Collection: Roberts, John G.: Files
Folder Title: JGR/Textiles (6 of 6)
Box: 55

THE WHITE HOUSE
~~WASHINGTON~~

John:

This could be useful to you —

Shelby

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

December 7, 1983

Honorable John G. Roberts, Jr.
Associate Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Roberts:

As we discussed, I am submitting to you a draft I prepared containing preamble language to any decision which might be made on the textile issue. I am also enclosing another copy of the MFA paper because the copy previously given to you accidentally had page 4 omitted from it.

Sincerely,

Shirley Coffield

Shirley Coffield
Attorney-Advisor
Office of the General Counsel

Enclosures

DRAFT PREAMBLE

I have determined that the actions set forth in this order are necessary to implement U.S. rights under the Multilateral Textile Agreement (MFA) and related bilateral trade agreements. These actions are taken pursuant to Section 204 of the Agricultural Act of 1956 which provides authority to implement these agreements, and Executive Order 11651 of March 3, 1972 as amended, in which authority to perform certain actions with respect to these agreements has been delegated to the Committee for the Implementation of Textile Agreements (CITA).

Under the MFA and our bilateral textile agreements, the U.S. is authorized to take action affecting imports in cases of market disruption or the threat of market disruption.

As a consequence of increasing imports of textile and textile products from low wage countries, there has been increasing disruption and threat of disruption to the U.S. textile and apparel industry. As provided in Section 204 and our international agreements, and in order to avoid further disruption to the U.S. textile and apparel industry which is damaged or threatened with damage from imports coming from these low wage countries, I am directing CITA to take the following actions:

. . . .

Market disruption or the threat thereof may occur under circumstances other than those referred to above. CITA will continue to carefully monitor all textile and apparel imports and their impact on the U.S. textile and apparel industry, and where market disruption or threat occurs under such other circumstances, will take appropriate actions to limit imports.

Requirements for Market Disruption under the MFA

Both Articles 3 and 4 of the MFA refer to "Market Disruption;" in Article 3 as the justification for action and in Article 4, "preventing the real risk of market disruption" as a basis for bilateral agreements. In both articles, reference is made to the definition of Market Disruption in Annex A.

Annex A Paragraph I, does not, however, contain any quantifiable definition of Market Disruption, but rather refers to it as "serious damage" or the "actual threat thereof." "Appropriate factors" must be examined in determining damage, an illustrative list of which is given. No mention is made of threat of damage. The definitiveness of the list of factors is further clouded by the last sentence of Paragraph I which comments that, "No one or several of these factors can necessarily give decisive guidance."

The ambiguities of Paragraph I, when seen in conjunction with the Article 3(3) provision which leaves the decision as to when Market Disruption exists to the "opinion" of the importing country (in terms of the Annex A definition) further dilutes the "definition" as it exists in Annex A Paragraph I.

Clearly, to have Market Disruption there must be serious damage or the actual threat of serious damage. In order to make a determination as to whether or not damage exists, participating countries must look at factors determined to have a bearing on the state of the domestic industry. An illustrative list of factors which may have such a bearing are:

- turnover
- market share
- profits
- export performance
- employment
- volume of disruptive and other imports
- production
- utilization of capacity
- productivity
- investments

The illustrative nature of the list, together with the caveat that "No one or several of these factors can necessarily give decisive guidance" would seem to leave to the country making the determination (under Article 3) considerable flexibility as to which factors, listed or otherwise, should be considered most important in determining whether or not damage exists.

While there is no discussion in Annex A as to what factors one should look at to determine actual threat of damage, it seems reasonable to expect that a country would look at similar factors as when determining damage but may, of course, consider some factors more important than others or look at different factors when determining if an actual threat exists.

Paragraph II which lists the factors, generally appearing in combination, which cause Market Disruption gives a more quantifiable basis for a Market Disruption determination. If those factors exist;

(i) a sharp and substantial increase or imminent increase of imports of particular products from particular sources;

(ii) those products are offered at prices which are substantially below those of similar goods in the importing market,

then it would not, in my view, be inconsistent with Annex A to presume Market Disruption. The presumption could be refuted if it was determined that no damage or threat of the damage was present after looking at factors bearing on the domestic industry's condition in accordance with Paragraph I.

With respect to agreements under Article 4 of the MFA, the standard is that the agreements should eliminate the "real risk of Market Disruption," a term translated into most U.S. bilaterals as providing for exporter and U.S. action when the "threat of Market Disruption" exists. (As contrasted to the threat of damage which can be Market Disruption in Annex A). The standard is still Annex A under the terms of Article 4, but the justification for action under an agreement is pushed back one step from Market Disruption (Article 3) to threat of Market Disruption (U.S. bilaterals).

With respect to countries not a party to the MFA, there is no requirement that Market Disruption exist. Article 8 of the MFA gives rights to MFA signatories that an importing country not allow non-participant to frustrate the operation of the MFA. It additionally provides that participants not be restrained greater than non-participants causing or threatening Market Disruption.

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

December 9, 1983

MEMORANDUM TO FRED F. FIELDING
Counsel to the President

FROM: IPM Irving P. Margulies
Acting General Counsel

SUBJECT: Textile Import Program

Here is a draft, based upon my conversation last night with John Roberts, of a brief written confirmation of your legal clearance of the proposed changes in textile import program procedures.

Also attached are alternative drafts, in memorandum and letter form, of the directions concerning these changes from the President to the CITA members. These drafts contain bracketed language alternatives. The second alternative in each case is language we would prefer, if we can get the Labor/Industry textile representatives to accept changes. These drafts should be closely held until Commerce has an opportunity to table them when we resume discussions with the industry/labor group.

I believe your action is vital to the timely and successful conclusion of these difficult deliberations. Please give me a call if you wish to discuss these drafts.

We received the attached brief from counsel for the CVD petitioners late this afternoon.

Attachments

DRAFT

Honorable Malcolm Baldrige
Secretary of Commerce
Washington, D.C. 20230

Dear Mr. Secretary:

I have determined that the actions directed to be taken by the Committee for the Implementation of Textile Agreements (CITA), in this letter are necessary to implement U.S. rights under the Multifiber Arrangement (MFA) and related bilateral trade agreements. I am, therefore, authorizing CITA, under Section 1(c) of Executive Order 11652 of March 3, 1972 as amended, to take such actions. These actions will be taken pursuant to Section 204 of the Agricultural Act of 1956 which provides authority to implement textile agreements, and Executive Order 11651 in which authority to perform certain actions with respect to these agreements has been delegated to CITA.

Under the MFA and our bilateral textile agreements, the U.S. is authorized to take action affecting imports in cases of market disruption or the threat of market disruption.

As a consequence of increasing imports of textile and textile products from low-wage countries, there has been increasing disruption and threat of disruption to the U.S. textile and apparel industry. As provided in Section 204 and our international agreements, and in order to avoid further disruption to the U.S. textile and apparel industry which is damaged or threatened with damage from imports coming from these low-wage countries, I am directing CITA to take the following actions:

(1) CITA [will act to limit imports from] [will issue calls, which limit imports, on] 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] [calls will be made] on any growing low-wage supplier when imports from any such supplier reach [the greater of 1 percent of total imports or] the minimum consultation level in that product/category.

(2) The Government [will act to limit imports from] [will issue calls, which limit imports, on] growing low-wage suppliers in any product/category already import impacted, [that is,] in which imports exceed 20 percent of U.S. production in that category. In taking [these] actions [to limit imports,] the Government will [limit] [call] 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.

(3) With respect to Hong Kong, Taiwan and 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 [MFL] [and in the

opinion of the Chairman of CITA would exceed the MFL if not called] 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.

(4) Once any category is restricted after consultations under the textile import program, [CITA shall take action to insure that] it shall remain under control for the life of the bilateral agreement that governs our textile relations with the called country.

Market disruption or the threat thereof may occur under circumstances other than those referred to above. You should insure, therefore, that CITA will continue to carefully monitor all textile and apparel imports and their impact on the U.S. textile and apparel industry, and where market disruption or threat occurs under such other circumstances, will take appropriate actions to limit imports. Copies of this letter are being sent to heads of other departments and offices which are members of CITA.

Sincerely,

Ronald Reagan

cc: The Secretary of State
The Secretary of Treasury
The Secretary of Labor
The U.S. Trade Representative

DRAFT

MEMORANDUM TO: THE SECRETARY OF STATE
THE SECRETARY OF TREASURY
THE SECRETARY OF COMMERCE
THE SECRETARY OF LABOR
THE U.S. TRADE REPRESENTATIVE

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called] and is 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.

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Secretary of Commerce
Washington, D.C. 20230

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Sincerely,

Ronald Reagan

cc: The Secretary of State
The Secretary of Treasury
The Secretary of Labor
The U.S. Trade Representative

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.

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.

DRAFT PREAMBLE

I have determined that the actions set forth in this order are necessary to implement U.S. rights under the Multilateral Textile Agreement (MFA) and related bilateral trade agreements. These actions are taken pursuant to Section 204 of the Agricultural Act of 1956 which provides authority to implement these agreements, and Executive Order 11651 of March 3, 1972 as amended, in which authority to perform certain actions with respect to these agreements has been delegated to the Committee for the Implementation of Textile Agreements (CITA).

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Settle c.v. duty case w/China

Pet. by industry + unions → foreign relations disrupts PRC
(Gov subsidies) at Commerce, c.v.-duty law

12/6 submitted: deadline for Commerce ruling

PRC refused to participate, threats of retaliation against them (→ duties).

Facts: leaning to affirmative (30-40% duty)

Pet: will withdraw if → Annex I

Baldridge floated to Cabinet

Shultz noted agreement

STR opposed (partly legal)

Industry mad

[call auto basis for future growth]

CITA — consults on draft Textile Agreements

Baldridge to get industry to w/draw for 20 weeks, ~~[illegible]~~

Friday next deadline

→ c.v. decision or proposal.

Labor: for

Treasury: ? [mildly opposed]

Put legal gloss on policy decision

NOT MFA factors, but formula

Sets criteria for calls. This doesn't → resolution, but could in future.

Industry Wants from Pres: e.o., memo.

11651 — CITA

Preamble: put in legal context

Using some of legal problem to cover dislike

Justice: Shanks looking at it

STR: violate MFA

Need to resolve legal question

→ retaliation / injunction will occur, all this to action

We take it; keep Shanks off

DOC: no violation now, ~~[illegible]~~ may later [but TSB]

Grzywinski

[377-4845]