products being offered at prices substantially below the prevailing price in the market of the importing country. Both factors need not be present for market disruption, as it is only stated that they "generally appear in combination." 4/

The definition in Annex A to the MFA lists several factors that are to be examined in determining the existence of serious damage, but adds the qualification that "no one or several of these factors can necessarily give decisive guidance":

> The existence of damage shall be determined on the basis of an examination of the appropriate factors having bearing on the evolution of the state of the industry in question such as: turnover, market share, profits, export, performance, employment, volume of disruptive and other imports, production, utilization of capacity, productivity and investments.

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4/ The EC has taken the position that low prices alone can cause market disruption. In its agreements with state-controlled economies, the EC has included clauses that provide for consultations triggered by low prices. Perlow, p. 128.

The discretionary wording of Article 3:3 ("if, in the opinion of"), the fact that Article 4 requires only that a "real risk" of market disruption exist, and the specific inclusion of threat of serious damage in the definition of market disruption, indicate that the threshold showing required for a request for consultations is not intended to be a barrier to prompt action. The market disruption definition of Annex A itself provides importing countries with flexibility of action. The use of phrases such as "no one or several of the factors having a bearing on the evolution of the state of the industry can necessarily give decisive guidance" and "[t]he factors causing market disruption . . . and which generally appear in combination are . . ." preserves the ability of a government to take action whenever it believes action is necessary to alleviate or prevent damage to its industry.

The Textiles Surveillance Body ("TSB") has not used its review function to establish quantitative standards for showings of market disruption. Although the TSB did provide a checklist of relevant information (data concerning price, volume, injury, products, due consideration of exporting countries' interests and compliance with the requirements of Annex B), 5/ the TSB has not

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5/ Com. TEX/SB/83, Annex (1975), as discussed in Perlow, p. 120.

insisted on compliance, and parties have not always furnished complete information. 6/

B. Extension of the MFA

The Protocol Extending the Arrangement Regarding International Trade in Textiles, concluded on December 22, 1981, (Attachment D) included language intended to further expand the rights of importing countries to use the market disruption mechanism to impose unilateral or negotiated restraints on import levels. Specifically, paragraph 4 of the protocol permits importing countries to relate import levels to domestic consumption growth rates in market disruption determinations:

> Attention was drawn to the fact that decline in the rate of growth of per capita consumption in textiles and in clothing is an element which may be relevant to the recurrence or exacerbation of a situation of market disruption.

Other provisions of the Protocol strengthened the ability of importing countries to limit import growth by departing from

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6/ Perlow, pp. 121, 122, 130. The TSB's failure to refine the definition of market disruption results also from its tendency to recommend that parties consult under Article 4, rather than expressly deny a country the right to take action under Article 3.

agreed bilateral agreement levels. Paragraph 9 allows for agreement to be reached on a lower positive growth level "in exceptional cases where there is a recurrence or exacerbation of a situation of market disruption," and goes on to authorize any "mutually acceptable arrangements with regard to flexibility," in cases involving a "heavily utilized quota with a very large restraint level . . . accounting for a very large share of the market."

Finally, the "anti-surge mechanism" contained in paragraph 10 of the Protocol allows importing countries complete freedom in negotiating agreements to deal with "significant difficulties" which "stem from consistently under-utilized large restraint levels and cause or threaten serious and palpable damage."

C. Practice under the MFA

In interpreting international agreements, reference is properly made to the practice of the parties signatory to the agreement. 7/ In this instance, the practice of the European

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7/ "The factors to be taken into account by way of guidance in the interpretive process include . . . the subsequent practice of the parties in the performance of the agreement, or the subsequent practice of one party, if the other party or parties knew or had reason to know of it." American Law Institute, Restatement of Law 2d, Foreign Relations Law of the United States § 147.

Communities is most illuminating. The increased flexibility of the renewed Arrangement is due largely to efforts of the European Community, which has sought to legalize actual reductions in quotas and greatly reduce import growth rates overall. 8/

The EC position during the 1981 renewal process resembled strongly the EC position prior to the 1977 renewal. At that time the EC announced a "stabilization plan" which involved placing global ceilings on products, based on import penetration levels for the product imported from all sources. 9/ For some products, growth was limited to the growth rate of consumption, while import levels for other products would be permitted to grow. Shortly before the original MFA expired, the EC negotiated more than 30 bilateral agreements which largely achieved the objectives of the stabilization plan. The EC position was later legitimized with the inclusion of the "reasonable departures clause" in the 1977 protocol. 10/

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8/ Reuters North European Service, January 1, 1982; The Economist, December 25, 1982; Christian Science Publishing Society, January 21, 1982.

9/ The European Community's Textile Trade, (EC Publication, April 1981), p. 5.

10/ Perlow, pp. 112-13.

Some precedent for the EC position, and for that set forth in the proposed order, is provided by conclusions of the Cotton Textile Committee under the Long-Term Agreement Regarding International Trade in Cotton Textiles, the MFA's predecessor. In 1963 the Committee provided some informal interpretations of the market disruption concept. Included were acknowledgements that (1) the relationship between volume of imports and volume of domestic production is "implicit" in the definition of market disruption and (2) account would appropriately be taken of the performance of imports from a particular country as well as "imports from all sources of the particular product or category over a period of years." 11/

The EC approached the 1981 renewal talks from a position which called for import growth over the next five years no more than 1 percent greater than the growth in EC textile consumption. The growth in EC consumption is approximately 1-2 percent per year. 12/

Under the new extended Arrangement the EC has, in fact, restricted import growth to levels which approach that goal.

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11/ Dam, The GATT Law and International Economic Organizations (1970), p. 313.

12/ Business Week, July 27, 1981; The European Community's Textile Trade (EC Publication, April 1981), p. 8.

Paragraph 6 of the Protocol states that dominant exporters are willing to cooperate in finding and contributing to mutually acceptable solutions to problems caused by particularly high import quotas. The EC has interpreted this paragraph to authorize absolute reductions in quota levels. 13/

During the renewal negotiation, the EC stated that it would allow imports to increase no more than 1 percent per year over 1980 levels, and that the levels for the dominant suppliers would be cut back 10 percent over the four year period. 14/ The most recent EC-Hong Kong bilateral agreement does, in fact, reduce preexisting quota levels. Hong Kong quota levels for categories of imports of most concern to EC producers were reduced between 5 and 8 percent in 1983. Beyond 1983, growth levels are as low as 0.1 percent. There are indications that Canada will seek to renegotiate its agreements with the dominant exporters in order to obtain similarly restrictive terms. 15/

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13/ 23 Harvard Int'l Law J. 151 (1982); BNA Import Weekly No. 110 (Jan. 13, 1982), p. 342.

14/ BNA Import Weekly, No. 117 (March 3, 1982).

15/ Business Week, December 27, 1982, p. 39; BNA Import Weekly, No. 109 (Jan. 6, 1982).

Recent EC Council Regulations [16/] authorize consultations where imports of products in a particular category from a particular country exceed a specified percentage of total imports of that product in the previous year. The percentages established are at very low levels. The effect is to restrict imports at close to current levels.

D. Bilateral Textile Agreements

The following market disruption provision, which incorporates the MFA market disruption standard, is representative of bilateral textile agreements concluded by the United States:

> In the event that the Government of the United States believes that imports from Malaysia classified in any category or categories in Annex A by Specific Limits are, due to market disruption or a threat thereof threatening to impede the orderly development of trade between the two countries, the Government of the United States of America may request consultations with the Government of Malaysia with a view to avoiding such market disruption. The Government of the United States of America shall provide the Government of Malaysia at the time of the request with data similar to that envisioned

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16/ Council Regulation No. 3587/82 of 23 December 1982; Council Regulation No. 3588/82 of 23 December 1982; Council Regulation No. 3589/82 of 23 December 1982.

> in Annex A of the Arrangement Regarding International Trade in Textiles which in the view of the Government of the United States of America shows (1) the existence of market disruption, and (2) the role of exports from Malaysia of the product or products concerned from Malaysia in that disruption.

Thus, the bilateral agreements rely on the MFA market disruption standard and do not qualify the President's authority to act under the Arrangement, requiring only that data which, in the view of the United States, shows the impact of imports from a particular country.

E. Section 204

Section 204 of the Agricultural Act of 1956, which authorizes the President to negotiate agreements (both the MFA and bilateral agreements) and to take action to implement agreements, was designed to give the President full scope to exercise U.S. rights under the MFA. It is as broad a delegation of authority from the Congress to the President as exists on trade matters. The legislative history of Section 204 indicates that Congress purposely delegated the broadest authority to the President and expressly rejected stipulating procedures and/or criteria for Section 204 actions, out of a concern over the potential for disruption of U.S. textile and apparel markets. 17/

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17/ See Cong. Rec. 6159-69 (April 10, 1962); Cong. Rec. 8317-47 (May 16, 1962).

## IV. THE PROPOSED EXECUTIVE ORDER IS CONSISTENT WITH THE MFA

### A. The Policies Described in Paragraphs 3 through 6 Are Consistent With the MFA

Any dispute as to the MFA-compatibility of the proposed Executive Order concerns not whether the order itself is MFA-compatible, but only whether the calls made by CITA pursuant to it would be MFA-compatible and would withstand TSB scrutiny. An analysis of the individual provisions of the proposed order indicates that the benchmarks triggering calls under the order have been conservatively set, such that when those benchmarks are met or surpassed, situations qualifying as market disruption or risk of market disruption according to the terms of the MFA will exist.

Paragraphs 3, 4 and 5 of the proposed agreement establish benchmarks that would trigger mandatory calls on particular products from particular sources. The benchmarks established represent levels of imports that evidence market disruption or risk thereof and that create, in fact, a higher threshold than conditions that have actually triggered CITA action in the

past. Under the MFA and under bilateral agreements, CITA already has the discretion to make calls under the circumstances described in the order. The proposed order would merely make mandatory action that is now authorized.

Paragraph 3 of the proposed order provides that CITA will limit imports from a growing low-wage supplier in any product category when (1) growth in total imports in that category is more than 30 percent in the most recent year, or (2) total growth in imports would lead to an import to domestic production ratio of 20 percent or more and (3) imports from the particular country in that category have reached certain minimum consultation levels. 18/

This provision is fully within the discretion accorded by MFA Articles 3 and 4. Action under Article 3 or 4 would be triggered only when total imports in a category increase 30 percent or the import/production ratio increases to 20 percent. Threat of serious damage will arise any time that import volumes increase at that rate, or to the level specified. Market share, profits, production, volume of disruptive and other imports and

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18/ Minimum consultation levels would be set at 700,000 square yard equivalents for cotton and man-made fiber apparel, 1 million square yard equivalents for cotton and man-made fiber non-apparel, and 100,000 square yard equivalents for wool apparel and non-apparel.

actually indicative of a disrupted market or one threatened with disruption.

Paragraph 4 of the proposed order, which is limited in application to import-impacted import categories 19/, makes calls mandatory whenever imports from growing low-wage suppliers exceed either the minimum consultation level 20/ or 1 percent of total imports. There is virtually no danger that application of this provision could result in calls that would be struck down by the TSB. The 20 percent I/P threshold in a very conservative threshold that will only be met in markets that are disrupted or threatened with disruption. Any significant growth in imports will contribute to disruptions of such markets.

Paragraph 5 would establish special procedures for calls on imports from Hong Kong, Taiwan and Korea. It describes situations where threat of damage or risk of disruption exists. Currently, bilateral agreements with Hong Kong, Korea and Taiwan provide that when consultations do not result in agreement, quantitative limits will be set at the higher of (a) the level of trade during the previous agreement year plus 15 percent (in the case of cotton and man-made fiber products) or 6 percent (in the

19/ Import-impacted categories are described as those in which the import to domestic production ration exceeds 20 percent.

20/ See note 18, supra.

capacity utilization -- all factors to be considered -- will be adversely affected, or in danger of being adversely affected, when total imports in a category reach the specified levels. The MFA nowhere quantifies the level of imports or rate of growth that gives rise to a threat of market disruption. Because the term is not defined in the MFA, the agreement does not limit CITA's discretion to establish benchmarks.

The definition of market disruption in Annex A does not require that a market be disrupted wholly as a result of the particular imports from the particular country involved in a call, but only that those imports are a factor causing the disruption. There is, then, no obstacle to measuring disruption in terms of overall imports or I/P ratios.

Under paragraph 3 CITA would call imports of a particular product from a particular country only when certain minimum levels are met, signifying a "sharp and substantial increase...or imminent increase in imports from that country." This provision merely makes mandatory what is now authorized on a discretionary basis. As has been stated, the absence of a requirement that price-undercutting exist does not make this provision inconsistent with the MFA. The fact that the minimum consultation levels in question are those that CITA uses currently as guidelines supports the proposition that they are

case of wool products) of that level; (b) an average of the levels of trade during calendar years beginning with 1981 plus 15 or 6 percent of that level; or (c) the import volume represented by the export authorizations issued as of the date of the request for consultations or the limit requested by the U.S. for the cessation of issuance of export authorizations.

Under the proposal, a call would be issued when export authorizations issued reach 65 percent of the higher of (a) or (b) described above. Because of the lag between export authorizations and U.S. imports, the 65 percent benchmark represents a point at which imports are approaching a level of 15 percent above the level of trade in a recent period and, thus, the level at which a quota might legitimately be established. Given the significant import volume involved from these countries, the rate of increase and absolute volume that would by definition exist when the threshold is met, would cause disruption or a risk of market disruption.

Finally, paragraph 6 of the proposed order provides that once a category is called, that category will remain under control for the life of the agreement. While quantitative limits established unilaterally under MFA Article 3 may not exceed one year unless all parties agree, bilateral restraint agreements

reached pursuant to Article 3 may be concluded for more than one year, 21/ as may Article 4 agreements. 22/ Thus, nothing in the Arrangement precludes the United States from negotiating limits that continue for the life of a bilateral agreement.

This was, in fact, done in the US-India bilateral agreement concluded in January 1983. That agreement provides that in the event that consultations between the United States and India do not result in agreement, the United States may either impose limits covering the agreement year, or impose specific limits that would last through the life of the agreement. 23/ Similarly, the textile bilaterals with Hong Kong, Korea and Taiwan provide that either government party to the agreement has the option, prior to the beginning of the agreement year subsequent to that for which limits are established, to convert the limit to a specific limit that will last the life of the agreement. 24/

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21/ MFA Article 3:8.

22/ Article 4 states only that participating countries may conclude agreements on "mutually acceptable terms."

23/ U.S.-India Bilateral Textile Agreement, ¶ 16.

24/ U.S.-Korea Bilateral Textile Agreement, ¶ 6(F); U.S.-Taiwan Bilateral Textile Agreement, ¶ 6(f)(iv); U.S.-Korea Bilateral Textile Agreement, ¶ 6(F).

B. The Specific Calls in Paragraphs 1 and 2 are Valid

Paragraph 1 and 2 of the proposed order require CITA to take immediate action to establish limitations on specific categories of textiles and apparel imports. Such actions are largely discretionary with the U.S. government, within the broad parameters of the MFA and applicable bilateral agreements. The particular actions contemplated by the proposed agreement are well within those parameters.

Paragraph 1 contemplates immediate calls for consultations to establish limits on imports in categories 359 (other [cotton] apparel), 369 (other cotton manufactures), 659 (other [man-made] apparel), and 669 (other man-made manufactures), from Hong Kong, South Korea, Taiwan, and the PRC. In addition, it requires immediate calls on imports from South Korea in category 459 (other [wool] apparel) and from India in category 369 (other [cotton] apparel). Table 2, below, indicates the changes in import levels in each of these five categories in the first ten months of 1983 as compared to the first ten months of 1982.

TABLE 2

IMPORTS IN BASKET CATEGORIES
% CHANGE IN JAN-OCT. 1983
WHEN COMPARED TO JAN-OCT. 1982

| | 369 | 369 | 459 | 659 | 669 |
|---|---|---|---|---|---|
| Hong Kong | + 43.3% | - 3.2%* | - | + 8.3% | + 19.6% |
| Korea | + 21.2% | - 10.3% | + 44.2% | + 35.0% | +252.7% |
| Taiwan | +193.4% | +142.6% | - | + 15.6% | + 90.3% |
| PRC | + 17.0% | - 11.0% | - | + 71.3% | +484.5% |
| India | - | + 26.4% | - | - | - |

Paragraph 2 contemplates immediate action in six product-specific categories of imports from the PRC. They are: 442 (wool skirts); 444 (womens', girls' and infants' wool suits); 613 (spun non-cellulosic woven fabric); 638 (Mens' & boys' man-made

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*/ In these three categories, overall import levels have declined. However, calls are warranted where: (1) export license reports indicate an imminent increase in overall import levels; (2) there has been a significant increase in import penetration in the category as a whole; or (3) imports or import penetration of particular products within the category have increased dramatically. It is necessary to issue a call for the entire category in the last circumstance where for example, a part-category call would be inadequate to protect against the threat of market disruption caused by a shift in emphasis to other products within the category. The decision whether to issue a category or part-category call is solely within the discretion of the United State Government. [But see MFA, Annex A ("Such an imminent increase shall be a measureable one and shall not be determined to exist on the basis of allegation, conjecture, or mere possibility among, for example, from the existence of production capacity in the exporting countries.") (emphasis added).]

fiber knit shirts); 659 (part) (man-made fiber headwear); and 669 (part) (polypropolene bags). Table 3, below shows the changes in import levels in each of these six categories in the first 10 months of 1983 as compared to the comparable period in 1982.

TABLE 3

IMPORTS FROM THE PRC
% CHANGE IN JAN-OCT. 1983
WHEN COMPARED TO JAN-OCT. 1982

| | 442 | 444 | 613 | 638 | 659 | 669 |
|---|---|---|---|---|---|---|
| PRC | +209.7% | +1566% | + 17.1% | + 6.7% | +71.3% | + 6.7% |

The U.S. bilateral agreements with each of the five countries involved in the proposed calls in paragraphs 1 and 2 provide, in substantially the same language, that "in the event that the government of the United States of America believes that imports from [the other party to the agreement] classified in any category or categories not covered by specific limits are, due to market disruption, threatening to impede the orderly development of trade between the two countries, [it] may request consultations . . . ." 25/ "Market disruption" is not defined in the

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25/ U.S.-China Bilateral Textile Agreement (1983) at ¶ 8. See also U.S.-India Bilateral Textile Agreement (1982) at ¶ 16; U.S.-Hong Kong Bilaterial Textile Agreement (1982) at ¶ 7; U.S.-Taiwan Bilateral Textile Agreement (1982) at ¶ 6; U.S.-South Korea Bilateral Textile Agreement (1982) at 6.

agreements per se. Rather, each relies on the description set forth in Annex A to the MFA.

Under the terms of the bilateral agreements, it is for the U.S. government to determine whether particular import levels and/or import pricing are causing or threatening serious damage to domestic producers. Calls for consultations with foreign governments are appropriate, and consistent with the agreements and the MFA, when the U.S. government "believes," on the basis of an actual or imminent increase of imports, or substantial price undercutting, that there is a risk of market disruption. In such cases, it is incumbent upon the U.S. government to provide a statement of the reasons and justifications for its requests to the country with which a consultation is requested. The agreements provide for review of the decision to request a consultation only by the TSB. 26/

Each of the calls required by the proposed order are within the ambit of the government's authority and within pertinent

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26/ In practice, review is seldom requested, and any disagreements between the parties are handled in the context of the negotiations that follow upon the request for consultation.

precedents established by prior calls. 27/ In most cases, current import levels exceed past performance by more than 15%. Further, the effect of these increases on domestic producers is cummulative. Thus, a relatively smaller increase in imports in a particular category from one country (e.g., other man-made apparel from Hong Kong) may have a serious effect because it comes on top of much larger increases from, other low-wage, high volume countries (i.e., increases of 35%, 15.6%, and 71.3% from respectively, Korea, Taiwan, and PRC).

Moreover, current import statistics do not reveal the entire picture of market disruption. Large volumes of imports en route to the U.S. may pose a threat of imminent damage, particularly when cummulated with existing increases in the same category from other countries. Further, significant price undercutting is an independently sufficient basis for determining that there is a risk of market disruption. In the 369 category from the PRC, for example, there has been, and continues to be, very significant

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27/ For example, CITA previously has issued calls on basket categories. See, e.g., categories 457 and 659 from Poland; category 369 from Brazil; categories 320 and 434 from Taiwan; category 320 from Korea; category 434 from Hong Kong.

price undercutting in shop towels, causing serious injury to domestic producers. 28/

Finally, it is important to note that the risk of damage or risk of threat of damage required by the MFA in order to support a finding of risk of market disruption need not be to a producer of products in the same category in which the call is made, but merely to "domestic producers." 29/ If, for example, domestic producers of an up-stream component of an imported product are damaged or threatened with damage by reason of increased imports or price undercutting, the U.S. government is justified in issuing a call for consultations with the exporting country, aimed at limiting imports in the category that covers the product covered.

In the case of each action mandated by the proposed order, ample justification exists according to the broad standards set forth in the U.S. bilateral agreements and in the MFA. Further, the justifications would be consistent with precedents established by prior CITA calls.

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28/ See Shop Towels of China from the People's Republic of China (U.S.I.T.C. 1983) at e.g., 8-9, A-25 to A-28.

29/ See Arrangement Regarding International Trade in Textiles at Annex A ¶ I.

## V. CONCLUSION

The MFA has, from its inception, authorized action -- and, indeed, has been consistently utilized -- to alleviate or prevent market disruption less severe than that presently experienced by the U.S. textile industry. The broad delegation of authority under Section 204, when combined with the concern expressed during floor debate about imports, is evidence of Congress' intent that the President exercise fully U.S. rights under the Arrangement. The United States, has, in the past, exercised those rights without abuse and, in those instances in which it has acted, has not been found by the Textiles Surveillance Body to have exceeded the terms of the Arrangement.

In light of the foregoing, the policy of more active enforcement on the part of the Administration set forth in the proposed Executive Order is clearly well within the rights and obligations of the United States.

PROPOSED EXECUTIVE ORDER

(1) The Government will immediately take action to establish import limits on basket Categories 359, 369, 659, and 669 from Hong Kong, Taiwan, South Korea, and the PRC. Additionally, action will be taken on Category 459 for Korea and 369 for India.

(2) CITA will immediately request consultations with the PRC to establish limits on imports in Categories 638, 444, 442, 699 pt. (polybags), 659 pt. (man-made fiber headwear), and 613.

(3) The Government will act to limit imports from growing low-wage suppliers in any product/category when total growth in imports in that product/category is more than 30 percent in the most recent year ending or the total growth in imports would lead to an import to domestic production ratio of 20 percent or more. These limits will be established on any growing low-wage supplier when imports from any such supplier reach the minimum consultation level in that product/category.

(4) The Government will act to limit imports from growing low-wage suppliers in any product/category already import impacted in which imports exceed 20 percent of U.S. production in that category. In taking actions to limit imports, the Government will limit all growing low-wage suppliers that have greater than the higher of the minimum consultation level or 1 percent of total imports in any category.

(5) With respect to Hong Kong, Taiwan and South Korea, E-system calls on each supplier will be made on any product/category when E's issued in that particular product/category reaches 65 percent of the maximum formula level and in a category with an I/P ratio of 20 percent or more, or total imports or anticipated total imports would increase the I/P.

(6) Once any category is called under the textile import program, it shall remain under control for the life of the bilateral agreement that governs our textile relations with the called country.

ATTACHMENT A

(7) The Departments of Commerce and Treasury shall develop an import licensing system for implementation in calendar year 1984 to effectively monitor and control imports of textiles and apparel from all sources.

5. The Textiles Surveillance Body shall complete its review of such reports within ninety days of their receipt. In its review it shall consider whether all the actions taken are in conformity with this Arrangement. It may make appropriate recommendations to the participating countries directly concerned so as to facilitate the implementation of this Article.

Article 3

1. Unless they are justified under the provisions of the GATT (including its Annexes and Protocols) no new restrictions on trade in textile products shall be introduced by participating countries nor shall existing restrictions be intensified unless such action is justified under the provisions of this Article.

2. The participating countries agree that this Article should only be resorted to sparingly and its application shall be limited to the precise products and to countries whose exports of such products are causing market disruption as defined in Annex A taking full account of the agreed principles and objectives set out in this Arrangement and having full regard to the interests of both importing and exporting countries. Participating countries shall take into account imports from all countries and shall seek to preserve a proper measure of equity. They shall endeavour to avoid discriminatory measures where market disruption is caused by imports from more than one participating country and when resort to the application of this Article is unavoidable, bearing in mind the provisions of Article 6.

3. If, in the opinion of any participating importing country, its market in terms of the definition of market disruption in Annex A is being disrupted by imports of a certain textile product not already subject to restraint, it shall seek consultations with the participating exporting country or countries concerned with a view to removing such disruption. In its request the importing country may indicate the specific level at which it considers that exports of such products should be restrained, a level which shall not be lower than the general level indicated in Annex B. The exporting country or countries concerned shall respond promptly to such request for consultations. The importing country's request for consultations shall be accompanied by a detailed factual statement of the reasons and justification for the request, including the latest data concerning elements of market disruption, this information being communicated at the same time by the requesting country to the Chairman of the Textiles Surveillance Body.

4. If, in the consultation, there is mutual understanding that the situation calls for restrictions on trade in the textile product concerned, the level of restriction shall be fixed at a level not lower than the level indicated in Annex B. Details of the agreement reached shall be communicated to the Textiles Surveillance Body which shall determine whether the agreement is justified in accordance with the provisions of this Arrangement.

5. (i) If, however, after a period of sixty days from the date on which the request has been received by the participating exporting country or countries, there has been no agreement either on the request for export restraint or on any alternative solution, the requesting participating country may decline to accept imports for retention from the participating country or countries referred to in paragraph 3 above of the textiles and textile products causing market disruption (as defined in Annex A) at a level for the twelve-month period beginning on the day when the request was received by the participating exporting country or countries not less than the level provided for in Annex B. Such level may be adjusted upwards to avoid undue hardship to the commercial participants in the trade involved to the extent possible consistent with the purposes of this Article. At the same time the matter shall be brought for immediate attention to the Textiles Surveillance Body.

(ii) However, it shall be open for either party to refer the matter to the Textiles Surveillance Body before the expiry of the period of sixty days.

(iii) In either case the Textiles Surveillance Body shall promptly conduct the examination of the matter and make appropriate recommendations to the parties directly concerned within thirty days from the date on which the matter is referred to it. Such recommendations shall also be forwarded to the Textiles Committee and to the GATT Council for their information. Upon receipt of such recommendations the participating countries concerned should review the measures taken or contemplated with regard to their institution, continuation, modification or discontinuation.

6. In highly unusual and critical circumstances, where imports of a textile product or products during the period of sixty days referred to in paragraph 5 above would cause serious market disruption giving rise to damage difficult to repair, the importing country shall request the exporting country concerned to co-operate immediately on a bilateral emergency basis to avoid such damage, and shall, at the same time, immediately communicate to the Textiles Surveillance Body the full details of the situation. The countries concerned may make any mutually acceptable interim arrangement they deem necessary to deal with the situation without prejudice to consultations regarding the matter under paragraph 3 of this Article. In the event that such interim arrangement is not reached, temporary restraint measures may be applied at a level higher than that indicated in Annex B with a view, in particular, to avoiding undue hardship to the commercial participants in the trade involved. The importing country shall give, except where possibility exists of quick delivery which would undermine the purpose of such measure, at least one week's prior notification of such action to the participating exporting country or countries and enter into, or continue, consultations under paragraph 3 of this Article. When a measure is taken under this paragraph either party may refer the matter to the Textiles

Surveillance Body. The Textiles Surveillance Body shall conduct its work in the manner provided for in paragraph 5 above. Upon receipt of recommendations from the Textiles Surveillance Body the participating importing country shall review the measures taken, and report thereon to the Textiles Surveillance Body.

7. If recourse is had to measures under this Article, participating countries shall, in introducing such measures, seek to avoid damage to the production and marketing of the exporting countries, and particularly of the developing countries, and shall avoid any such measures taking a form that could result in the establishment of additional non-tariff barriers to trade in textile products. They shall, through prompt consultations, provide for suitable procedures, particularly as regards goods which have been, or which are about to be, shipped. In the absence of agreement, the matter may be referred to the Textiles Surveillance Body, which shall make the appropriate recommendations.

8. Measures taken under this Article may be introduced for limited periods not exceeding one year, subject to renewal or extension for additional periods of one year, provided that agreement is reached between the participating countries directly concerned on such renewal or extension. In such cases the provisions of Annex B shall apply. Proposals for renewal or extension, or modification or elimination or any disagreement thereon shall be submitted to the Textiles Surveillance Body, which shall make the appropriate recommendations. However, bilateral restraint agreements under this Article may be concluded for periods in excess of one year in accordance with the provisions of Annex B.

9. Participating countries shall keep under review any measures they have taken under this Article and shall afford any participating country or countries affected by such measures, adequate opportunity for consultation with a view to the elimination of the measures as soon as possible. They shall report from time to time, and in any case once a year, to the Textiles Surveillance Body on the progres made in the elimination of such measures.

## Article 4

1. The participating countries shall fully bear in mind, in the conduct of their trade policies in the field of textiles, that they are, through the acceptance of, or accession to, this Arrangement, committed to a multilateral approach in the search for solutions to the difficulties that arise in this field.

2. However, participating countries may, consistently with the basic objectives and principles of this Arrangement, conclude bilateral agreements on mutually acceptable terms in order, on the one hand, to eliminate real risks of market disruption (as defined in Annex A) in importing countries and disruption to the textile trade of exporting countries, and on the other hand to ensure the expansion and orderly development of trade in textiles and the equitable treatment of participating countries.

3. Bilateral agreements maintained under this Article shall, on overall terms, including base levels and growth rates, be more liberal than measures provided for in Article 3 of this Arrangement. Such bilateral agreements shall be designed and administered to facilitate the export in full of the levels provided for under such agreements and shall include provisions assuring substantial flexibility for the conduct of trade thereunder, consistent with the need for orderly expansion of such trade and conditions in the domestic market of the importing country concerned. Such provisions should encompass areas of base levels, growth, recognition of the increasing interchangeability of natural, artifical and synthetic fibres, carry forward, carryover, transfers from one product grouping to another and such other arrangements as may be mutually satisfactory to the parties to such bilateral agreements.

4. The participating countries shall communicate to the Textiles Surveillance Body full details of agreements entered into in terms of this Article within thirty days of their effective date. The Textiles Surveillance Body shall be informed promptly when any such agreements are modified or discontinued. The Textiles Surveillance Body may make such recommendations as it deems appropriate to the parties concerned.

## Article 5

Restrictions on imports of textile products under the provisions of Article 3 and 4 shall be administered in a flexible and equitable manner and over-categorization shall be avoided. Participating countries shall, in consultation, provide for arrangements for the administration of the quotas and restraint levels, including the proper arrangement for allocation of quotas among the exporters, in such a way as to facilitate full utilization of such quotas. The participating importing country should take full account of such factors as established tariff classification and quantitative units based on normal commercial practices in export and import transactions, both as regards fibre composition and in terms of competing for the same segment of its domestic market.

## Article 6

1. Recognizing the obligations of the participating countries to pay special attention to the needs of the developing countries, it shall be considered appropriate and consistent with equity obligations for those importing countries which apply restrictions under this Arrangement affecting the trade of developing countries to provide more favourable terms with regard to such restrictions, including elements such as base level and growth rates, than for other countries. In the case of developing countries whose exports are already subject to restrictions and if the restrictions are maintained under this Arrangement, provisions should be made for higher quotas and liberal growth rates. It shall, however, be borne in mind that there should be no undue prejudice to the interests of established suppliers or serious distortion in existing patterns of trade.

ANNEX A TO MULTIFIBER ARRANGEMENT

Definition of Market Disruption

I. The determination of a situation of "market disruption", as referred to in this arrangement, shall be based on the existence of serious damage to domestic producers or actual threat thereof. Such damage must demonstrably be caused by the factors set out in paragraph II below and not by factors such as technological changes or changes in consumer preference which are instrumental in switches to like and/or directly competitive products made by the same industry, or similar factors. The existence of damage shall be determined on the basis of an examination of the appropriate factors having a bearing on the evolution of the state of the industry in question such as: turnover, market share, profits, export performance, employment, volume of disruptive and other imports, production, utilisation of capacity, productivity and investments. No one or several of these factors can necessarily give decisive guidance.

II. The factors causing market disruption referred to in paragraph I above and which generally appear in combination are as follows:

(i) a sharp and substantial increase or imminent increase of imports of particular products from particular sources. Such an imminent increase shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries;

(ii) these products are offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country. Such prices shall be compared both with the price for the domestic product at comparable stage of commercial transaction, and with the prices which normally prevail for such products sold in the ordinary course of trade and under open market conditions by other exporting countries in the importing country.

III. In considering questions of "market disruption" account shall be taken of the interests of the exporting country, especially in regard to its stage of development, the importance of the textile sector to the economy, the employment situation, overall balance of trade in textiles, trade balance with the importing country concerned and overall balance of payments.

ENERAL AGREEMENT ON
ARIFFS AND TRADE

L/5276
23 December 1981
Limited Distribution

# PROTOCOL
# EXTENDING THE ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES

The Arrangement Regarding International Trade in Textiles of 23 December 1973, is due to expire on 31 December 1981.

Following a meeting of the Textiles Committee on 22 December 1981, a Protocol providing for the extension of the Arrangement for a further period of four years and seven months until 31 July 1986, is open for acceptance.

The text of the Protocol is attached hereto.

ATTACHMENT D

# PROTOCOL EXTENDING THE ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES

THE PARTIES to the Arrangement Regarding International Trade in Textiles (hereinafter referred to as "the Arrangement" or "MFA")

ACTING pursuant to paragraph 5 of Article 10 of the Arrangement, and

REAFFIRMING that the terms of the Arrangement regarding the competence of the Textiles Committee and the Textiles Surveillance Body are maintained, and

CONFIRMING the understandings set forth in the Conclusions of the Textiles Committee adopted on 22 December 1981, a copy of which is attached herewith,

HEREBY AGREE as follows:

1. The period of validity of the Arrangement set out in Article 16, shall be extended for a period of four years and seven months until 31 July 1986.

2. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT. It shall be open for acceptance, by signature or otherwise, by the Parties to the Arrangement, by other governments accepting or acceding to the Arrangement pursuant to the provisions of Article 13 thereof and by the European Economic Community.

3. This Protocol shall enter into force on 1 January 1982 for the countries which have accepted it by that date. It shall enter into force for a country which accepts it on a later date as of the date of such acceptance.

Done at Geneva this twenty-second day of December, one thousand nine hundr and eighty-one, in a single copy in the English, French and Spanish languages, each text being authentic.

CONCLUSIONS OF THE TEXTILES COMMITTEE ADOPTED ON 22 DECEMBER 1981

1. The participants in the Arrangement exchanged views regarding the future of the Arrangement.

2. All participants saw mutual co-operation as the foundation of the Arrangement and as the basis for dealing with problems in a way which would promote the aims and objectives of the MFA. Participants emphasized that the primary aims of the MFA are to ensure the expansion of trade in textile products, particularly for the developing countries, and progressively to achieve the reduction of trade barriers and the liberalization of world trade in textile products while, at the same time, avoiding disruptive effects in individual markets and on individual lines of production in both importing and exporting countries. In this context, it was reiterated that a principal aim in the implementation of the Arrangement is to further the economic and social development of developing countries and to secure a substantial increase in their export earnings from textile products and to provide scope for a greater share for them in world trade in these products.

3. Members of the Textiles Committee recognized that there continued to be a tendency for an unsatisfactory situation to exist in world trade in textile products, and that such a situation, if not satisfactorily dealt with, could work to the detriment of countries participating in international trade in textile products, whether as importers or exporters or both. This situation could adversely affect prospects for international co-operation in the trade field and could have unfortunate repercussions on trade relations in general, and the trade of developing countries in particular.

4. Attention was drawn to the fact that decline in the rate of growth of per capita consumption in textiles and in clothing is an element which may be relevant to the recurrence or exacerbation of a situation of market disruption. Attention was also drawn to the fact that domestic markets may be affected by elements such as technological changes and changes in consumer preference. In this connexion it was recalled that the appropriate factors for the determination of a situation of market disruption as referred to in the Arrangement are listed in Annex A.

5. It was agreed that any serious problems of textile trade falling within the purview of the Arrangement should be resolved through consultations and negotiations conducted under the relevant provisions thereof.

6. The Committee noted the important rôle of and the goodwill expressed by certain exporting participants now predominant in the exporting of textile products in all three fibres covered by the Arrangement in finding and contributing to mutually acceptable solutions to particular problems relative to particularly large restraint levels arising out of the application of the Arrangement as extended by the Protocol.

7. The participants recalled that safeguard measures could only be invoked if there existed a situation of market disruption - as defined in Annex A - or real risk thereof. Noting that Article 6 envisages that in the application of such measures developing countries, especially new entrants, small suppliers and cotton producers shall be given more favourable terms than other countries, the Committee drew particular attention to paragraph 12 below.

8. With respect to the definition of market disruption contained in Annex A of the Arrangement, participants took due note that difficulties had arisen as to its application in practice, leading to misunderstandings between exporting and importing participants, which have had an adverse impact on the operation of the Arrangement. Consequently, and with a view to overcoming these difficulties, the participants agreed that the discipline of Annex A and the procedures of Articles 3 and 4 of the Arrangement should be fully respected and that requests for action under these Articles shall be accompanied by relevant specific factual information. The participants further agreed that the situation prevailing when such action was requested should be periodically reviewed by the parties concerned, the Textiles Surveillance Body (TSB) being promptly informed of any resulting modifications under the terms of Articles 3, paragraph 9, and/or 4, paragraph 4.

9. It was recalled that in exceptional cases where there is a recurrence or exacerbation of a situation of market disruption as referred to in Annex A, and paragraphs 2 and 3 of Annex B, a lower positive growth rate for a particular product from a particular source may be agreed upon between the parties to a bilateral agreement. It was further agreed that where such agreement has taken into account the growing impact of a heavily utilized quota with a very large restraint level for the product in question from a particular source, accounting for a very large share of the market of the importing country for textiles and clothing, the exporting party to the agreement concerned may agree to any mutually acceptable arrangements with regard to flexibility.

10. The view was expressed that real difficulties may be caused in importing countries by sharp and substantial increases in imports as a result of significant differences between larger restraint levels negotiated in accordance with Annex B on the one hand and actual imports on the other. Where such significant difficulties stem from consistently under-utilized larger restraint levels and cause or threaten serious and palpable damage to domestic industry, an exporting participant may agree to mutually satisfactory solutions or arrangements. Such solutions or arrangements shall provide for equitable and quantifiable compensation to the exporting participant to be agreed by both parties concerned.

11. The Committee recognized that countries having small markets, an exceptionally high level of imports and a correspondingly low level of domestic production are particularly exposed to the problems arising from imports causing market disruption as defined in Annex A, and that their problems should be resolved in a spirit of equity and flexibility in order to avoid damage to those countries' minimum viable production of textiles. In the case of those countries, the provisions of Article 1, paragraph 2, and Annex B, paragraph 2, should be fully implemented. The exporting participants may, in the case of countries referred to in this paragraph, agree to any mutually acceptable arrangements with regard to paragraph 5 of Annex B; special consideration in this respect would be given to their concerns regarding the avoidance of damage to these countries' minimum viable production of textiles.

12. The participating countries were conscious of the problems posed by restraints on exports of new entrants and small suppliers, as well as on exports of cotton textiles by cotton producing countries. They re-affirmed their commitment to the letter and intent of Article 6 of the Arrangement and to the effective implementation of this Article to the benefit of these countries.

To this end they agreed that:

(a) Restraints on exports from small suppliers and new entrants should normally be avoided. For the purposes of Article 6, paragraph 3, shares in imports of textiles and those in clothing may be considered separately.

(b) Restraints on exports from new entrants and small suppliers should, having regard to Article 6, paragraph 2, take due account of the future possibilities for the development of trade and the need to permit commercial quantities of imports.

(c) Exports of cotton textiles from cotton producing exporting countries should be given special consideration. Where restraints are applied, more favourable treatment should be given to these countries in terms of quotas, growth rates and flexibility in view of the importance of such trade to these countries, having due regard to the provisions of Annex B.

(d) The provisions of Annex B relating to exceptional circumstances and cases should be applied sparingly to exports from new entrants, small suppliers and trade in cotton textiles of cotton producing developing countries.

(e) Any restraints envisaged on exports from new entrants, small suppliers and cotton textile producing countries shall take into account the treatment of similar exports from other participants, as well as non-participants in terms of Article 8, paragraph 3.

13. The Committee recalled that consideration is to be given to special and differential treatment which should be accorded to trade referred to in Article 6, paragraph 6.

14. Participants agreed to co-operate fully in dealing with problems relating to circumvention of the Arrangement, in the light of the provisions of Article 8 thereof. It was agreed that the appropriate administrative action referred to in Article 8, paragraph 2, should in principle, where evidence is available regarding the country of true origin and the circumstances of circumvention, include adjustment of charges to existing quotas to reflect the country of true origin; any such adjustment together with its timing and scope being decided in consultation between the countries concerned, with a view to arriving at a mutually satisfactory solution. If such a solution is not reached any participant involved may refer the matter to the TSB in accordance with the provisions of Article 8, paragraph 2.

15. In pursuance of the objective of trade liberalization embodied in the Arrangement, the Committee reaffirmed the need to monitor adjustment policies and measures and the process of autonomous adjustment in terms of the provisions of Article 1, paragraph 4. To this end, the Committee decided that a Sub-Committee should be established to carry out activities previously performed by the Working Group on Adjustment Measures and to make a periodic review of developments in autonomous adjustment processes and in policies and measures to facilitate adjustment, as well as in production and trade in textiles, on the basis of material and information to be provided by participating countries. The Sub-Committee would report periodically to the Textiles Committee to enable that Committee to fulfil its obligations under Article 10, paragraph 2.

16. Participating countries reaffirmed their commitment to the objectives of the expansion of trade, reduction of barriers to such trade and the progressive liberalization of world trade in textile products, while recognizing that these objectives also depend importantly upon matters outside the scope of the Arrangement, such as the reduction of tariffs.

17. In the context of the phasing out of restraints under the Arrangement, priority attention would be given to sectors of trade, e.g., wool tops, and suppliers for which the Arrangement provides for special and more favourable treatment as referred to in Article 6.

18. The participants reaffirmed the importance of the effective functioning of the two organs of the Arrangement, the Textiles Committee and the TSB, in their respective areas of competence. In this context, the participants emphasized the importance of the responsibilities of the TSB as set forth in Article 11 of the MFA.

19. The participants also reaffirmed that the rôle of the TSB is to exercise its functions as set out in Article 11 so as to help ensure the effective and equitable operation of the Arrangement and to further its objectives.

20. The Committee recognized the need for close co-operation among participants for the effective discharge of the TSB's responsibilities.

21. The participants also noted that, should any participant or participants be unable to accept the conclusions or recommendations of the Textiles Surveillance Body, or should, following its recommendations, problems continue to exist between the parties, the procedures set forth in Article 11, paragraphs 8, 9 and 10 are available.

22. The participants reaffirmed the importance of Article 7 to the effective operation of the Arrangement.

23. It was felt that in order to ensure the proper functioning of the MFA, all participants should refrain from taking measures on textiles covered by the MFA, outside the provisions therein, before exhausting all the relief measures provided in the MFA.

24 Taking into account the evolutionary and cyclical nature of trade in textiles and the importance both to importing and exporting countries of prior resolution of problems in a constructive and equitable manner for the interest of all concerned, and on the basis of the elements mentioned in paragraphs 1 to 23 above, which supersede in their totality those adopted on 14 December 1977, the Textiles Committee considered that the Arrangement in its present form should be extended for a period of four years and seven months, subject to confirmation by signature as from 22 December 1981 of a Protocol for this purpose.