UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

TRAINING MODULE ON

TRADE IN TEXTILES AND

CLOTHING

THE POST-ATC CONTEXT

UNITED NATIONS
New York and Geneva, January 2008

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For further information on the Trade Negotiations
and Commercial Diplomacy Branch and its activities,
please contact:

Ms. Mina MASHAYEKHI
Head, Trade Negotiations and
Commercial Diplomacy Branch
Division of International Trade in Goods and
Services, and Commodities
Tel: +41 22 917 56 40
Fax: +41 22 917 00 44
E-mail: trade.negotiations@unctad.org
www.unctad.org/tradenegotiations
www.unctad.org/dispute

UNCTAD/DITC/TNCD/2005/19

UNITED NATIONS PU BLICATION
ISSN 1816-5540

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ACKNOWLEDGEMENTS

Based on the paper prepared by Munir Ahmad, the Executive Director of the International Textiles and Clothing Bureau, this training module was completed by Michiko Hayashi, of the Trade Negotiations and Commercial Diplomacy Branch (TNCDB), under the supervision of Mina Mashayekhi, Head, TNCDB. Sophie Munda was responsible for formatting and Diego Oyarzun-Reyes designed the cover page.

The training module is for information and training purposes only and does not intend to state the official position of UNCTAD member States. It aims to provide training materials and inputs for developing countries' trainers, lecturers and government officials involved in training and research tasks on the issues of trade in textiles and clothing.

INTRODUCTION

For years, there was a clamour against the quota system, which targeted and restricted textiles and clothing from developing countries. Consequently, the conclusion of the Agreement on Textiles and Clothing (ATC), which promised to end the quota system, was hailed as a major achievement of the Uruguay Round of Multilateral Trade Negotiations. However, the abolition of the quota system at the end of 2004 failed to eliminate the problems afflicting international trade in textiles and clothing. In fact, the renewed debate on the trade has brought to the fore a host of issues that had otherwise remained hidden behind the convenience of the quota regime. These issues have important implications for developing countries, but the catalogue of the issues is long, varied and complex. It is necessary, therefore, to put together a short yet coherent framework that could assist the business operators and government officials in these countries to assess the implications of the underlying issues for the textiles and clothing sector in their countries. This module is intended to serve that purpose. It is based on the paper prepared by the International Textiles and Clothing Bureau, as well as UNCTAD work including "Assuring development gains from the international trading system and trade negotiations: implications of ATC Termination on 31 December 2004", "Weaving a new world: realizing development gains in a post–ATC trading system" and "Trade in textiles and clothing: assuring development gains in a rapidly changing environment".

The module is divided into topical issues affecting trade in the sector. Chapter I discusses historical background of trade in textiles and clothing. Chapter II offers a statistical overview of trade in textiles and clothing, with an emphasis on the situation of developing economies in this trade. Chapter III reviews the issues of tariffs and tariff preferences, while chapter IV addresses non-tariff barriers. Also, these two chapters are intended to offer the context for assessment of market access negotiations under the Doha Work Programme. Chapter V provides an analysis of the impact of origin rules on trade flows in the sector. Chapter VI discusses rules on trade remedy measures such as safeguard and anti-dumping actions, as well as the implications of trade remedy measures for textiles and clothing exports of developing countries. Chapter VII provides an overview of developments in safeguard measures against Chinese textiles and clothing. Chapter VIII discusses the necessity for diversifying into dynamic textiles and clothing products in lieu of intensifying competition in the post–ATC phase. Chapter IX provides a list of selected documentation and a bibliography. The annexes provide supplementary information on the ATC, the new European Union (EU) Generalized System of Preferences (GSP), World Trade Organization (WTO) accession, tariffs, intellectual property rights, origin rules, and the 2005 trends in the textiles and clothing trade.

CHAPTER I

HISTORICAL EVOLUTION OF THE TRADE REGIME

I.1. From the MFA to the post–ATC phase

For over 40 years, exports of textiles and clothing from developing countries were the subject of special discriminatory measures which deviated from the General Agreement on Tariffs and Trade (GATT). They were first governed by the so-called Short-Term Cotton Arrangement, which became the Long–Term Arrangement and later the Multi-fibre Arrangement (MFA). The MFA expanded its coverage to synthetic fibres and wool, and thus it covered practically all fibres. The exclusion of textiles and clothing from GATT was intended to be a temporary relief measure in favour of developed–country industries, but it lasted over four decades. The Uruguay Round of Multilateral Trade Negotiations concluded the Agreement on Textiles and Clothing (ATC), which succeeded the MFA. The ATC promised that textiles and clothing would be fully integrated into the normal GATT rules by the end of 2004 and that all MFA quotas would be eliminated by then.

The MFA and the ATC were derogations from the basic rules of GATT, i.e. the principle of nondiscrimination and prohibition on quantitative restrictions. GATT prohibited members from targeting specific countries in applying trade restriction measures, except within procedures such as anti-dumping and countervailing duties prescribed by WTO rules. GATT also forbade use of quantitative restrictions. In spite of these rules, textiles and clothing from developing countries were targeted and restricted for many years, and this anomaly caused a major distortion in international trade in textiles and clothing.

The removal of the distortion caused by the MFA regime was among the principal objectives of the Uruguay Round, and it was agreed that the textiles and clothing sector would be reintegrated into GATT, the same as any other industrial sector. Consequently, the Uruguay Round concluded with the ATC as part of the package of several agreements that went into effect alongside the agreement that created WTO. These agreements are embodied in *the Results of the Uruguay Round of Multilateral Trade Negotiations.*[1]

The ATC formed part of the single undertaking embodied in the results of the Uruguay Round of Multilateral Trade Negotiations. Developing countries had accepted other agreements such as services and trade-related intellectual property rights in the Uruguay Round in exchange for developed countries' acceptance of integration of textiles and clothing into the normal GATT rules. Consequently, the results of the Uruguay Round negotiations reflect the fine balance of the concessions made by WTO member countries in the single undertaking. This is why it was essential to honour Article 9 of the ATC, which stipulated that "there shall be no extension of this agreement". As the ATC expiry approached, some textiles industry associations that had been protected under the quota system pressured their Governments for an extension of the ATC. However, because of the fine balance of the concessions gained under the single undertaking approach of the Uruguay Round negotiations, extension of the ATC would have had serious implications for the multilateral trading system, including the loss of credibility for the system, as it would have required a reopening and unravelling of the WTO Agreements.

[1] The results of the Uruguay Round of Multilateral Trade Negotiations, WTO, Geneva, 1994.

The ATC was essentially designed to correct a longstanding anomaly in the multilateral trading system. According to its terms, the purpose of the ATC was to integrate the textile and clothing sector into the normal rules and disciplines of GATT. The ATC did not provide any explicit definition of the term "integration". However, given the context of negotiations on textiles and clothing in the Uruguay Round, it implied the elimination of the practices which did not conform to the normal rules of GATT, i.e. the quota restrictions applied by major developed countries under the MFA. The ATC set out a framework by which to achieve the phase-out of MFA quotas in a gradual and systematic manner over a transitional period of 10 years, to allow adjustment time for businesses. The details of the ATC phase-out schedule are explained in the Annex I of this module.

The ATC had been considered as a major achievement of the Uruguay Round of negotiations. It was seen as a welcome step towards strengthening the multilateral trading system by correcting the anomaly in the system. It was also perceived as opening the textiles and clothing sector to the benefit of developing exporting countries on the one hand and to the advantage of consumers in the quota-restraining countries on the other.

Integration of textiles and quotas was implemented in four stages (table 1). Over the entire 10–year period of the implementation, the pace of elimination of quotas remained a source of continuous debate and problems. Although in the end the restraining countries fulfilled their commitments, and all quota restrictions were eliminated as from 1 January 2005, the large bulk of the quotas remained in place throughout the transition period. They were abolished only in one giant installment at the very end, and it created large and immediate adjustment pressures for businesses. The box below explains why it was possible for restricting countries to hold the liberalization of restricted products until the last moment.

Table 1. Pace of quota abolition by stages of the ATC

	United States	**EU**	**Canada**	**Norway**
Total number of quotas at start of ATC	937	303	368	54
Of which phased-out				
Stage 1 (from 1995 to 1997)	0	0	8	46
Stage 2 (from 1998 to 2001)	15	21	26	8
Stage 3 (from 2002 to 2004)	88	70	42	0
Total number of quotas abolished during ATC	103	91	76	54
Stage 4 (2005) Quotas to be abolished on 1 Jan. 2005	834	212	292	0

Source: International Textiles and Clothing Bureau (ITCB) tables derived from notifications to the WTO's Textiles Monitoring Body.

Back-loading of restricted products

The ATC replaced the MFA and established an integration programme to phase out all quota restrictions over a 10–year transition period. It set minimum thresholds for "integration" of textile and clothing products in four successive steps: an initial 16 per cent of these products was integrated by 1 January 1995, a further 17 per cent by 1 January 1998, a further 18 per cent by 1 January 2002, and the remaining 49 per cent by 1 January 2005, thereby completing the ATC integration programme. Before 1 January 2005, 51 per cent of the products covered under the ATC had been integrated.

However, products of real interest to developing countries, i.e. products that were restrained by quotas, remained largely restricted, and therefore the commercial significance of the integration for these countries had been very limited. Keeping restricted products out of liberalization was possible as the integration programme included unrestricted textiles and clothing products as well as restricted ones, and the selection of products for integration was left to the discretion of the restricting countries. According to estimates, in the case of the EU, such non-restrained products accounted for some 42 per cent of the total volume of its imports. In the case of the United States, the comparable figure was about 40 per cent. The percentage for Canada was even higher.

Thus, while the obligation in terms of fulfilling the mechanics of integrating the required minimum percentages might have been met, the same could not be said of the realization of the objective and purpose of the ATC. This led to widespread concerns about the process of ATC implementation, and it was said that the restraining countries were effectively following a policy of "back-loading" the quota phase-out, i.e. most quotas were being left to be abolished in one go only at the end of the 10–year period. As shown in table 1, except for Norway, the pace of liberalization by restricting countries was very slow.

As the ATC expiry approached, a number of countries and trade associations expressed apprehension about the impact of quota elimination on textile and clothing industries worldwide. Some industry groups pressed for extension of the ATC, but when they failed, they launched a campaign to win the re-imposition of quota restrictions by their authorities on imports from China. They argued that the expected increase in imports from that country posed a grave threat to established industries. It is important to note, however, that the aftermath of quota elimination was heavily conditioned by the fact that the major quota–restraining countries had chosen to so backload their quota phase-out programmes[2]. As scheduled on 1 January 2005, the ATC expired, and all remaining quota restrictions under the ATC were abolished.

[2] Numerous studies on post–ATC impact pointed out this aspect, for instance, IMF and World Bank, "Market access for developing country exports: selected issues", 26 September 2002; International Textiles and Clothing Bureau, "Textile trade liberalization beyond quota restrictions", CR/39/IND/5, 10 March 2004; Spinanger, Dean , "Faking liberalization and finagling protectionism: the ATC at its best", background paper for the WTO 2000 Negotiations: Mediterranean Interests and Perspectives, Cairo; Audet, Denis, "Structural adjustment in textiles and clothing in the post–ATC trading environment", TD/TC/WP(20004)23/FINAL, OECD Trade Policy Working Paper No.4, 13 August 2004, et al.

Quotas alone could not be a guarantee of success

It is a common belief that the success of many developing countries in establishing export industries in textiles and clothing is owed to the existence of quota restrictions. Without the quotas which restricted exports from countries with competitive textile and clothing industries, it is said, many smaller economies would not have been able to set up export industries in this sector. And as an outstanding success story, the example of Bangladesh is quoted most often.

While there is some justification to this argument, the role of quotas in the success of many developing countries is often exaggerated.[3] The fact is that, much more than quotas, entrepreneurs in many countries took advantage of the export opportunity, essentially in garments, by tapping into their inherent potential due to the availability of relatively cheap labour. In many instances, national Governments actively assisted the efforts of such entrepreneurs through business–friendly policy initiatives.

Bangladesh exporters' efforts were rewarded by a governmental policy designed to make it simpler for exporters to import raw material. Its major boost, however, came from the availability of duty-free access to the EU, providing apparel articles from Bangladesh, which gave a duty advantage of more than 14 per cent over its competitors. Bangladesh has developed the domestic industry for knitted fabrics, and is therefore able to meet the EU GSP rules of origin better than other countries that do not have the domestic capacity to produce fabrics. The issue of rules of origin is discussed in chapter V. The fact that over 55 per cent of Bangladesh's garments exports are destined to the EU stands out as an important non-quota element in the success of its exports in the sector.

More recently, Jordan's success owes almost exclusively to tariff–free access, together with liberal origin rules that became available to the country after the conclusion of a free trade agreement with the United States.[4] Prior to the free trade agreement, Jordan managed to export just $20 million worth of textiles and clothing to the United States. This was despite the fact that most of its competitors, including the most efficient ones, were under quota restraints and its own possibilities were never constrained by any quota–restraining country. Following the implementation of the Jordan–United States free trade agreement, Jordanian exports to the United States jumped to over $1 billion dollars in 2004.

It therefore appears that quotas alone could not have been a guarantee of success. Indeed, in most cases, developing countries' success in export of garments has owed more to the availability of preferential tariff access and a proximity to the main markets, assisted in turn by developments in transportation and information technologies.

I.2. Post-ATC transition measures introduced by the EU and the United States

On the eve of expiry of the ATC, and with it the quota restrictions, the EU and the United States adopted procedural measures for transition to the quota-free regime issuing detailed measures required for the purpose.

[3] International Textiles and Clothing Bureau, "Textile Trade Liberalization beyond Quota Restrictions", CR/39/IND/5, 10 March 2004.
[4] Ibid. Also, United States International Trade Commission, "Textiles and apparel: assessment of the competitiveness of certain foreign suppliers to the U.S. market", Appendix L, January 2004.

I.2.1. Transitional regulations by the EU

The EU made changes in its Regulation/3030 relating to the imports of textiles and clothing into the EU. Some measures are in consequence of the quota abolition, such as: (a) the abolition of the requirement that the quota–restrained shipments be accompanied by export licenses issued by the authorities of exporting country; (b) the abolition of the related requirement for EU importers to present import authorization from the relevant EU member states for release of the shipments; and (c) the procedure for treatment of 2004 shipments that might have been made from quota–restrained countries in excess of the quota limits for that year. The last procedure became void on 1 April 2005.

Also, the regulation established an internal surveillance system for close monitoring of textiles and clothing imports made after 1 January 2005. In the case of imports from China, the EU established an *a priori* surveillance procedure under which the releases for free circulation of products imported from China are subject to the presentation of a "surveillance document" by the importer, which is to be issued by the authorities of the relevant EU member State within five days of the request by the importer. The surveillance document in effect serves as an automatic import licence and a tool for monitoring imports from China. For all other countries, an *a posteriori* surveillance system covering 42 categories of the main textile and clothing products was established to enable prompt monitoring of imports and other relevant data elements.

In April 2005, the European Commission published guidelines for the use of the Textile Specific Safeguard Clause in the Protocol of China's Accession to WTO. These guidelines set alert levels for categories of Chinese textiles imports beyond which the Commission would consider launching market disruption investigations that could lead to the use of temporary safeguards as permitted by the Protocol of China's Accession to WTO. Pertinent aspects of these procedures are discussed in chapter VII.

In July 2005, the European Commission adopted the guidelines for the EU GSP scheme for the period 2006–2015, and the first implementation period of 1 January 2006–31 December 2008 has begun.[5] The new EU GSP scheme addresses the concerns of least developed countries (LDCs) and other vulnerable countries for their textiles and clothing exports in the post–ATC phase, and introduces the new graduation mechanism. The main features of the new EU GSP scheme for textiles and clothing is discussed in annex II.

I.2.2. Transitional regulations by the United States

The United States also abolished the quota monitoring measures imposed under the MFA/ATC regimes such as export visa, Electronic Visa Information System (ELVIS) transmission, Guaranteed Access Level (GAL) certification and exempt certification used for handicraft items. As for safeguard actions on Chinese textiles and clothing, the country had already established its internal procedures in 2003. Indeed, it had invoked and adopted safeguard restrictions under these procedures on three product categories that were integrated at the start of stage three of ATC integration in January 2002, namely: combined categories 350/650 – cotton and man-made fibre dressing gowns and robes; categories 349/649 – cotton and man-made fibre brassieres; and category 222 – knit fabric. United States safeguard actions on Chinese textiles and clothing are discussed in chapter VII.

[5] WTO document, "Generalized System of Preferences, Communication from the European Communities", WT/COMTD/57, 28 March 2006.

I.3. Post–ATC issue discussed at WTO

The ATC expiry has started a new set of debate on the international trade in textiles and clothing. As of February 2007, the WTO Council on Trade in Goods (CTG) considers the issue under the agenda of "Issues Related to Trade in Textiles – Submission of Turkey". In this regard, Turkey's proposal to create a special work programme for textiles and clothing is being considered.[6] The stated objectives of the proposed work programme are "to foster a broader understanding of the unique needs of the textiles and clothing sector; provide guidance for national and multilateral policies and measures to deal with related issues; and in this context, grant technical advice, practical assistance and support to developing countries; elaborate and implement integrated strategies from global to local level to adjust to new global realities". In this light, Turkey has proposed specific activities, such as reviewing on the global production, post–ATC trade and market circumstances; identifying options for developing countries to improve their competitiveness in the sector; reviewing on the adjustment–related issues and recommending measures to assist developing countries facing challenges; and examining ways to develop collaborative efforts with the relevant international organizations.

The current discussions on the establishment of the work programme originate from an initiative by Mauritius, Bangladesh and Nepal in the summer of 2004 to call for an emergency WTO meeting to consider "unintended negative consequences for vulnerable economies from the impending phase-out of the textiles and clothing quotas on 1 January 2005". Subsequently, it was agreed that the CTG would discuss the post–ATC adjustment–related issues, and several submissions were made to support Turkey's proposal to create the work programme. The proposal has gained support from countries of small textiles and clothing exporters.[7]

The discussions on establishing a work programme for textiles and clothing in WTO continue, but the subject is highly controversial, and no agreement has emerged. The opposing countries are developing countries that are major exporters of textiles and clothing. They argue that industrial goods are treated collectively in WTO, and that textiles and clothing should not be an exception to this practice. They view agencies such as the World Bank, the International Monetary Fund (IMF) and other developmental organizations as the appropriate bodies to deal with post–ATC adjustment issues.

[6] "Issues related to the textiles and clothing sector: communication from Turkey", WTO document, G/C/W/549, 28 April 2006.

[7] "Initial submission on Post–ATC adjustment–related issues from Bangladesh, Dominican Republic, Fiji, Madagascar, Mauritius, Sri Lanka, and Uganda", WTO document, G/C/W/496, 30 September 2004; "Turkey's contribution to the debate on post–ATC related-issues", WTO document, G/C/W/497, 25 October 2004; "Tunisia's submission", WTO document, Job(05)/31, 11 March 2005; "Issues related to trade in textiles and clothing: the perspective of Turkey on the issues involved", WTO document, G/C/W/522, 30 June 2005.

CHAPTER II

STATISTICAL OVERVIEW OF THE CURRENT SCENE

II.1. Trends in world textile and clothing trade

During the last 25 years, international trade in textiles and clothing grew significantly, and developing countries made a considerable contribution to this growth. Textiles and clothing constituted the second most dynamic product in world trade, with an annual export growth rate of 13 per cent, surpassed only by electronic and electrical goods, whose exports increased by 16 per cent annually.[8] World exports in textiles and clothing stood at $530 billion in 2004, of which $352 billion accounted for exports from developing countries (table 2). Traded products were largely yarns and fabrics in the initial stages of trade development in this sector; however, there has been a notable shift in the composition of the trade. Now, export of clothing far exceeds that of textiles for most developing countries.

The textiles and clothing sector is an important instrument for economic and social transformation in many economies. The sector plays a vital role in developing countries, offering possibility for absorption of large pools of labour, for generating foreign exchange, and for diversification of economic activities and exports. Also, the sector has important implications for employment opportunities for women, development of small– and medium–scale enterprises, integration of remote regions into the global economy, and the promotion of rural development and poverty alleviation.

Table 2. Textile and Clothing Exports

(Billions of $)

Year	Textiles		Clothing		Textiles & Clothing	
	World	Developing Countries	World	Developing Countries	World	Developing Countries
1980	60	17	37	17	97	34
1990	82	24	104	59	186	83
2000	167	87	252	188	419	275
2002	163	85	261	194	424	279
2003	182	96	297	220	479	316
2004	199	105	331	247	530	352

Note: For 1980, SITC Rev.2, Textiles (Divisions 26 + 65), Clothing (Division 84);For 1990–2004: SITC Rev.3, Textiles (Division 65), Clothing (Division 84).

Source: United Nations Commodity Trade Statistics Database (UN COMTRADE).

[8] UNCTAD," Strengthening participation of developing countries in dynamic and new sectors of world trade: Trends, issues and policies", TD/B/COM.1/EM.26/2, 15 December 2004.

Trade in textiles and clothing as the engine for economic growth

Historically, trade in textiles and clothing has been the beginning of the process of industrialization of a number of economies, often serving as the engine for their economic growth. After the Second World War, starting with Japan, a succession of countries and economies passed through the same experience. In 1956, Japan derived as much as 38 per cent of its total export earnings from the sector, and the Republic of Korea 36 per cent in 1970. The sector now accounts for only 1.6 per cent of Japan's exports and 9 per cent of the Republic of Korea's. Hong Kong, China, and Taipei, Taiwan Province of China, went through similar evolutions, although the sector still accounts for over half of domestic exports of Hong Kong, China. At their peak in early 1980s, Hong Kong, China, the Republic of Korea and Taipei, Taiwan Province of China, together supplied one third of the world's clothing.

Particular importance of the garment sector

The garment sector has played a significant role in the transformation of exports in many developing countries. One recent example is Bangladesh. The garment sector in the country has contributed immensely in the transformation of its exports. From a mere 4 per cent in 1983, the garment industry now accounts for over 80 per cent of Bangladesh's total exports. For a number of other developing countries and economies, the sector represents the single largest source of export earnings.

The top 30 exporters of textiles and clothing in 2005 are listed in tables 3 and 4. China was a leading exporter of both textiles and clothing, followed by Italy, the United States and Germany for textiles; and Turkey, Italy and India for clothing. Contrary to the general belief that developing countries dominate the textiles and clothing trade, developed countries are also important exporters. Of the 30 top exporters in 2005, developed countries made up 16 for textiles and 11 for clothing.

Table 3. Top 30 textile exporters in 2005

(Millions of $)

China	39,523
Italy	13,422
United States	11,789
Germany	10,909
India	9,316
Turkey	9,257
Korea, Rep. of	8,765
Taiwan Prov. of China	8,565
Japan	7,060
Pakistan	7,007
France	5,403

Belgium	5,265
United Kingdom	3,968
Netherlands	3,917
Indonesia	3,213
Spain	2,869
Switzerland	2,661
Canada	2,475
Thailand	2,416
Hong Kong, China	2,301
Mexico	2,160
Portugal	1,749
Austria	1,573
Czech Republic	1,542
Brazil	1,362
Malaysia	1,151
Poland	1,093
Israel	1,090
Romania	1,067
Egypt	967

Note: Textiles as Division 65 of SITC Rev.3.

Source: UN COMTRADE database.

Table 4. Top 30 clothing exporters in 2005

(Millions of $)

China	118,518
Turkey	22,889
Italy	14,203
India	13,942
Bangladesh	12,319
Hong Kong, China	10,767
Romania	9,687
Germany	7,707
Indonesia	7,186
Mexico	6,809
Tunisia	6,539
Morocco	6,156
France	5,952

Viet Nam	5,686
Thailand	5,658
Sri Lanka	4,145
Pakistan	4,141
Malaysia	3,739
United States	3,660
Cambodia	3,190
Bulgaria	3,098
Portugal	3,088
United Kingdom	3,056
Korea, Rep. of	3,020
Belgium	3,009
Netherlands	2,951
Honduras	2,852
Philippines	2,811
Spain	2,467
Macao, China	2,398

Note: Clothing as Division 84 of SITC Rev.3

Source: UN COMTRADE database.

Under the combined influence of quota restrictions, relatively high United States and EU import tariffs on clothing, the preferential access available to certain countries, and advances in transportation and information technology, countries on the export scene have continued to expand, from a mere handful two decades ago to more than two dozen now. The latest entries are those of Viet Nam, several Sub-Saharan African countries and Jordan. Spread around the globe, many have been recent entrants to the scene, yet the sector has quickly become the mainstay of their exports. As discussed below, virtually all of them have specialized in export of garments assembled from imported inputs, on the back of quota and tariff-free access granted by major developed economies such as the EU, the United States and, more recently, Canada. These three together accounted for some 70 per cent of world imports of clothing in 2005.

II.2. Trade profiles of individual countries

The export profiles of selected developing countries for textiles and clothing are shown in tables 5 and 6. With few exceptions, most are also beneficiaries of tariff preferences in the United States or in the EU, and their exports are therefore primarily destined towards the preference-giving markets. The issue of preferences is further discussed in chapter III.

It is noteworthy that from amongst the countries included in table 5, sector exports of the following countries are almost all in clothing: Bangladesh, Sri Lanka, Madagascar, Mauritius, Morocco, Tunisia, Lesotho, Bulgaria, Jordan and Romania. Due to the problems related to the reporting of their exports from export processing zones, the percentages of clothing exports presented in table 5 for El Salvador, Guatemala, Honduras, Mexico and Dominican Republic

do not reflect their accurate situation. It can, however, be assumed that their sector exports are also primarily in clothing, over 90 per cent in each case, except for Mexico. Most of these countries have little or no indigenous textile production capacities of their own.

While Pakistan stands out at the other extreme, with clothing making up only 29 per cent of its sector exports, most Asian economies included in table 5 enjoy a relatively wider export mix between textiles and clothing. For countries not included in the table, textile exports far outweigh clothing in the export mix for the Republic of Korea and Taipei, Taiwan Province of China, whereas Cambodia, Philippines and Viet Nam depend largely on clothing.

Table 5. Textile and clothing exports to the world – selected countries

		HS Clothing in		**HS Textiles in**	
Year	Exporter	Million $	%	Million $	%
Asia					
2003	Bangladesh	3,596	89%	424	11%
2003	China	45,757	63%	27,186	37%
2003	India	6,166	47%	6 ,940	53%
2003	Indonesia	3,982	57%	3 ,039	43%
2003	Pakistan	2,446	29%	6 ,090	71%
2003	Sri Lanka	2,400	93%	193	7%
2003	Thailand	3,053	55%	2,475	45%
Africa					
2003	Madagascar	236	95%	12	5%
2003	Mauritius	979	93%	77	7%
2003	Morocco	2,813	96%	133	4%
2003	Tunisia	2,696	90%	286	10%
2002	Lesotho	234	93%	18	7%
Middle East/Europe					
2003	Bulgaria	1,493	85%	268	15%
2003	Jordan	675	97%	19	3%
2003	Romania	4,015	90%	440	10%
2003	Turkey	9,546	64%	5,270	36%
Latin America					
2003	El Salvador	83	53%	73	47%
2003	Guatemala	102	65%	54	35%
2003	Honduras	25	66%	13	34%
2003	Mexico	7,218	76%	2,299	24%
2001	Dominican Rep.	7	85%	1	15%

Source: UN COMTRADE database.

The trends of the export destination of the countries included in table 5 are provided below (table 6). Firstly, it is evident that the largest shares were absorbed by the United States and the EU; and secondly, that where the United States tariff preferences were available to particular countries, those countries' exports went predominantly to the United States market. Likewise, where EU preferences were available, their exports went predominantly to the EU market. For example, countries such as Bangladesh, Mauritius, Morocco, Tunisia, Bulgaria, Romania and Turkey have duty-free access to the EU, and major proportions of their exports went to the EU. Likewise, countries such as Jordan, Mexico, El Salvador, Guatemala, Honduras, and the Dominican Republic have duty-free access to the United States, and major part of their exports went to that country.

No doubt that proximity to markets is an important factor, yet the evidence points to the primacy of competitive advantage deriving from trade policy measures such as tariff preferences and the origin rules. The issues of tariff preferences and origin rules are further discussed in chapters III and V, respectively.

Table 6. Textile and clothing exports to the world, United States and EU, selected countries

		World	United States		EU 15		United States & EU
Year	Exporter	Million $	Million $	%	Million $	%	%
Asia							
2003	Bangladesh	4,020	1,391	35%	2,195	55%	90%
2003	China	72,943	7,201	10%	7,656	10%	20%
2003	India	13,106	2,888	22%	4,161	32%	54%
2003	Indonesia	7,021	2,048	29%	1,591	23%	52%
2003	Pakistan	8,535	2,676	31%	2,624	31%	62%
2003	Sri Lanka	2,593	1,525	59%	825	32%	91%
2003	Thailand	5,528	1,892	34%	1,026	19%	53%
Africa							
2003	Madagascar	247	121	49%	102	41%	90%
2003	Mauritius	1,056	299	28%	658	62%	90%
2003	Morocco	2,946	54	2%	2,814	96%	98%
2003	Tunisia	2,981	24	1%	2,877	96%	97%
2002	Lesotho	252	159	63%	9	3%	66%
Middle East/Europe							
2003	Bulgaria	1,761	112	6%	1,447	82%	88%
2003	Jordan	695	608	88%	5	1%	89%
2003	Romania	4,455	81	2%	4,101	92%	94%
2003	Turkey	14,816	1,745	12%	9,520	64%	76%

Latin America							
2003	El Salvador	156	64	41%	2	2%	43%
2003	Guatemala	155	72	46%	0	0%	46%
2003	Honduras	37	24	64%	1	1%	65%
2003	Mexico	9,517	8 926	94%	96	1%	95%
2001	Dominican Rep.	9	7	85%	0	2%	87%

Source: UN COMTRADE database.

II.3. Limitations of the statistics

While we are able to see the trends of trade in textiles and clothing from the statistics, it is important to recognize that reliable data are hard to come by. Part of this problem derives from differences in various classification systems and part from reporting practices by different exporting countries. As described below, definitions of textiles and clothing differ in each classification system.

- Standard International Trade Classification (SITC): Developed by the United Nations Statistical Office, textiles and clothing are classified as SITC Divisions 65 and 84, respectively. Besides conventional textiles and clothing, Divisions 65 and 84 include articles of apparel and clothing accessories of leather, fur skins, and artificial plastic materials or rubber, and yarns and fabrics of glass fibre, even though these products are not commonly understood to be textile and clothing. Therefore, data under SITC is *overstated* to the extent of exports of these products.

- Harmonized Commodity Description and Coding System (HS): Developed by the World Customs Organization, textiles and clothing are classified under "Section XI– Textiles and Textile Articles". This section is subdivided by chapters 50 to 60 (textiles) and chapters 61 to 63 (clothing). Section XI does not treat the non-conventional articles included in the SITC as textiles and clothing, but it includes certain agricultural products such as raw cotton, silk, wool and animal hair, and other vegetable fibres including jute, flax, ramie, etc. Thus, under the HS, too, Section XI *overstates* textiles and clothing exports to the extent that these agricultural raw materials are included.

- International Standard Industrial Classification (ISIC): The ISIC Database of the United Nations Industrial Development Organization treats the following items as textiles: t-shirts, singlets and other vests, jerseys, pullovers, cardigans, waistcoats and other similar articles, panty hose, tights, stockings, socks and other hosiery, whereas these are actually items of clothing and are classified as such in the HS under headings 61.09, 61.10 and 61.15. The Global Trade Analysis Project database, which is used by economists as the basis for their simulation exercises to measure the effects of quota elimination, uses the ISIC.

- ATC classification: The product coverage of the defunct ATC was largely based on Section XI of the HS. However, the ATC classification excluded the agricultural raw materials and added many other items from outside this section. The most significant of these inclusions were luggage, handbags and footwear uppers of textile materials; fabrics coated, covered or laminated with plastics; headgear; yarns and fabrics of fibre glass; safety seat belts; and pillows and cushions. As with leather apparel products under SITC and agricultural raw materials under HS Section XI, these

products are also not commonly understood to belong to the universe of textiles and clothing. They were included in the product coverage of the ATC at the insistence of major developed countries and led to significantly inflating the volume of trade which was to be taken for integration into the normal rules of GATT/WTO. This action enabled restricting countries to postpone the phase-out of bulk of MFA quotas to later stages of the ATC integration process.

As if the differences in the classification systems were not complicated enough, the situation is compounded by two further factors: firstly, by the time lag in which various countries report their trade statistics;[9] and secondly, by differences among exporting countries with respect to their treatment and reporting of exports from export processing zones. Far from being trivial, these differences raise important questions about the comparability of various data sets, and the results produced by researchers who use differing classifications or, worse, several classifications at the same time to arrive at a particular output.

In order to appreciate the full importance of differences in the statistics, it is worthwhile to glance through the figures in table 7. The ones under the SITC classification are those from the WTO data set, while those under the HS are from the UN COMTRADE database. The figures which relate to exports of purely agricultural raw materials, namely, raw silk, raw cotton, raw wool and animal hair, and other vegetable fibres are excluded from the SITC data.

The differences in the figures under the two data sets are apparent. In particular:

- Firstly, it is notable that for certain developing exporting countries the aggregate figures are significantly different under alternate data sets. Thus, for Bangladesh, SITC data are higher by $800 million. In the case of China, it is higher by over $6 billion. The large variations in figures with respect to El Salvador, Honduras and the Dominican Republic are also notable. These differences are possibly due to the inclusion of leather apparel products in SITC data set and differences among countries with respect to the reporting of their exports from export processing zones.

- Secondly, with respect to exports for Guatemala and Honduras under SITC in the WTO data set, the differences are relatively small. Yet if one refers to the figures shown in the WTO publication “International Trade Statistics 2004” for United States imports from these two countries, it becomes apparent that their export figures in table 7 do not include exports from their export processing zones. The publication shows that in 2003 the United States imported $1.85 billion and $2.62 billion worth of textiles and clothing from Guatemala and Honduras, respectively.

[9] In order to make up for delayed reporting by some countries, WTO generally includes its own estimates.

Table 7. Textile and clothing exports under SITC and HS classifications

2003 Textile and clothing exports to the world, selected countries			
		SITC	HS
Year	Exporter	Million $	Million $
Asia			
2003	Bangladesh	4,831	4,020
2003	China	78,962	72,943
2003	India	13,470	13,106
2003	Indonesia	7,028	7,021
2003	Pakistan	8,521	8,535
2003	Sri Lanka	2,889	2,593
2003	Thailand	5,776	5,528
Africa			
2003	Madagascar	246	247
2003	Mauritius	1,043	1,056
2003	Morocco	2,977	2,946
2003	Tunisia	2,990	2,981
2002	Lesotho	252	252
Middle East/Europe			
2003	Bulgaria	1,744	1,761
2003	Jordan	718	695
2003	Romania	4,513	4,455
2003	Turkey	15,181	14,816
Latin America			
2003	El Salvador	2,036	156
2003	Guatemala	157	155
2003	Honduras	522	37
2003	Mexico	9,444	9,517
2001	Dominican Rep.	2,712	9

Sources: WTO data set for figures under SITC;
UN COMTRADE database for figures under HS.

The upshot is that users need to be cognizant of these issues and verify the source as well as the product coverage of data used in different presentations. For the purposes of this module, the data sources are clearly indicated. As a general matter, unless otherwise specified, the figures used are based on HS Section–XI from the UN COMTRADE database, excluding agricultural raw materials indicated earlier.

CHAPTER III

TARIFFS AND TARIFF PREFERENCES

Policy measures by developed countries, especially the United States and the European Union, have long had a major influence on trade flows in textile and clothing. For years, these measures were a combination of quota restrictions and high tariffs. With the expiry of the ATC and the termination of quota restrictions at the end of 2004, the focus has naturally shifted to tariffs. Tariffs on textiles and clothing in major developed economies are significantly higher than average tariffs on non-agricultural products. It is widely believed that significant reductions in textiles and clothing tariffs through the ongoing Doha Development Round of WTO negotiations will significantly increase market access for these products from developing countries.

At the same time, however, precisely because of the relatively high tariffs on textiles and clothing in the two major markets, the issue of tariffs is closely intertwined with that of tariff preferences available to a number of both large and small countries, either by virtue of free trade agreements between them and the two trade partners, or under autonomous preferential schemes such as the GSP.

This chapter is designed to provide an insight into the linkage between tariffs and tariff preferences. The first section gives an overview of the post–Uruguay Round tariff situation around the world. The second section shows how tariffs of the main importing countries are intertwined with tariff preferences. The final section brings the reality of these linkages in the context of the ongoing Doha Round negotiations on market access. The chapter is based on "Trade in textiles and clothing: post–ATC context" and "Weaving a new world: realizing development gains in a post–ATC trading system".[10]

III.1. Post–Uruguay Round tariff situation

In the Uruguay Round negotiations, tariffs in the textiles and clothing sector in developed countries were cut much less than those in other industrial sectors. Two factors were primarily responsible for this outcome:

- In the Uruguay Round, the attention remained focused on the problem of quotas, with developing countries assuming it was unrealistic to expect concurrent commitments from the developed world for abolition of quotas and major reductions in tariffs at the same time; and
- The approach agreed for tariff negotiations set only the objective of achieving a target overall reduction of at least one third for all sectors combined. In practice, it allowed major developed countries to meet the target even when

[10] International Textiles and Clothing Bureau, "Trade in textiles and clothing: post–ATC context", UNCTAD Mimemo, September 2005; and Hayashi, Michiko, "Weaving a new world: realizing development gains in a post–ATC trading system", UNCTAD/DITC/TNCD/2005/3, October 2005.

cutting textiles and clothing tariffs by much less, with deeper reductions in other product areas.

Consequently, textile and clothing tariffs by developed countries were reduced by only 22 per cent, whereas on all industrial products combined the reductions achieved were 40 per cent. Worse still, the United States reductions in textile and clothing tariffs amounted to only 13 per cent, compared with 35 per cent for all industrial products. The comparable figures for the EU were 17 per cent for textiles and clothing and 37 per cent for all industrial products.[11]

The prevalence of high tariffs in textiles and clothing relative to the average incidence on all industrial products is self-evident in the sum up of the present situations of tariffs in the four major developed countries (table 8). Whereas only 1.8 per cent of all non-agricultural products are subject to tariff peaks in the United States, 13 per cent of textile and clothing products are liable to such peaks. Similarly, while over half of all non-agricultural products are duty-free in Japan, the comparable figure for textiles and clothing is only 2.8 per cent. Also, while simple average bound rate for all industrial products in the EU is 3.9 per cent, for textiles and clothing it is 7.9 per cent, and for clothing it is 11.5 per cent.

Table 8. Current tariff situation in a nutshell

(percentage)

	Canada	**United States**	**EU**	**Japan**
A. Simple average most favoured nation (MFN) bound rates:				
All non-agricultural products	5.3	3.2	3.9	2.3
Textile and clothing products	12.4	8.9	7.9	6.8
B. Tariff peaks (Share of tariff lines with rates above 15%)				
All non-agricultural products	6.8	1.8	0.8	0.6
Textile and clothing products	30.6	13.0	0	0.3
C. Share of duty-free lines				
All non-agricultural products	29.4	38.5	23.9	57.1
Textile and clothing products	6.5	11.3	2.1	2.8
D. Simple average tariff				
Clothing products (HS chapters 61-62)	17.5	10.7	11.5	9.2

Source: WTO, "Market access: unfinished business – post Uruguay Round inventory and issues", WTO Members' Tariff Profiles in document TN/MA/S/4/Rev.1 and Corr.1; and Organization for Economic Cooperation and Development (OECD) "Structural adjustment in textiles and clothing in the post–ATC trading environment", Trade Policy Working Paper No.4.

With respect to the average bound rates, a note of caution is in order, however. The box below shows that the averaging of tariffs can conceal the real incidence of high tariffs on particular products. For example, as shown in table 8, although the simple average tariff for the textiles

[11] GATT secretariat, "The results of the Uruguay Round of Multilateral Trade Negotiations: market access for goods and services; overview of the results", November 1994.

and clothing sector in the United States is calculated to be less than 9 per cent, actual tariffs for main traded products are much higher (table 9). The tariffs on the main traded items are much higher than the average incidence of tariff. Significantly, these product categories accounted for over $39 billion of United States imports in 2004, and represented over 46 per cent of total textile and clothing imports and about 60 per cent of clothing imports in the United States.

Simple average bound rate can be distorted and misleading

Simple average is the sum of various tariff rates, say, 2, 2, 2, and 30 per cent, etc., on different products divided by the number of tariff lines for which the average is to be calculated. Thus, for example, if the average rate were to be calculated for a hypothetical chapter with only four tariff lines based on the rates indicated here, the average will be (2 + 2 + 2 + 30) ÷ 4 = 9. Notice, how the average can be distorted and misleading if a country's main trade interest were in the product whose rate is 30 per cent.

Table 9. United States tariffs on main traded products, 2004

(Millions of $)

Product	Cat.	Imports	Tariff	Cat.	Imports	Tariff
All MFA products		83,311				
Knit shirts MB	338	5,182	19.7%	638	1,532	32.0%
Knit shirts WG	339	6,096	19.7%	639	2,357	32.0%
Trousers MB	347	5,023	16.6%	647	1,806	27.9%
Trousers WG	348	6,332	16.6%	648	1,723	28.6%
Underwear	352	2,558	8.9%	652	753	15.6%
Woven shirts MB	340	2,366	19.7%	640	684	29.1c/kg+25.9%
Woven shirts WG	341	1,432	15.4%	641	768	26.9%
Above products	Total	28,989			9,623	
	Share	34.8%			11.6%	

Note: Category numbers starting with 3 are cotton products and those with 6 are man-made fibre products; MB stands for men and boys, and WG for women and girls.

Source: United States Department of Commerce, OTEXA; United States Tariff Schedules and ITCB.

In order to see the real incidence of tariff structure for textiles and clothing in the industrialized world, it is necessary to see the comparative tariffs on main traded products.

These figures are provided in table 21 in annex IV. It can be summarized that:

- EU tariffs on clothing are a uniform 12 per cent, and 8 per cent and 4 per cent for fabrics and yarns, respectively.

- United States tariffs are much more varied, rising for a large list of main traded items to 20 per cent, or even 32 per cent.
- Japanese tariffs for clothing range from 9 to 11 per cent, and for fabrics and yarns from 3 to 6 per cent.
- Canadian tariffs on clothing and made-up articles are 17 to 18 per cent, on fabrics 12 to 14 per cent, and yarns 8 per cent.

Textiles and clothing tariffs are also high in developing countries. However, as discussed in the box below, there are important differences from industrialized countries in their tariff situations.

Developing country tariffs are high too, but there is a qualitative difference compared with developing country tariffs

Bound developing country tariffs are generally set at ceiling rates and, in a majority of cases, vary between 25 per cent and 45 per cent. However, the applied rates in these countries are usually much lower. Thus, for example, India's bound tariffs on clothing products are 35 to 40 per cent, yet its applied tariffs have since been reduced to 15 per cent. Likewise, Brazilian applied tariffs are 20 per cent or even lower, whereas its bound tariffs are 35 per cent.
Moreover, textile and clothing tariffs in developing countries do not generally vary much from tariffs on other industrial goods. In other words, unlike the industrialized countries, the sector is not singled out for any special protection.

III.2. The linkage between tariffs and tariff preferences

Since the Uruguay Round negotiations, regional trade agreements have increased, and textiles and clothing from many countries have preferential access to the major markets. Also, these products from developing countries and LDCs have preferential access to the major markets under non-reciprocal preference programmes. The relevant agreements and programmes are indicated below. For the GSP, the detailed information can be found at the UNCTAD website.[12]

III.2.1. United States

The most relevant regional trade agreements with the United States for textiles and clothing are the North American Free Trade Agreement (NAFTA) and the Central America–Dominican Republic Free Trade Agreement (CAFTA). Also, bilateral agreements such as the United States–Jordan Free Trade Agreement and the United States–Israel Free Trade Area Agreement are important for textiles and clothing.

[12] UNCTAD Website http://www.unctad.org/Templates/Page.asp?intItemID=1418&lang=1

The United States does not provide GSP benefits to textiles and clothing,[13] but under the non-reciprocal preference programmes such as the African Growth and Opportunity Act (AGOA), the Caribbean Basin Initiative (CBI) and the Andean Trade Preference Act (ATPA), duty-free access to the United States market is provided to textiles and clothing from the beneficiary countries. For developing countries and LDCs that are not covered by the free trade agreements or the non-reciprocal preference programmes, their textiles and clothing are subject to MFN duties. Bangladesh, Cambodia, Nepal, Sri Lanka, and Viet Nam are examples of this. The box below shows the beneficiaries of the trade agreements and non-reciprocal programmes discussed above.

NAFTA: Canada and Mexico; CAFTA: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic

Among AGOA economies, as of February 2007 those with textiles and clothing preferential access were: Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Ethiopia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Rwanda, Senegal, Sierra Leone, South Africa, Swaziland, United Republic of Tanzania, Uganda and Zambia.

CBI: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

ATPA: Bolivia, Colombia, Ecuador and Peru.

III.2.2. EU

The most relevant regional agreements with the EU for textiles and clothing include the Economic Partnership Agreements (EPA) and the Euro–Mediterranean Association Agreements (EMAA). Duty-free access to the EU market is provided to textiles and clothing from the countries that participate in these arrangements. The box below includes the beneficiary countries of these arrangements.

EPA: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal,

[13] Exceptionally, some handicraft textile products such as hand-loomed and folklore wall hangings, hand-loomed and folklore pillow covers, and hand-loomed fabrics, are eligible for GSP treatment when the GSP beneficiary has signed an agreement with the United States to provide certification that the items are handmade products of the exporting beneficiary. To date, such agreements have been signed with Afghanistan, Botswana, Colombia, Egypt, Guatemala, Jordan, Macao Province of China, Malta, Morocco, Nepal, Pakistan (benefits suspended 30 June 1996, but restored 30 June 2005), Peru, Romania, Thailand, Tunisia and Uruguay. The arrangement allows the United States to give duty-free treatment to the products. Also recently, hand-loomed and folklore carpets and other textile floor coverings, hand-loomed and folklore rugs, other hand-loomed and folklore floor coverings, and hand-woven and folklore tapestries are made duty-free on an MFN basis. Moreover, for Pakistan, gloves, mittens, and mitts for sports use are eligible for duty-free treatment under the United States GSP scheme in view of its progress in addressing concerns regarding worker rights. http://usinfo.state.gov/gi/Archive/2005/Jul/01-523855.html, 30 June 2005, and Office of the United States Trade Representative, "U.S. Generalized System of Preferences Guidebook", Executive Office of the President, Washington, D.C., January 2006.

Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, United Republic of Tanzania, Togo, Uganda, Zambia, Zimbabwe, Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Surinam, Trinidad and Tobago, Fiji, Kiribati, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa.

EMAA: Association agreements are in force with Tunisia, Israel, Morocco, Jordan, Egypt and on an interim basis the Palestinian Authority.

The EU GSP provides preferential access to textiles and clothing from developing countries and LDCs. These products from LDCs are eligible for duty-free treatment under the Everything But Arms (EBA) Initiative. Also, developing countries are entitled for duty concessions, but only to the extent of 20 per cent of the applicable MFN duty rate. Thus, for example, on a tariff rate of 12 per cent on clothing, the duty concession is only 2.4 per cent.

III.2.3. Canada and Japan

Canada's GSP scheme largely excludes textiles and clothing, with some exceptions such as in carpets and other textile floor coverings. Preference rates vary for GSP-covered textiles and clothing articles. Since January 2003, however, Canada provides duty-free access to textiles and clothing from LDCs under its new programme that extends duty-free access to imports from these countries.

For Japan, except silk-worm cocoons and raw silk, its GSP scheme provides preferential access to textiles and clothing from developing countries with varying preferences. Also, some silk and wool fabrics have ceilings beyond which duty concessions do not apply. For LDCs, it provides duty-free treatment for covered textiles and clothing articles.

III.2.4 The linkage between tariff preferences and competitive edge

It is apparent that duty-free treatment offers a significant competitive advantage, especially as tariff rates are quite high in the industrialized countries. For exporting countries that are located in close proximity to these countries, the value of preferences becomes even more pronounced, given the lower transportation costs and shorter delivery times. This value is particularly eminent in the United States and the EU, given their market size and the high tariffs of textiles and clothing.

As a result of United States' free trade agreements and non-reciprocal preference programmes, textile and clothing imports from countries that have duty-free access accounted for 30 per cent of all United States imports in 2004, compared to only 14 per cent from these same countries in 1990.[14] Most notably, Mexico increased its share from 2.4 per cent in 1990 to 13.5 per cent in 2000 before declining to 9.4 per cent in 2004. AGOA countries' share advanced from 0.7 to 2.2 per cent. By contrast, Indonesia's share increased only from 2.5 to 3.1 per cent, and India's increased from 2.8 to 4.4 per cent. Textiles and clothing from these two countries do not have preferential access to the United States. It should be stressed, however, that the extent of duty-free imports from individual countries entering under these programmes varied from 96 per cent in the case of Mexico, to 45 per cent and 37 per cent in

[14] Figures in this paragraph are ITCB calculations based on data on United States MFA imports from OTEXA, United States Department of Commerce. They are based on the product coverage of United States' MFA categories.

the cases of Guatemala and Nicaragua, respectively. The rest of their exports of textiles and clothing entered the United States under the normal MFN duty rates because they did not meet the rules of origin requirements. This issue is further discussed in chapter V.

On the EU side, the share of extra-EU imports accounted for by Morocco, Romania, Tunisia and Turkey increased from 16.7 per cent in 1990 to 27 per cent in 2004.[15] These countries have duty-free access to the EU. Within this group, Turkey's share increased from 8.6 to 14 per cent from 1990 to 2003, and Romania's from 1.2 to 5.6 per cent during the period. By contrast, Indonesia's share stagnated at 2.4 per cent and India's moved only from 5.3 to 6 per cent during the period. Textiles and clothing from these two countries do not have duty-free access but are entitled to 20 per cent preference margin from the MFN duty rates.

From the foregoing, the significance of tariff preferences to a large number of countries is self-evident. Yet what makes the issue more complex is the fact that a majority of beneficiary countries are obligated to use United States or EU textile components, especially yarns and fabrics, for their apparel export sectors. This obligation is manifested in the origin rules that their exports must fulfil to be able to benefit from preferential tariffs. The issue of origin rules is further discussed in chapter V.

III.3. NAMA tariff negotiations

The non-agricultural market access (NAMA) tariff negotiations under the Doha Round of multilateral trade negotiations aim at reduction or elimination of tariffs. The results of the NAMA negotiations would have direct bearing on the textiles and clothing sectors in developing countries and LDCs. While reduction of their tariffs would be highly beneficial to developing country exporters given the existing tariff peaks in the sector in developed countries, it is apparent that the existence of high tariffs in major markets is intertwined with the issue of preferences. Therefore, negotiators in the Doha Round are faced with the challenge of devising an optimal approach that takes into account the imperative of enhancing market access in the sector on the one hand, and the concerns of many developing economies deriving from their dependence on apparel exports to preferential giving markets on the other. This aspect is considered in the NAMA negotiations as the "non-reciprocal preference issue". The discussions in this context are highlighted in the box below.

[15] ITCB calculations from Eurostat data on EU–15 imports in HS Section XI, excluding the agricultural products classified under this section.

Non-reciprocal preferences issue discussed in the NAMA negotiations

At the Sixth WTO Ministerial Conference, Ministers recognized the challenges that may be faced by non-reciprocal preference beneficiary countries due to erosion of preferences, and instructed the NAMA Group to intensify work on the assessment of the scope of the problem with a view to finding possible solutions.[16] Some proposals have been made in this regard. The African Group has proposed that longer implementation periods for tariff reduction would be applied for the products that would be affected by preference erosion for non-reciprocal preference beneficiary countries.[17]

Many developing countries, however, are opposed to any measures that would allow for longer periods or lesser cuts in the markets in developed countries, as it would be at the expense of their own access to major markets.[18] Also, they view such measures as special and differential treatment in favour of developed countries. They have made a counterproposal that the challenges faced by preference-receiving countries should be dealt with by targeted assistance, and capacity–building through Aid-for-Trade and other technical assistance programmes to assist affected countries in diversifying their exports and enhancing their competitiveness. Other countries have suggested that compensation measures be provided to developing countries that would be adversely affected by trade solutions to ease preference erosion. Such measures include providing immediate preferential market access for affected developing countries and extending additional phase-out years for implementing their tariff cuts in the same tariff lines.

The NAMA tariff negotiations have focused on the tariff reduction formula, flexibilities for developing countries and treatment of unbound tariffs. The Sixth WTO Ministerial Conference agreed to adopt a tariff reduction formula, the so-called, "Swiss Formula".[19] Coefficients to be applied for the Swiss Formula are under consideration. The stake for developing countries is the level of ambition, i.e. how deep and how fast the developing countries should reduce their own tariffs, which would be determined by the combination of the coefficients for the Swiss Formula and flexibilities for developing countries. LDCs are exempt from the NAMA tariff reduction obligation and therefore, unless they are affected by customs union agreement tariffs on textiles and clothing imports in these countries do not have to be reduced. However, they are expected to substantially increase their level of binding commitments, although the binding coverage rate and the level at which tariffs should be bound are not yet agreed.

The Doha Round negotiations were suspended at the end of July 2006 when a meeting of ministers from six key trading nations collapsed over divisions on how to cut farm subsidies and tariffs, but it resumed in January 2007. NAMA negotiations have been considered as intrinsically linked to agricultural negotiations, and the issue of ambition in NAMA would be resolved when the same is determined in the agricultural negotiations.

[16] "Ministerial Declaration", WTO document, WT/MIN(05)/DEC, 22 December 2005, paragraph 20.
[17] "Treatment of non-reciprocal preferences for Africa", WTO document, TN/MA/W/49, 21 February 2005.
[18] The NAMA 11 Group of Developing Countries: Argentina, the Bolivarian Republic of Venezuela, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa and Tunisia.
[19] Final bound tariff = ([initial bound tariff] x [coefficient]) / ([initial bound tariff] + [coefficient]).

CHAPTER IV

NON-TARIFF BARRIERS

Non-tariff barriers (NTBs) significantly affect market access of textiles and clothing from developing countries. These products face various NTBs that are often in the form of complex and stringent internal regulations and standards. For example, typical measures are customs and other documentation formalities, non-uniform classification practices with respect to the same products, rules of origin (including stricter rules for eligibility for preferences), technical barriers to trade requirements, and social–condition–related requirements. Importing countries often impose these measures unilaterally, without consulting exporters who will be affected by them.

In principle, technical regulations and standards are aimed at accomplishing the legitimate policy objectives of human safety, health protection and environmental protection. However, they can effectively block market entry for exporters that are unable to comply with conditions and requirements that are often difficult and costly for exporters to meet. Also, problems arise when the purpose of technical measures goes beyond their legitimate protection policy objectives.

In this chapter, NTBs are divided into two groups: (a) those discussed in the NAMA negotiations; and (b) those dealing with market entry conditions. In both cases, NTBs can have significant impact on exports of textiles and clothing from developing countries, and it is important for exporters to understand them. The chapter is based on country submissions on NTBs to the NAMA negotiations, as well as UNCTAD publications.[20]

IV.1. Non-tariff barriers discussed in the NAMA negotiations

The NAMA NTBs negotiations aim at elimination or reduction of NTBs. The NAMA Group has proceeded with identification, examination and categorization of NTBs based on the notifications made by WTO members. NTBs on textiles and clothing that were identified in the NAMA negotiations include:[21]

- Restrictive governmental measures on import of textile products, e.g. import licensing requirements;
- Excessive technical regulations and standards, and certification requirements;
- Differing and excessive label or marking requirements;

[20] For UNCTAD publications: “assuring development gains from the international trading system and trade negotiations: implications of ATC termination on 31 December 2004”; “Weaving a new world: realizing development gains in a post–ATC trading system”; and "Report of the expert meeting on market entry conditions affecting competitiveness and exports of goods and services of developing countries: large distribution networks, taking into account the special needs of LDCs”. For country submissions, WTO documents “Non-tariff barrier notification”, TN/MA/W/25, 28 March 2003, TN/MA/6/Rev. 1, 1 April 2003, TN/MA/W/25/Add.1, 13 May 2003, TN/MA/W/46/Add.5, 3 November 2004, TN/MA/W/46/Add.10, 6 December 2004, TN/MA/W/46/Add.7/Rev.1, 5 July 2005, TN/MA/W/46/Add.10/Rev.1, 5 July 2005, TN/MA/W/46/Add.15, 9 November 2005, and TN/MA/W/46/Add.16, 21 November 2005.

[21] WTO documents, Ibid.

- Difficult and costly marking and labelling requirements;
- Specific packaging requirements;
- Pre-shipment inspection requirement;
- Unreasonable customs valuation;
- Application of strict rules of origin;
- Lack of enforcement for infringement of intellectual property rights;
- Lack of preventive measures in the countries concerned for false country of origin marking;
- Non-uniform classification practices with respect to the same products;
- Export taxes and export restrictions on textile raw materials;[22]
- Import prohibition on used textile products;
- Import restriction of fabrics;
- Price controls; and
- Tariff quotas.

The issues on intellectual property rights are discussed in annex V.

Also, some proposals have been made with regard to labelling for textiles and clothing. Many countries are concerned about proliferation of label requirements and increasingly diverse labelling schemes. Requirements for labelling often cover social, environmental and developmental aspects, as well as conventional technical specifications such as fiber content and care instructions, and label schemes can vary by company and by country. In this background, the United States has proposed that, with respect to textile and apparel articles, labelling requirements be harmonized and the information that could be required by importing countries would be limited to those on country of origin, fiber content, care instructions, and information necessary for consumer safety.[23] Similarly, the EU has proposed that the NAMA Group should agree on what information can be required for labelling for textiles and apparel.[24]

Excessive certification requirements and conformity assessment procedures were also frequently noted as technical barriers that affect textiles and the clothing trade. Particular barriers identified in the NAMA negotiations in this regard include: (a) use of standards not recognized internationally; (b) non-recognition of third-party certification and testing; (c) costs and delays of testing performed by customs; (d) excessive losses of samples due to overzealous sampling; and (e) unnecessary testing and certification processes. In this light, the EU has made a proposal to simplify certification requirements and conformity assessment

[22] Many countries oppose the proposals to negotiate disciplines in respect of export taxes or export restrictions, arguing that these issues fall outside the explicit mandate and the balance of issues struck in the Doha Ministerial Conference.
[23] "Negotiating text on textiles, apparel, footwear and travel goods labeling requirements: communication from the United States", WTO document, TN/MA/W/18/Add.14, 15 May 2006.
[24] "Negotiating proposal on non tariff barriers in the textiles/clothing and footwear sector: communication from the European Communities", WTO document, TN/MA/W/11/Add.7, 27 April 2006.

procedures and to make rules with a view to limit such practices to what would be agreed as necessary measures.[25]

Also, the EU and the NAMA 11 Group of Developing Countries[26] have proposed that WTO establish a new mechanism to solve NTB-related problems. The box below highlights the proposed mechanism.

A NAMA proposal to establish an "NTB resolution mechanism"[27]

Currently, WTO members have two channels to seek for resolution for NTB problems, i.e. through the notification system under the relevant WTO agreements and using the dispute settlement mechanism. However, these mechanisms fail to meet the needs of exporters with NTB-related problems, as the notification system is not oriented toward problem-solving, and as the dispute settlement mechanism is time-consuming and costly. The "NTB resolution mechanism" would, therefore, supplement these means to resolve NTBs in the WTO system. It is proposed that the mechanism attempt to identify solutions with the support of its experts without interfering with members' rights and obligations in WTO. Participation in the "NTB resolution mechanism" procedure would be mandatory, while implementation of the recommended solution would not. Any party unwilling to implement the recommended solution would be required to state its reasons.

IV.2. Market entry conditions

For about the last 10 years or so, trade in textiles and clothing has witnessed the emergence of sustained pressure at two inter-related levels: one aimed at integrating new modes of regulation into the work place, and the other at influencing consumer choice and behaviour. Impelled by a variety of actors, including industry associations, worker unions, non-governmental organizations, Governments and other stakeholders, these pressures are resulting in a set of market entry conditions that specify "performance criteria and requirements" for exporters, under what is being termed a "trio of compliances" in the areas of social, environmental and security concerns. Developing country producers and exporters, especially the small and medium–sized ones, thus find themselves faced with an increasingly complex business environment involving an array of such market entry conditions. Helping them cope with the challenge of these conditions calls for a concerted effort by national Governments in conjunction with private sector associations. In this context, besides the obvious need for collection and dissemination of information, it is also imperative to see how developing-country businesses can best cope with these emerging demands.

[25] Ibid.
[26] Argentina, Bolivarian Republic of Venezuela, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa and Tunisia.
[27] "Negotiating proposal on WTO means to reduce the risk of future NTBs and to facilitate their resolution: communication from the European Communities", WTO document, TN/MA/W/11/Add.8, 1 May 2006; and "Resolution of NTBs through a facilitative mechanism: submission by NAMA 11 Group of Developing Countries", WTO document, TN/MA/W/68/Add. 1, 8 May 2006.

IV.2.1. Social conditions

In the aftermath of the failure of attempts by some countries to secure a linkage between trade and labour standards in the context of WTO rules, social clauses have increasingly been included in a number of governmental and private sector initiatives aimed at securing compliance with social conditions. The following discusses the initiatives that are highly relevant to exports of textiles and clothing from developing countries.

i. Social clause in the EU GSP scheme

In the context of its new EU GSP scheme effective since 1 January 2006, the EU has included a special incentive arrangement aimed at "promoting sustainable development and good governance" in the beneficiary countries. Commonly referred to as "GSP Plus", this special arrangement replaces and combines into one the former incentive schemes for promoting labour rights, protecting the environment and combating drug trafficking. Already fast-tracked for implementation from July 2005, the "GSP Plus" arrangement rewards imports from those developing countries that assume special responsibilities with full duty-free treatment for 7,200 products, including for textiles and clothing. To qualify for "GSP Plus" benefits, the EU GSP beneficiary countries must ratify and implement 27 conventions that the European Commission considers to be "key international conventions on sustainable development and good governance". These conventions are found in the box below. The detailed information on the new EU GSP measures concerning textiles and clothing is found in annex II.

ii. Social clause in the Africa Growth and Opportunity Act (AGOA)

The AGOA legislation provides that to be eligible for duty-free treatment, the African countries concerned must make continual progress towards establishing protection for internationally-recognized worker rights. The list of worker rights includes *acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.* The legislation also provides for termination of the designation of a country as beneficiary if it is determined that the country is not making continual progress.

iii. Social clauses in the Caribbean Basin Trade Partnership Act (CBTPA)

The criteria for designation of countries as beneficiaries of the duty advantage under CBTPA also includes the condition that the country provides internationally-recognized worker rights. The list of CBTPA worker rights is similar to that of AGOA.

iv. Labour clause in the United States–Jordan Free Trade Agreement

The United States–Jordan Free Trade Agreement provides for the two parties to strive to ensure that core labour standards are recognized by and protected by its domestic law. The list of requirements is similar to those in the above schemes, but this agreement also provides for an enforcement mechanism, i.e. if a dispute is not resolved within a period of 30 days after the presentation of the report of a panel, "the affected Party shall be entitled to take any appropriate and commensurate measure".

Conventions referred to in the EU GSP Scheme for Special Incentive Arrangement for Sustainable Development and Good Governance

Part A

Core human and labour rights UN/International Labour Organization (ILO) conventions

1.	International Covenant on Civil and Political Rights
2.	International Covenant on Economic Social and Cultural Rights
3.	International Convention on the Elimination of All Forms of Racial Discrimination
4.	Convention on the Elimination of All Forms of Discrimination Against Women
5.	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
6.	Convention on the Rights of the Child
7.	Convention on the Prevention and Punishment of the Crime of Genocide
8.	Minimum Age for Admission to Employment (N° 138)
9.	Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (N° 182)
10	Abolition of Forced Labour Convention (N° 105)
11	Forced Compulsory Labour Convention (N° 29)
12	Equal Remuneration of Men and Women Workers for Work of Equal Value Convention (N° 100)
13	Discrimination in Respect of Employment and Occupation Convention (N° 111)
14	Freedom of Association and Protection of the Right to Organise Convention (N° 87)
15	Application of the Principles of the Right to Organise and to Bargain Collectively Convention (N°98)
16	International Convention on the Suppression and Punishment of the Crime of Apartheid

Part B

Conventions related to environment and governance principles

17	Montreal Protocol on Substances that Deplete the Ozone Layer
18	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
19	Stockholm Convention on persistent Organic Pollutants
20	Convention on International Trade in Endangered Species
21	Convention on Biological Diversity
22	Cartagena Protocol on Biosafety
23	Kyoto Protocol to the United Nations Framework Convention on Climate Change
24	United Nations Single Convention on Narcotic Drugs (1961)
25	United Nations Convention on Psychotropic Substances (1971)
26	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
27	Mexico United Nations Convention against Corruption

v. Labour clause in the United States–Cambodia textile agreement

In 1999, the textile agreement negotiated between the United States and Cambodia provided that the parties shall support the implementation of a programme to improve working conditions in the textile and apparel sector in Cambodia by promoting compliance with and effective enforcement of Cambodia's labour code as well as internationally-recognized core labour standards. Based on compliance with these standards, Cambodia was promised a 14 per cent increase in its export quotas. With the ATC expiry, the bilateral textiles agreement became defunct, but as discussed below, it was succeeded by the International Labour Organization (ILO) project on monitoring labour conditions.

vi. International Labour Organization project on labour conditions

For its part, ILO has launched a pilot programme "to boost the textile and clothing industries' competitiveness through promotion of decent work". Initially started as a pilot project in Morocco in July 2002, the programme envisages the extension of similar projects in a number of other developing countries. Premised on the belief that, in addition to mere economic considerations, success in the global competitive environment increasingly demands including social factors into business, the ILO project seeks to encourage improving social dialogue at the enterprise and industry levels and to boost competitiveness through improvement of the quality of employment. Major initiatives under the project are the Better Factories Cambodia initiative, Decent Work Pilot Programme in Morocco, and the Factory Improvement Programme in Sri Lanka.

The most visible activity to date of the ILO project in textiles and clothing has been the one with respect to the monitoring of working conditions in the garment sector in Cambodia. In connection with this project, ILO established a detailed list of recommendations and suggestions to Cambodian apparel makers for improving working conditions in their factories, and is conducting regular monitoring of these recommendations.

vii. Private codes of conduct and corporate social responsibility

Aside from the governmental and inter-governmental initiatives on social conditions discussed above, there has also emerged a sustained campaign through private initiatives in the form of private codes of conduct for promoting socially desirable objectives. These codes provide for principles to serve as the basis for commitment to standards of behaviour by companies, particularly for labour conditions. Large producing and retailing companies such as GAP, C&A, Sara Lee, The Limited, Hennez and Mauritz, etc. have developed their own private codes of conduct, and the compliance factor has become an important criterion in terms of their sourcing decisions.

The concept underlying labour conditions is corporate social responsibility (CSR). There is a wide variety of concepts and definitions associated with CSR, but there is no overall agreement on its definition. [28] A publication by the Commission of the European Communities, "The future of the textiles and clothing sector in the enlarged European Union", defined CSR as a "contribution from enterprises to sustainable development". [29] This

[28] Michael Hopkins, "Corporate social responsibility: an issues paper", ILO Working Paper No.27, ILO, Geneva, May 2004, p. 1.
[29] Commission of the European Communities, "The future of the textiles and clothing sector in the enlarged European Union", COM(2003) 649 final, Brussels, 29.10.2003.

report emphasized that CSR was particularly relevant to the textiles and clothing sector, given its internationalized supply chains.

Under the banner of CSR, apparel retailers in the major importing countries impose stringent labour conditions on their international suppliers through their private codes of conduct. While the retailers face intense competition in their domestic markets and seek low-cost producers globally, their actions are criticized by labour unions and non-governmental organizations (NGOs), which claim that labour conditions in supplying developing countries are poor. Labour conditions have become a vital aspect of supply chain management, and textiles and clothing factories in developing countries are required to comply with strict codes of conduct, and receive frequent compliance audit visits.[30]

Studies report cases of extremely poor working conditions in textiles and clothing factories in developing countries, and there is also a danger that working conditions will deteriorate, given the heavy pressures on developing country exporters to cut prices. Ensuring adequate labour conditions is a legitimate and important concern, and it is essential that Governments enforce the labour legislation so as to gradually meet the norms of the ILO conventions.[31] Private codes of conduct contribute to this end, but they can also pose problems for developing-country exporters of textiles and clothing. As discussed below, private codes of conduct often require standards that are higher than ILO labour standards, and they can be seized upon by protectionist interests. In addition, they are imposed by large distributors and retailers who control the market, and textiles and clothing manufacturers in developing countries are compelled to agree with them.

[30] International Textiles and Clothing Bureau, "Textile and clothing trade: emerging issues", CR/41/IND/4, 10 March 2005, p. 4.

[31] The ILO Declaration on Fundamental Principles and Rights at Work, adopted in June 1998, defines basic labour rights as: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) elimination of all forms of forced or compulsory labour; (c) effective abolition of child labour; and (d) elimination of discrimination in respect of employment and occupation.

Problems of private codes of conduct

One of the major problems that developing-country exporters of textiles and clothing can face is that labour conditions imposed by buyers can be arbitrary, going beyond ILO labour standards, and failing to consider cultural and social specificity. Also, finding local audit and monitoring professionals who understand local laws and issues is a challenge. Moreover, well-meaning campaigns could be seized upon by protectionist interests as vehicles to create unnecessary barriers to trade. Buyers may act at the behest of protectionist-minded unions and trade associations that are interested in price equalization by imposing highly demanding labour conditions.

In addition, market concentration by retailers in the major importing countries can make it difficult for developing-country suppliers to counter the problem of private codes of conduct. Apparel retailing in the major importing countries is dominated by large firms which control major distribution channels and networks, and they have considerable control in the global commodity chain of textiles and clothing.[32] Individual exporters in developing countries have practically no bargaining power vis–à–vis the large retailers, and they have no choice but to accept conditions imposed by buyers. At the same time, with their strong bargaining power, buyers are exercising significant influence on prices affecting producers' margins and limiting their capacity to modernize and provide better wages and working conditions.[33]

At present, there is no systematic mechanism to which producers can address problems related to private codes of conduct. Initiatives under the ILO project discussed above contribute to easing the problem of private codes of conducts. However, the scale of the project is very much limited, and global-level assistance is needed. Also, developing countries may prefer to develop and implement localized compliance programmes rather than follow buyer-driven requirements [34] Compliance to the ILO core labour standards should be considered as an asset in improving competitiveness, and Governments and producers should strive to achieve this objective. Meanwhile, requirements of private codes of conduct should not exceed ILO core labour standards, and it would help if institutions such as ILO establish a mechanism to oversee the level of requirements laid out in private codes of conduct.

IV.2.2. Environmental compliance

In so far as environmental issues are concerned, the environmental community is worried about degradation of the environment due to the adverse effects of production in the textile sector. Among other things, it postulates that, following the elimination of quota restrictions on textiles and clothing, a larger share of the market will be supplied by more competitive developing countries, and that the resulting shift in production from developed to developing countries might lead to higher levels of water and air pollution if there are lower standards in

[32] UNIDO, "The global apparel value chain: what prospects for upgrading by developing countries", p. 6, Gary Gereffi, Olga Memedovic, Vienna, 2003. UNCTAD, "Report of the expert meeting on market entry conditions affecting competitiveness and exports of goods and services of developing countries: large distribution networks, taking into account the special needs of LDCs", TD/B/COM.1/66, 19 January 2004.
[33] ILO, "Promoting fair globalization in textiles and clothing in a post–MFA environment", op. cit., p. 33.
[34] "Textile and clothing trade: emerging issues", op. cit., p. 12.

these countries. A study that attempted to measure the environmental effects of Uruguay Round agreements predicted that liberalization of quota restrictions would result in a significant contraction of textile and clothing production in developed countries, leading to an expansion of these sectors in the developing world.[35] It further estimated that this trend would result in increased pollution in developing countries, despite the relatively low pollution intensities associated with output from the textile and clothing sectors. Whether based on such analyses, or due to perceived effects of certain production processes involved in the manufacture of textiles and clothing, pressures by the environmental community is producing initiatives aimed at arresting such adverse effects both at the national and international levels.

Some common problems in textiles are the use of chemicals in its dyeing and printing processes, water effluents, non-biodegradable wastes in the manufacture of synthetics, high noise levels, dust in the spinning process, and inefficient use of water and energy.[36] Also mentioned is the use of chemical fertilizers in the production of natural fibres. Consequently, eco-labeling schemes are being developed in many countries and regions to inform and guide consumers on environmentally-conscious product choices. It is also becoming a market practice especially for high-income, quality-minded market niches.

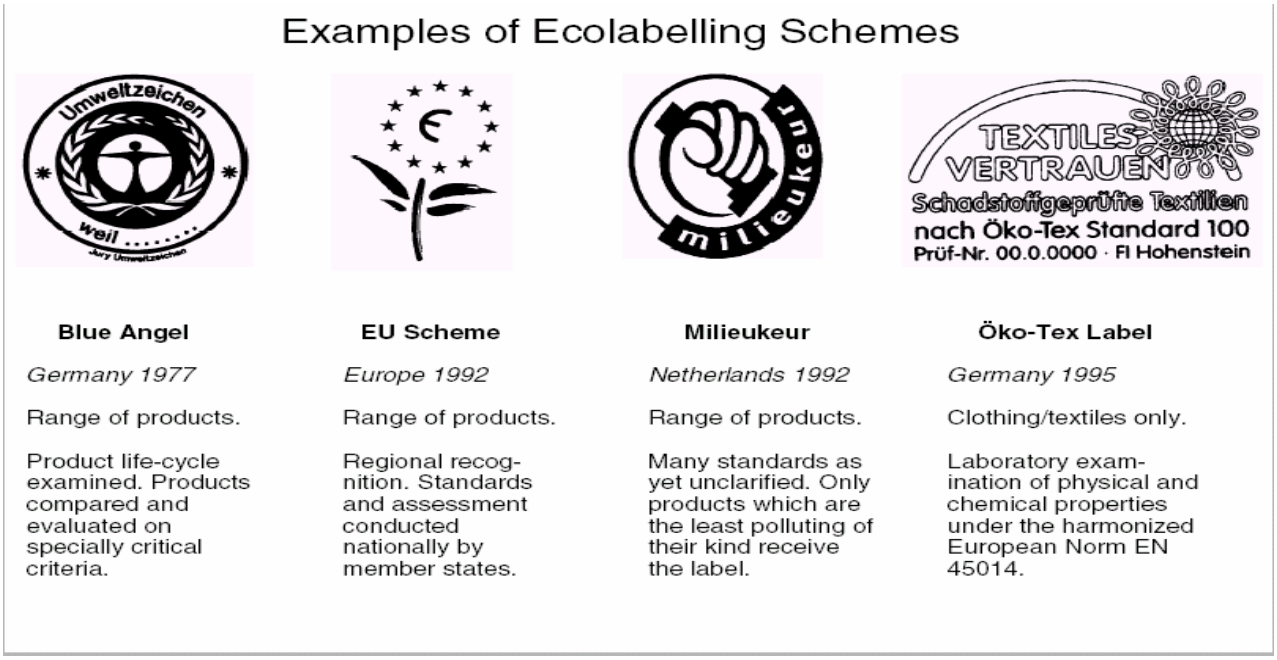
Eco-labelling schemes are being developed in many countries and regions to guide consumers on environmentally-conscious product choices

Despite the fact that eco-labelling remains a voluntary practice, it is becoming a market requirement. Consumers and retailers – mainly in industrialized countries and in high-income, quality-minded market niches – are giving preference to eco-products, even when prices may be higher, for example, “eco-textiles” for baby clothing. Unlabelled products therefore face increasing difficulties competing with eco-labelled products or with products that bear technically-endorsed environmental claims. The market preference for eco-labelled products is also expected to force manufacturers of textiles and clothing to redesign their products, their packages and their processes to make them more environmentally acceptable.

[35] Cole, Matthew A., Trade Liberalization, Economic Growth and the Environment, (Edward Elgar, United Kingdom), 2000.

[36] However, apparel production has extremely low emissions as it primarily involves the application of labour to pre-manufactured components, i.e. fabric, etc. At the textile end of the sector, too, the environmental problems appear to be much less acute than in some other manufacturing industries such as non-ferrous metals; chemicals, rubber and plastics; iron and steel; leather products; pulp, paper and printing; and transportation equipment.

Examples of the major eco-labelling schemes in Europe are presented below.



The problems that developing country producers and exporters face with eco-labelling relate to lack of clear definitions of basic concepts in terminology used in eco-labelling schemes, insufficient participation of developing countries in the setting of criteria and standards, and inadequate technical assistance to developing countries to improve environmental performance. Actions necessary to ease these problems include: providing adequate adjustment time for producers of textiles and clothing in developing countries; establishing an international and independent scientific panel to determine the scientific basis for the requirements; harmonizing the eco-criteria and establishing a mutual recognition of developing country eco-labels; and increasing technical assistance to improve environmental performance.

IV.2.3. Security compliance

In recent years, security compliance has become an important aspect for international trade. Security compliance is required at the international and national levels, and some investments in infrastructure and training would be necessary for exporters in order to meet security requirements.

i. Measures at the international level

The most comprehensive international programme on security compliance is the development in June 2005 of a “Framework of Standards to Secure and Facilitate Global Trade” under the auspices of the World Customs Organization (WCO) with the objectives of: (a) establishing standards to provide supply chain security and facilitation at a global level; (b) enabling integrated supply chain management of all modes of transport; (c) enhancing the role, function and capabilities of customs administrations in this area; (d) strengthening cooperation between customs administrations to improve their capability to detect high-risk consignments; (e) strengthening customs and business cooperation; and (f) promoting the seamless movement of goods through secure international trade supply chains.

The Framework consists of four core elements.

1. It harmonizes the advance electronic cargo information requirements on inbound, outbound and transit shipments.

2. Each country that joins the Framework commits to employing a consistent risk-management approach to address security threats.

3. The Framework requires that at the reasonable request of the receiving nation, based upon a comparable risk targeting methodology, the sending nation's customs administration will perform an outbound inspection of high-risk containers and cargo, preferably using non-intrusive detection equipment such as large-scale X-ray machines and radiation detectors.

4. The framework defines benefits that customs will provide to businesses that meet minimal supply chain security standards and best practices.

Based on the four core elements noted above, the Framework details a twin-pillar approach of customs-to-customs network arrangements and customs-to-business partnerships. The twin-pillar strategy has many advantages. The pillars involve a set of standards that are consolidated to guarantee ease of understanding and rapid international implementation. Moreover, the Framework draws directly from existing WCO security and facilitation measures and programmes developed by member administrations.

ii. Measures at the national level

The most significant national measures adopted for security compliance are those by the United States, much of which is now mirrored in the WCO Framework above. Among these are the Container Security Initiative (CSI), the requirement for filing advance information prior to the loading of goods on vessels, and the Customs–Trade Partnership Against Terrorism (C–TPAT).

The goal of the CSI is to reduce the vulnerability of cargo containers to smuggled terrorist materials, while accommodating the need for efficiency in global trade. The core elements of the CSI are the following:

1. Establishment of criteria for identifying high-risk cargo containers that might potentially pose risk of containing terrorist products;

2. Pre-screening the high-risk containers at their port of shipment, i.e. before they are shipped to the United States;

3. Maximizing the use of detection technology to pre-screen high-risk containers; and

4. To develop "smart" and secure containers with electronic seals and sensors that could indicate if particular containers had been tampered with, particularly after they had been pre-screened.

The United States Customs Service initially focused on so-called mega-ports, which accounted for the bulk of cargo containers going to the United States. These ports joined in participating in the CSI. Bilateral agreements have been established to allow United States Customs agents to work in foreign ports to target suspicious cargo and to work with local customs to pre-screen and inspect the containers. Cargo from these ports moves faster than that from other ports, and is not subjected to further inspection upon arrival in the United

States. The principles of the CSI can also be applied to all ports regardless of their size or volume of cargo containers shipped to the United States.

Linked to the CSI is the requirement, implemented since 2003, that cargo manifests of all shipments to the United States be supplied to its customs electronically at least 24 hours before the cargo is laden on board the vessel at a foreign port. Among other information, the cargo declaration must include the number and quantities from the bills of lading, the harmonized tariff schedule numbers, the weight, consignee's name and address, container's number and container seal number. Most significantly, this rule covers all cargo on board the vessel, not just cargo that is destined for the United States. Marine terminals may not load such cargo unless the carrier confirms that it has been properly documented. The vessel carrier must notify customs of any cargo tendered that has not been properly documented. Civil penalties may be imposed for violations.

C-TPAT is designed to establish a partnership between customs, importers, carriers, brokers, warehouse operators and manufacturers to improve security along the entire supply chain. The United States Customs Service requires businesses to ensure the integrity of their security practices and communicate their security guidelines to their business partners within the supply chain. The benefits of participation in C-TPAT are reduced number of inspections and fast cargo clearance. Online closed circuit television (CCTV) cameras, although an expensive solution, are also being employed to increase buyer confidence in production transparency at the suppliers' end. This is said to be especially helpful in countries where security issues have been creating problems in receiving orders.

The national security measures noted above carry potentially significant implications for developing-country exporters and Governments. Firstly, the requirement to provide advance information on containerized cargo by electronic means 24 hours in advance of the goods being loaded can have profound impact on time-sensitive cargo, including textiles and clothing. If the cargo has to wait for loading for want of some information or the other, it might need to wait until another shipment or be transshipped through some other ports, adding to the time needed for delivery. Such a case would hurt performance of exporter, given the fact that speed of delivery and the lead time between the placement of an order and its shipment have become critical in the textile and clothing trade.

Secondly, the selection by customs of so-called "safe ports" may lead to the rerouting of major flows between certain origins and destinations. In a worst-case scenario, the additional cost caused by rerouting might make low-priced textiles and clothing from affected countries uncompetitive. Thirdly, shippers in developing countries may need to engage inspection firms to certify the safety of containers. Inspection is done for a fee paid by the shippers, which in turn will need to be incorporated into the selling price or reduce the exporters' margin. The same might hold true if the container also needed to be scanned and inspected.

Fourthly, the screening of containers implies the provision and use of costly equipment for which ports in many developing countries may not be able to raise or allocate the required resources. In any event, the operating cost of shipping companies operated by developing countries will increase, as will their legal liabilities. The costs of installation and maintenance of CCTV cameras can also be high, especially in relation to small and medium–sized enterprises. Fifthly, in small ports where United States Customs officers are not present, the local customs would need to verify the contents of the containers. Besides the question of who pays for the cost of this control, it also raises concern about the acceptability of such controls.

Sixthly, the C-TPAT initiative requires trading partners to work with their service providers throughout the supply chain. Various aspects of each stage of the chain must be monitored, including employees and origin of goods. UNCTAD has undertaken substantial work on the

issues of trade logistics and facilitation. Information is available at the UNCTAD website, under Services Infrastructure, Transport and Trade Logistics.

CHAPTER V

THE ORIGIN RULES IN TEXTILES AND CLOTHING

Rules of origin occupy a central role in international trade in goods, especially in textiles and clothing. Their primary purpose was to assist in determining the origin of imported products for the application of tariffs, anti-dumping or countervailing duties, safeguard actions, and marking requirements. Yet in recent years they have increasingly come to be used as an instrument to provide protection to domestic industries.[37] This chapter is intended to provide, firstly, a description of origin rules in the area of textiles and clothing, and secondly, an analysis of how these rules have come to have an impact on the export prospects of many developing countries. In doing so, it is important to address the issue under two strands: (a) non-preferential origin rules, and (b) preferential origin rules, both in the context of autonomous preferential schemes and free trade area arrangements.

V.1. Non-preferential origin rules

Before the Uruguay Round negotiations, GATT did not provide any specific origin rules. In general, the rule–of–thumb standard for origin determinations had been "substantial transformation", i.e. to deem a product to originate in a place where it underwent substantial transformation in its making. It was only during the Uruguay Round that, by an interim agreement, i.e. the Agreement on Rules of Origin, WTO members agreed that the "origin rules should provide for the country of origin to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out". The practical reflection of this otherwise simple rule has in the past taken various forms, such as a change in tariff heading or a certain percentage of value addition. The origin rules continue to be a source of contention in negotiations in WTO aimed at harmonizing non-preferential origin rules.

WTO harmonization work programme under Part IV of the Agreement on Rules of Origin

The Agreement on Rules of Origin mandated WTO to initiate the work on a harmonization programme as soon as possible after the completion of the Uruguay Round, and to complete it within three years of initiation. The work has proved to be technically and politically difficult, and it still continues. As of February 2007, there were 94 core policy issues that needed to be resolved in the work programme. Until the completion of the harmonization programme, WTO member countries are expected to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner; and that they are based on a positive standard, in other words, they should state what confers origin rather than what does not.

[37] Grynberg R., Rules of Origin: Textiles and Clothing Sector, ed., Cameron May Ltd., London, 2005.

The case of the United States rules of origin discussed below highlights how origin rules can be used for trade policy purposes that affect particular countries.

The United States, a major textile importing country, did not provide for any specific expression of the "substantial transformation" standard in its legal statutes, giving rise to the need for rulings by customs authorities which, as could be expected, remained subject to outside influences and controversy. That notwithstanding, until the conclusion of the Uruguay Round negotiations, the United States Customs Service conferred origin to an apparel article on the basis of where its components were cut to shape.

On the eve of implementation of the results of the Uruguay Round negotiations, however, the United States textile industry succeeded in getting the origin rules relating to textile and clothing products to be changed and formally codified in the Uruguay Round Agreements Act under its Section 334. The Uruguay Round negotiations agreed that the MFA quota restrictions would be phased out in stages and be eliminated by the end of 2004. To offset the consequent loss of protection, the United States textile industry wanted to alter the United States rules of origin for textile products so that imports of textile products to the country, which were previously conferred not to originate from major exporting countries, would be conferred to be so. Some of the fundamental modifications affected through this law are described in table 10.

Table 10. United States changes in rules of origin, July 1996

	Previous rule	**New rule**
Fabric	Where it was formed or where it was processed by dyeing and printing	Where fabric was formed (no recognition for processing, i.e. dyeing, printing, etc.)
Made-ups (bed/table linen, etc.)	Where the constituent fabric was transformed to a new article	Where the constituent fabric was formed in its greige form
Clothing	1. Finished garment = where sewn 2. Assembly item = where cut to shape	- Where wholly assembled - In multi-country processing, where most important assembly operation is undertaken - For apparel made from knit-to-shape panels, where the panels are knit

The revised origin rules provided that dying and printing in the case of fabric, a multitude of operations in the making of made-up articles from fabric, and cutting to shape in the case of apparel would no longer be deemed to confer origin. Thus, for example, even if greige fabric imported from developing countries was further processed by dyeing, printing and other finishing operations in, say, a European country and then exported from the European country to the United States, under the revised rules, its origin remained that of the country from where the greige fabric was exported, and therefore the greige fabric could be debited from

the quota entitlement of the developing country which exported the fabric. Likewise, flat goods made of fabric imported into the United States, say, from a European country where they were made from fabric exported from quota–restrained developing countries, also came to be treated as originating in the developing country from where the fabric was exported. Consequently, for example, silk scarves made in France from fabric imported from China came to be deemed as originating in China. This gave rise to a chorus of criticism from a wide cross-section of opinions and disruption of established trade patterns. Under pressure, especially from the EU, the United States conceded and enacted an amendment to its Uruguay Round Agreements Act under the Trade Development Act of 2000. The 1996 rules and the amended ones are presented in table 11 for comparison.

Table 11. Changes from 1996 origin rules to the amended ones

	1996 rule	**Amended rule**
Fabric	Where fabric is formed (no recognition for processing, i.e. dyeing, printing, etc.)	Where it is formed and dyed, printed and processed (for fabrics of wool, same as 1996 rule)
Made-ups (bed/table linen, etc.)	Where the constituent fabric is formed	For non-cotton and non-wool articles (silk, man-made fibre (MMF), vegetable fibres): - Where the constituent fabric is formed or dyed and printed, and undergoes at least two finishing operations[38] (Definition of cotton component in these products changed to 16% or more by weight of cotton from the previous definition, which defined them as those of cotton if they were chief weight cotton.)
Clothing	Where wholly assembled In multi-country processing, where most important assembly operation is undertaken For apparel made from knit-to-shape panels; where the panels are knit	No change in 1996 rule

[38] Bleaching, shrinking, fulling, napping, permanent stiffening, weighting, permanent embossing, or moireing.

Specifically:

(a) *For processed fabrics*, the origin reverted to the pre–1996 rule. Consequently, such fabrics are now conferred origin of the country where they are both dyed and printed and undergo two or more of the following finishing operations such as: bleaching, shrinking, decaying, permanent stiffening, weighting, permanent embossing or moireing. However, this same rule does not apply to fabrics made of wool. For wool fabrics, origin remains where the basic fabric is formed.

(b) *For made-up articles*, specifically for 16 specified categories of made-up articles, the 1996 change established the origin as the country where the constituent greige fabric was formed by weaving or knitting, regardless of any further processing such as dyeing and printing of fabric, and subsequent conversion of fabric to made-up articles. With respect to some of these 16 articles, the Trade and Development Act of 2000 changed the origin rule as summarized below:

(i) For non-cotton and non-wool made-up articles, i.e. only for those of silk, MMF or other vegetable fibres, the rule now recognizes dyeing and printing as conferring origin. Thus, the origin is the country where the constituent fabric is dyed and printed, and undergoes two or more finishing operations, regardless of where it may be further processed. However, if these same products are made from cotton or wool fabric, the origin continues to be deemed the country where the basic cotton or wool fabric is formed.

(ii) The definition of cotton made-ups was enlarged. Now an article containing 16 per cent or more by weight of cotton is considered as cotton, whereas before these products were deemed as cotton when their chief weight was cotton.

(iii) For all made-up articles, contrary to pre–ATC rules, the new rule continues to disregard processing operations such as designing, cutting, hemming, sewing, etc., that may be undertaken on the fabric to convert it to made-up articles.

(c) *For apparel products*, no further modification was made. Consequently, origin continued to be determined on the basis of rules as modified and implemented with effect from July 1996.

When the 1996 rules were introduced, the EU and India, the two parties affected by the rules, initiated WTO dispute settlement proceedings.[39] They considered those changes inconsistent with the Agreement on Rules of Origin, which prohibits the use of non-preferential rules of origin for trade policy purposes. The dispute between the EU and the United States was settled through consultations. Consequently, the United States introduced legislation modifying the Section 334 to accommodate the EU's particular export interests, and the 2002 rules became effective. However, for India, which is a cotton textile exporter, the problem remained, and the dispute settlement panel was established. The WTO panel did not fault the changes in the origin rules in a strict legal sense.[40] However, the International Textiles and

[39] The relevant WTO documents are (for the European Union) WT/DS85/1, WT/DS151/1 and WT/DS151/10, and (for India) WT/DS243/1 and WT/DS243/R.
[40] Panel report, United States – Rules of Origin for textiles and apparel products, WT/DS243/R.

Clothing Bureau noted that this was an astonishing ruling given the fact that Washington's real goal in changing the rules of origin was primarily aimed at achieving trade objectives.[41]

WTO dispute settlement case "United States – rules of origin for textiles and apparel products"

India argued that the structure of the changes, the circumstances under which they were adopted and their effect on the conditions of competition for textiles and apparel products suggested that they serve trade policy purposes. However, the panel ruled in favour of the United States, arguing that India had failed to show how the purported United States measures undermined Indian textile exports.

This ruling may have systemic implications from the point of view of developing countries. Concerning textiles and clothing exports without preferential trade agreements with the major importing countries, as with these countries, rules of origin could be shifted at the will of the importing country, and they could act as an entry barrier.

In the post–ATC phase, the issue on effect of origin rules on MFA quota restrictions is void. However, non-preferential rules of origin continue to have significance in the context of application of safeguard actions, countervailing and anti-dumping duties, and marking of origin of imported products.

In the case of the EU in so far as textile and clothing products are concerned, the concept of substantial transformation is reflected in detailed rules which specify the criteria with respect to individual products item by item. In general, the criteria are to confer origin to a particular product if it was transformed in the exporting country so as to fall under a different tariff heading. This method of determining the origin is sometimes referred to as the "list system". Another method used for conferring origin is based on a minimum proportion of value addition in a particular country.

V.2. Preferential origin rules

The origin criteria applied for determining the origin of imported textile and clothing products under preferential arrangements are different from those applied for non-preferential origin determinations. Preferential origin rules concern non-reciprocal schemes such as the GSP and free trade arrangements. The following subsection discusses origin rules for non-reciprocal preference schemes and those for free trade arrangements.

V.2.1. Origin rules for non-reciprocal preference schemes

i. EU GSP

At a general level, the EU GSP origin rules for textiles and clothing provide that, to benefit from duty concession, the exported product should either be wholly produced in the exporting country or, if manufactured from inputs from other countries, it should have undergone sufficient working or processing in the exporting country. Sufficient working or processing is generally defined as "double transformation". Thus, for woven apparel, the production of

[41] Institute for Agriculture and Trade Policy Trade Information Project, "Trade Observatory", 18 April 2003, http://www.tradeobservatory.org/headlines.cfm?refID=18175.

fabric as well as the making up of the fabric into apparel should have taken place in the country claiming the GSP benefit. Also, for knit apparel, the yarn used to make the apparel should also have been produced in the country claiming the benefit. Under special arrangements, countries belonging to prescribed regional groupings – such as the Association of South-East Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC), the Central American Common Market and the Andean Group – are allowed the possibility of using fabric or yarn obtained from other countries in the region, also called partial regional "cumulation". This system permits, for example, an ASEAN country to use inputs from other ASEAN countries, provided that such inputs have ASEAN country origin status. There are three types of cumulation, which are explained in the box "Three types of cumulation" under the subsection V.2.2.ii EU Free Trade Agreements.

Many apparel exporting countries lack sufficient textile-making capacities of their own, so they have to import their fabric and yarns requirements. Consequently, they are unable to take full advantage of EU GSP benefits. For example, the GSP utilization rates in woven fabric garments (HS chapter 62) by Sri Lanka, Philippines and Viet Nam in 2005 were only 30 per cent, 16 per cent and 10 per cent, respectively. GSP utilization for exports of knitted fabric garments (HS chapter 61) are usually higher than woven fabric garments, but even so the utilization rates for these countries were 50 per cent (Sri Lanka), 22 per cent (Philippines) and 20 per cent (Viet Nam).[42]

The EBA that is provided under the EU GSP scheme extends duty-free access to textiles and clothing from LDCs with the same rules of origin. The rates of EBA benefit utilization for apparel are low even for Bangladesh, which is a major apparel exporter due to its limited textile manufacturing capacity. Compared to other LDCs, Bangladesh has made significant advances in establishing backward linkages, i.e. creating domestic supply capacity for production of requisite inputs, particularly concerning the apparel of knitted fabric (HS chapter 61). In 2005, 85 per cent of these products entered duty free to the EU market. However, it is striking that, in the case of apparel made of woven fabrics (HS chapter 62), which constitute about 45 per cent of the total Bangladeshi exports of clothing to the EU, only 30 per cent of the products received duty-free treatment due to the country's limited capacity to fulfill the origin requirement.

ii. Canadian GSP

In January 2003, Canada relaxed its origin rules with respect to duty-free imports of textiles and clothing from LDCs under its GSP scheme.[43] The origin rules permit assembly from fabrics from Canadian GSP beneficiary countries. Also, they require as little as 25 per cent of value added in these countries. Consequently, it permits most of apparel products from LDCs to qualify for duty-free treatment. This revised dispensation resulted in significant improvement in the rates of utilization and, therefore, exports of textiles products from several LDCs to Canada increased substantially.

iii. United States non-reciprocal preference schemes

Under its non-reciprocal programmes such as AGOA, CBI and ATPA, duty-free access to the country is provided to textiles and clothing from beneficiary countries. These programmes are described in the box below.

[42] UNCTAD GSP Database.
[43] Canada and Customs Revenue Agency (2003) Memorandum D11-4-4.

United States non-reciprocal preference programmes

AGOA: The AGOA portion of the 2000 Act provided for granting of quota-free and duty-free access to textiles and clothing from designated African countries. This benefit is conditional on implementation of an effective visa system and enforcement mechanism to prevent unlawful trans-shipment.

CBI: The implementation of NAFTA resulted in an uneven competitive situation for clothing exports from CBI countries inasmuch as NAFTA provided for complete duty exemption of United States imports from Mexico, whereas the CBI extended duty concession only to the value added to the United States components in the beneficiary countries. Following protracted lobbying by these beneficiaries, the administration enacted a further act in 2000 which authorized duty-free access to textiles and apparel from the CBI countries.

ATPA: The Trade Act of 2002 renewed the ATPA that entered into force in 1991 and expanded duty- and quota-free treatment for textiles and clothing products from the ATPA countries, i.e. Bolivia, Colombia, Ecuador and Peru.

The "yarn forward" concept applies for the non-reciprocal preference programmes, and duty-free treatment is provided for apparel articles that are assembled in beneficiary countries from:

- Fabrics that are produced in the United States from United States yarns and are cut, dyed and finished in the country;
- Components that are knitted and shaped in the United States from United States yarns;
- Fabrics that are produced in the United States from United States yarns and are dyed and finished in the country, but cut in the region, and sewn with United States thread.
- Subject to prescribed quantitative limits, certain knit apparel cut and assembled in the beneficiary country from fabrics formed in each region, but with United States yarns;
- Fabric or yarns from third countries if those are specifically determined to be in short supply in the United States.

In short, duty-free treatment is essentially conditional on the use of United States materials, especially United States yarns and fabrics. Annex VI provides a tabular presentation of textile-related origin rules for the United States non-reciprocal preference schemes programmes.

V.2.2. Origin rules for free trade agreements

i. United States free trade agreements

The United States has concluded a number of free trade agreements with stringent rules of origin for textile and clothing. With the exception of United States free trade agreements with Israel and Jordan, the general benchmark is the so-called "yarn forward" rule of the North America Free Trade Agreement (NAFTA), which is explained in the box below. In simple terms, it makes the duty-free treatment of textiles and clothing imports conditional on the requirement that the imported product be made within the free trade area from yarn onward.

The same basic "yarn forward" concept has been employed in subsequent United States legislation under which it extends duty-free access to Central American countries.

NAFTA rules of origin

NAFTA resulted in the abolition of quota limits on Mexican exports to the United States and the grant of duty-free treatment to Mexican and Canadian exports. Under intense pressure from the textile industry in the United States, the NAFTA agreement however ushered in a novelty in rules of origin, the so-called "Yarn Forward" rule. This rule made the duty-free treatment of textile and clothing imports conditional on the requirement that the product be made within the free trade area from yarn onwards. It was thus so designed as to provide the maximum advantage to United States textile producers, textile production capacity in Mexico being rather weak. It needs to be recognized, though, that the situation in Canada is somewhat different, as it does have a significant textile capacity but little competitive prowess in garment making due to higher wages in the economy.

Source: International Textiles and Clothing Bureau, "Trade in Textiles and Clothing: Post-ATC Context", UNCTAD Mimemo, September 2005.

In view of the relative stringency of the "yarn-forward" origin rules, several United States free trade agreements provide for exceptions from this general rule in the form of (a) tariff preference levels, and (b) so-called "short-supply provisions". Also, under the tariff preference levels, the exporting partners are allowed the possibility of using non-originating materials and still benefit from tariff-free treatment. This concession is, however, limited to specified maximum amounts of imports as well as for limited periods of time. Under the short-supply provisions, the tariff-free treatment is provided if the component materials are determined not to be available in commercial quantities in the United States.

ii. EU free trade agreements

With respect to the EU free trade agreements, the rules are specified in each particular agreement. In general, these are based on a scheme of "list rules". The lists are based on the structure of the HS classification, and the criteria for determining the origin of various products are listed against each product. They set out the minimum amount of working or processing required on non-originating materials in order for the resulting product to obtain originating status. In general, the EU free trade agreements also provide for the possibility of use of materials or components produced in other countries with which the EU has similar free trade arrangements. Known as "cumulation", it allows products of country A to be further processed or added to products in country B to claim origin of country B. There are three different types of cumulation schemes which are explained in the box below.

Three types of cumulation

Bilateral cumulation: Bilateral cumulation operates between two countries where a free trade agreement or autonomous arrangement contains a provision allowing them to cumulate origin. This is the basic type of cumulation and is common to all origin arrangements. Only products or materials originating in these countries can benefit from it.

Regional cumulation: Regional cumulation is a form of diagonal cumulation, which only exists under the Generalized System of Preferences (GSP) and operates between members of

a regional group of beneficiary countries (e.g. ASEAN and SAARC).

Full cumulation: Full cumulation allows the parties to an agreement to carry out working or processing on non-originating products in the area formed by them. Full cumulation means that all operations carried out in the participating countries are taken into account. While other forms of cumulation require that the goods be originating before being exported from one party to another for further working or processing, this is not the case with full cumulation. Full cumulation simply demands that all the working or processing in the list rules must be carried out on non-originating materials in order for the final product to obtain origin. Full cumulation is in operation between the EU and the countries of the Maghreb region and the African, Caribbean and Pacific Group of States (ACP).

It may be noted that the EU origin criteria allows relatively more flexibility in the use of components made outside the EU. Yet it is also apparent that, effectively, these criteria also necessitate the use of EU materials and components by major clothing exporters such as Morocco, Tunisia, Bulgaria, Romania, etc.

V.3. Effects of origin rules

V.3.1. Rigid rules of origin

Economies that are tied to rigid rules of origin often have high reliance on inputs such as yarns and fabric which are imported from preference giving countries (tables 12 and 13).

Table 12. Reliance of certain countries on United States inputs, 2004
(Millions of $)

Economy	United States imports from	United States exports to
Mexico	7,793	4,736
Dominican Rep.	2,065	1,228
Caribbean Basin Initiative	10,023	4,520

Source: United States Department of Commerce, OTEXA and ITCB.

Coverage: MFA products.

Table 13. Reliance of certain countries on EU inputs, 2003
(Millions of $)

Country	EU imports from	EU exports to
Morocco	2,906	1,893
Tunisia	3,317	2,170
Romania	4,443	3,067

Sources: UN COMTRADE and ITCB.

Coverage: HS Section XI.

On the basis of the countries shown above, the stringency of the origin rules places an overarching constraint on the export possibilities of preference-receiving countries, especially those with limited domestic supply capacities in textiles. Thus, although Mexico and several Central American countries were able to rapidly increase their exports in response to the opportunity afforded by duty-free access and close proximity to the United States market, of late their exports have been experiencing a slowdown (table 14). This phenomenon is due largely to the drag placed by their obligation to use United States yarns and fabrics. In particular, despite the tariff advantage and close proximity to the United States, Mexico and the Dominican Republic saw large declines in their exports between 2000 and 2004 – some $2 billion for Mexico and more than $400 million for the Dominican Republic. Also, exports of some Central American and Caribbean countries have been in decline.

Table 14. United States textiles and clothing imports from selected countries
(Millions of $)

Country	Year	United States Imports
Mexico	1990	678
	2000	9,693
	2003	7,941
	2004	7,793
	2005	7,246
Dominican Republic	1990	723
	2000	2,451
	2003	2,128
	2004	2,065
	2005	1,855

Sources: United States Department of Commerce, OTEXA and ITCB.

On the EU side, too, Morocco, Tunisia and Romania, which enjoy lower transport costs and shorter delivery times due to their proximity to the EU countries, receive duty-free treatment by virtue of their free trade arrangements with the EU. Yet exporters from these countries have also been expressing anxiety about the continued health of their exports. Exports of textiles and clothing from Tunisia and Morocco to the EU have been indeed stagnating. Also, textiles and clothing from all LDCs have duty-free access to the EU under the Everything but Arms scheme, but due to the strict rules of origin, exports from LDCs are low. On the contrary, LDCs have increased their exports substantially under the preferential schemes with flexible rules of origin such as the AGOA and the Canadian GSP for LDCs.

While more than one factor is obviously at play, one reason for the declining exports discussed above appears to be the rigid rules of origin that prohibit the use of competitive inputs. Moreover, rigid origin rules discourage foreign investors from investing in the textiles and clothing sector.[44] Other obstacles include the costs associated with the plethora of

[44] Having flexible rules of origin is one of the major factors for foreign investors to invest in the textiles and clothing sector. See UNCTAD, "TNCs and the removal of textiles and clothing quotas", United Nations, New York and Geneva, UNCTAD/ITE/IIA/2005/1, 2005; United States International Trade Commission, January 2004;

paperwork and related formalities that they are required to observe to benefit from tariff concession. These are estimated to add as much as 3 to 5 per cent to the cost of exports.[45]

V.3.2. Flexible rules of origin

Interestingly, countries situated far from the preference-giving countries, and therefore liable to incur higher transportation costs and longer delivery times, have been witnessing a boom in their clothing exports. The most noteworthy examples are Jordan and some of the sub-Saharan African countries (table 15). These countries became eligible for duty-free treatment in the United States from or after 2000. Jordan increased its exports to the country from $52 million in 2000 to $956 million in 2004, an increase of 1,738 per cent. It now ranks as the 23rd largest supplier to the United States. Also, sub-Saharan African countries' exports grew from $776 million in 2000 to $1.79 billion in 2004, an increase of 130 per cent.

Table 15. United States textile and clothing imports from Jordan/AGOA countries
(Millions of $)

Exporter	2000	2003	2004	2004/2000
World	71,692	77,436	83,311	16%
Jordan	52	583	956	1735%
Sub-Saharan Africa	776	1 537	1 792	130%
Sub-Saharan share	1.1%	2.0%	2.2%	
Of which:				
Lesotho	140	393	456	225%
Madagascar	110	196	323	195%
Kenya	44	188	277	529%
Mauritius	245	269	227	-8%
Swaziland	32	141	179	455%
South Africa	163	253	164	0%
Namibia	0	42	79	…
Malawi	7	23	27	276%
Botswana	8	7	20	140%
Zimbabwe	20	5	n.a.	n.a.

Sources: United States Commerce Department, OTEXA and ITCB.

Coverage: MFA imports.

"Textiles and apparel: assessment of the competitiveness of certain foreign suppliers to the U.S. market"; Brenton, Paul, and Takako Ikezuki, "The Initial and Potential Impact of Preferential Access to the U.S. Market under the African Growth and Opportunity Act", World Bank, Policy Research Paper 3262, April 2004; and International Textiles and Clothing Bureau, "Market access in textiles and clothing: examining the nexus between trade and trade policy", CR/41/IDN/", 4 March 2005.

[45] United States International Trade Commission, January 2004, "Textiles and apparel: assessment of the competitiveness of certain foreign suppliers to the U.S. market".

So what might lie behind this difference in the relative performance of Mexico, the Dominican Republic and some Central American and Caribbean countries on the one hand, and Jordan and some sub-Saharan African countries on the other?

Jordan and sub-Saharan African countries are not locked in to the rigid origin rules. Under the United States–Jordan Free Trade Agreement, Jordanian exports of apparel to the United States must only be "substantially transformed", i.e. generally assembled from fabric into apparel, irrespective of the source of yarn and fabric. Likewise, under AGOA, countries that are qualified as the lesser-developed countries are also entitled to duty-free access for their apparel exports, irrespective of the origin of constituting yarns and fabrics.

The apparel exports of these countries are also dependent on imports of textiles from third countries. Yet little of their inputs such as yarn and fabric are sourced from preference-giving countries. A mere 1.3 per cent of Jordan's 2003 textile and clothing imports originated from the United States. The corresponding figures for AGOA countries were 3.2 per cent for Lesotho, 0.8 per cent for Madagascar and negligible for Swaziland. Even taking all developed countries together, only 10 per cent of Jordan's textile and clothing imports came from developed countries, 4 per cent for Lesotho, 2 per cent for Swaziland and about 20 per cent for Madagascar. [46]

As to the countries from which Jordan and the other successful AGOA countries imported their textile requirements, table 16 shows in the descending order of importance the main sources from where these countries import yarn and fabric. These sources accounted for over 90 per cent of imports in each case.

Table 16. Main Sources of selected countries' textile and clothing imports in 2003

Jordan	Lesotho	Swaziland	Madagascar
Imports from	Imports from	Imports from	Imports from
China	Hong Kong, China	South Africa	China
Taipei, Taiwan Province of China	South Africa	Taipei, Taiwan Province of China	EU
Israel	China	Hong Kong, China	Taipei, Taiwan Province of China
Hong Kong, China	Taipei, Taiwan Province of China	China	Hong Kong, China
Syria	Turkey	Singapore	Free Zones
Turkey	Singapore	Indonesia	Mauritius
Pakistan	United States	Egypt	India
Republic of Korea	Malaysia		Sri Lanka
India	India		Pakistan
EU	Pakistan		Indonesia
Indonesia	Indonesia		Singapore
United Arab Emirates	Thailand		Republic of Korea
Japan			Thailand

[46] ITCB calculations on basis of these countries' imports reported in UN COMTRADE database.

Saudi Arabia
Thailand
Philippines
Bangladesh
Egypt

Sources: UN COMTRADE and ITCB, as reported by importing country.

Product coverage: HS Section XI.

V.3.3. Necessity for addressing origin rules

It appears that the origin rule is the fundamental factor responsible for the difference in relative performance of Mexico, the Dominican Republic and some other Central American and Caribbean countries on the one hand, and Jordan and some sub-Saharan African countries on the other. While the former group has been constrained by the necessity of having to import their input requirements from the United States, the latter has had no such constraint and has, therefore, seen its trade flourish, despite the disadvantage of distance from the United States market involving longer lead times and larger transportation costs.[47]

As evidenced from the experiences of Jordan and several sub-Saharan exporting countries, the single most important factor behind their success appears to have been the possibility of being able to source their yarn and fabric requirements from the most competitive suppliers. And these competitive suppliers have generally been other developing countries. Restrictive origin requirements, whether in the context of the non-reciprocal preference programmes or free trade arrangements, undermine the competitiveness of developing-country apparel exporters. Unfortunately, country after country finds itself in the same dilemma: having to rely for their apparel exports on import of textile inputs from preference-giving countries that are not the most competitive sources for these products.

[47] However, it appears that the post-ATC competition environment is affecting AGOA countries. While there are AGOA countries that continue to do well in their exports of apparel, since the ATC expiry, apparel exports from some AGOA countries have declined.

CHAPTER VI

TEXTILES AND TRADE REMEDY ACTIONS

Given the convenience of the blanket protection provided by quota restrictions under the MFA and the ATC, the domestic producers in the restricting countries had little need to seek alternate measures to protect their corners of production. With quota restrictions gone and further liberalization of trade through reductions in tariffs as a result of Doha Round negotiations looming, there is heightened concern about more frequent use of trade remedy measures such as temporary safeguard actions or anti-dumping and countervailing duty measures. The intensification of competition and decline in prices spurred by the disappearance of quotas is adding to this concern. Underscoring similar apprehensions, the IMF and the World Bank warned that "the back loading of effective liberalization under the ATC is particularly unhelpful, as it turns what could have been a gradual adjustment process into a shock at the end of the transition period… This raises concerns that political pressures might spark greater recourse to other forms of protection once quotas are phased out, with trade remedy actions… becoming a new 'line of defense'". [48]

For business executives and government officials, the key to handling the possible rise of trade remedy measures is to become acquainted with the essentials of these measures and be prepared to deal with them. This chapter responds to this need. It is designed to provide a simple matter-of-fact description of what trade remedy instruments are, of the recent experience with respect to their use in textiles and clothing, and of what companies and officials can do to avoid harm to their trade interests.

VI.1. Safeguard actions

In the context of trade in textiles and clothing, it is important to distinguish between safeguard provisions included in the general WTO rules under Article XIX of GATT and in the Protocol of China's Accession to the WTO. In this chapter, the former will be discussed, while the latter is addressed in Chapter VII.

Under Article XIX of GATT, any country can legitimately restrict imports for temporary periods if, after investigation carried out by its competent authorities, it is established that imports are taking place in such increased quantities as to cause serious injury to their domestic industry that produces like or directly competitive products. Safeguard actions can take the form of higher tariffs or quantitative restrictions, though application of the latter is rare, and they should normally be applied on MFN basis, i.e. on imports from all sources.
The primary purpose of allowing safeguard action protection is to give the affected industry time to adjust to increased competition. The WTO Agreement on Safeguards therefore provides that such restrictions may be applied only for temporary periods and establishes a maximum of eight years for a safeguard measure on a particular product. As noted above, safeguard measures have to be applied on MFN basis, i.e. non-discriminatory and to all WTO members, but the Agreement on Safeguards does provide for a departure from strict observance of this MFN principle and permits selective application under carefully circumscribed criteria. Such a departure is permitted if it is demonstrated that imports from

[48] IMF/World Bank, "Market access for developing country exports – selected issues", 26 September 2002, paragraph 68.

certain members increased in a disproportionate percentage in relation to the total increase in imports of the product concerned. This departure, which is also sometimes called "quota modulation", is however not permissible in cases that are based on "threat of serious injury" as opposed to actual serious injury to domestic producers. However, "quota modulation" has not been used in any of the safeguard measures initiated so far.

Since the inception of WTO in January 1995, a large number of safeguard actions have been invoked against imports of non-agricultural products pursuant to the Agreement on Safeguards. However, as the textiles and clothing sector was subject to quota restrictions under the ATC, only a few of these actions related to textile products. While this record under the Agreement on Safeguards augurs well for textiles and clothing exporters in the future, it is not certain under the circumstances of no quota protection whether industries in importing countries would exercise restraint in requesting their respective Governments for safeguard protection measure. Consequently, exporting countries and enterprises are well advised to exercise due vigilance to protect their interests.

The Agreement on Safeguards prescribes sufficiently rigorous criteria which investigating authorities of importing countries must observe in determining whether increased imports are causing serious injury to the domestic industry. It also sets out important procedural requirements for the conduct of investigations. A particular aim of these procedural requirements is to provide foreign suppliers as well as Governments, whose interests may be adversely affected by the proposed safeguard actions, with an adequate opportunity to give evidence and defend their interests. In order to be able to do so effectively, it is imperative for exporters to closely follow the process and be ready to present evidence during investigations by importing authorities.

Crucially, the Agreement on Safeguards also enjoins WTO members not to seek any voluntary export restraints, orderly marketing arrangements or any other similar measures on exports from other members. The examples of such measures include export moderation, export–price or import–price monitoring systems, export or import surveillance, compulsory import cartels and discretionary export or import licensing schemes.[49] The Agreement also provides that where an importing country proposes to adopt a safeguard action, the exporting country whose exports would be adversely affected by the action may request compensation from the importing country concerned with a view to maintaining a balance of rights and obligations. Should there be no agreement in consultations so held, the affected exporting country can suspend equivalent concessions to the importing country concerned.[50]

Finally, it is also worth noting that, besides disciplines on unwarranted safeguard actions under the Agreement on Safeguards, the affected exporting countries can also have recourse to WTO's dispute settlement procedures against unjustified actions.

VI.2. Anti-dumping measures

Unlike the relatively small number of safeguards actions in textile and clothing, the sector has seen the invocation of a large number of anti-dumping actions in the past. With 197 initiations of investigations into alleged dumping from 1990 to 1999, textiles and clothing ranked fifth among all sectors – after only metals, chemicals, plastics, machines and electric appliances. [51] The European Commission had by far been the biggest user of anti-dumping cases in the textiles and clothing sector, and it initiated as many as 72 new investigations during from

[49] Agreement on Safeguards, Article 11 – Prohibition and Elimination of Certain Measures.
[50] Ibid. Article 8 – Level of Concessions and other Obligations.
[51] UNCTAD (2000), Impact of anti-dumping and countervailing duty actions, page 21.

1994 to 2004. The only sectors that witnessed the initiation of higher numbers of anti-dumping investigations by the European Commission were metals and chemicals.[52] Equally significant, 63 of those 72 new initiations (or 87 per cent) involved imports from developing countries.[53] The anti-dumping activity involving textile and clothing products in the United States has been less pronounced. Yet the handful of actions taken by the country have had a tendency to last for long periods, causing adverse effects on exports of products from developing countries concerned.

It is not uncommon to come across accusations where any low-cost imports are labeled as dumped imports. In common parlance, low-cost exports are usually equated with dumping. This understanding of dumping is, however, not correct.

What is dumping?

The WTO Agreement on Anti-dumping lays down precise criteria about the situations in which a product can be deemed as being dumped. In general, an imported product can be considered as dumped if the export price is less than the price charged for the same product in the domestic market of the exporting country. In cases where such domestic price may not be available, a product can be considered as dumped if the export price is less than its cost of production.

Furthermore, under the agreement, an importing country cannot impose anti-dumping duty solely on the grounds that the imported product was being dumped. It can do so only if, after proper investigation, it is also established that dumped imports are causing material injury to the domestic industry producing the like product in the importing country. And in determining whether dumped imports are causing material injury to the domestic industry, all relevant factors having a bearing on the state of the industry need to be taken into account, and it must be clearly established that there was a causal link between dumped imports and injury to the industry. If, however, the problem being faced by the industry might be due to some other factors, such as contraction in demand or changes in patterns of consumption, and it cannot be directly attributed to dumped imports, then anti-dumping duty should not be imposed. Also, the anti-dumping duty may only be levied if it is established that imports were causing problems to domestic producers which accounted for a major proportion of domestic output, not just a few of them.

To give concrete effect to the above general principles for consideration of specific cases of alleged dumping, the Agreement on Anti-dumping sets out detailed procedural criteria, which are summarized in the box below.

VI.2.1. Anti-dumping actions can have large adverse effects on exports

Any detailed exposition of the adverse effects of anti-dumping actions is beyond the scope of this brief information module.[54] Experience with these actions, however, shows that by merely alleging dumping and thereby provoking the initiation of investigations by importing authorities, the complaining industries can often cause substantial harm to the export interests of targeted countries, besides a host of related costs on the businesses concerned. Table 17

[52] Annual reports of the EC Commission to the European Parliament on the Community's anti-dumping and anti-subsidy activities.
[53] Of the remaining seven, two involved imports from developed countries and five from transition economies.
[54] Those interested in a full description of experience with anti-dumping actions in the area of textiles and clothing may wish to refer to a document submitted by a group of developing countries and economies to the Doha Round Negotiating Group on Rules entitled "Anti-dumping actions in the area of textiles and clothing: developing members' experiences and concerns", WTO document No. TN/RL/W/48/Rev.1.

shows how anti-dumping investigations led to significant falls in exports from countries whose exports were targeted for anti-dumping investigative actions in the EU.

Table 17. Changes in targeted countries' import shares.

Product investigated	Before investigation	Following investigation	After termination of investigation	Remarks/targeted countries
Synthetic fabric	1993	1995	1997	
Value	50.2%	52.9%	56.5%	Investigation terminated in 1996 without imposing anti-dumping duty; India, Indonesia, Pakistan, Thailand
Volume	66.6%	63.6%	70.4%	
Cotton fabric	1993	1998	2000	
Value	55.8%	38.6%	42.4%	Provisional duties imposed but lapsed in 1998; China,
Volume	59.0%	37.6%	40.4%	Egypt, India, Indonesia, Pakistan, Turkey
Bed linen	1993	1994	2000	
Value	49.0%	47.6%	41.3%	Definitive duties ended in 2001; Egypt, India, Pakistan, Thailand
Volume	51.8%	50.9%	44.7%	

Sources: WTO and ITCB.

In the case of synthetic fabrics, the import share of the targeted countries dropped from 66.6 per cent before the initiation of investigations to 63.6 per cent following the initiation. In the case of cotton fabrics, where three back-to-back investigations continued over several years, the import share of targeted countries showed the most pronounced decline, from 59 per cent to 37.6 per cent. Their share could not recover to pre-initiation levels even after the proceedings lapsed. The shares of targeted countries in the case of bed linen, too, dropped. The case was challenged by India under the WTO dispute settlement procedures, and a dispute panel ruled this particular action to be illegal. However, by the time the dispute was settled, the disruption in India's export was such that exports had fallen from $127 million in 1998 to $91 million by 2002. Reportedly, it had resulted in 1,000 job losses in the Southern Indian city of Pondicherry alone, where one of the targeted firms was based.[55]

VI.2.2. What can be done to avoid harm from anti-dumping actions?

Why in the face of such elaborate rules governing anti-dumping, is there so much criticism about these measures? The answer lies in the manner that these procedures are often misused, as well as permissive interpretations that some investigating authorities give to particular provisions of these rules. In fact, due to the flexible nature of some provisions of the anti-dumping regime, lack of clarity about certain disciplines and political pressures by affected

[55] Oxfam, "Stitched up: how rich country protectionism in textiles and clothing prevents poverty alleviation", Briefing Paper 60 (2004).

domestic industries leave the system liable to being used for protectionist purposes. This is all the more so in trade sectors that are subject to severe competitive pressures from exports such as textiles and clothing. It is therefore of paramount importance that both exporters and exporting country Governments become fully cognizant of their rights so as to avoid the misuse of anti-dumping procedures by protection-seeking interests in the importing countries.

In an anti-dumping case, the affected importing industry typically seeks the imposition of additional duties on imported goods, on top of regular duties. Enterprises in many developing countries are finding that as their exports rise, there are increasing pressures from industries in importing countries for the levy of such duties. As soon as the petitions are lodged, an uncertainty is created for manufacturers, exporters as well as importers, because they potentially face years of not knowing the actual total duty liability on their shipments while the responsible Government agencies in the importing country conduct their investigations to make their determinations. Thus, merely by initiating a case against foreign manufacturers or just threatening to do so, the protection-seeking industry in an importing country can cause extensive disruption to the market for an extended period.

When the investigations into allegations of dumping by foreign enterprises are begun by the domestic authorities of the importing country, the exporters are obliged to provide detailed information on the basis of a questionnaire issued by them. In the United States, there is a two-track process for consideration of a dumping petition. The petition is simultaneously filed with the United States Department of Commerce (DOC) and the United States International Trade Commission (ITC). These two agencies conduct independent, concurrent investigations, and if both make affirmative determinations, the DOC directs the United States Bureau of Customs and Border Protection to collect an anti-dumping duty. The DOC's responsibility is to determine whether imported goods are sold at "less than normal value", i.e. being dumped, and if so, the percentage by which they are below prices in the home market or below the cost of production. The ITC, on the other hand, is responsible for determining whether imports are causing injury or threatening to cause injury to the domestic industry which produces products that are like or directly competitive with the imports at issue. Each agency also conducts a two-part investigation, a preliminary and then a final investigation.

For countries that the United States considers to be non-market economies (NMEs), such as China or Viet Nam, the DOC rules are slightly different – and tend to have a more onerous impact. On the assumption that the presence of government controls in these economies makes normal price comparisons unreliable, the actual prices or cost of production in these economies are ignored. Instead, to determine the value of the good in these markets, DOC looks at the quantity of inputs, such as raw materials and energy used in production in the NME, and then determines the price of these inputs in a surrogate third country. For example, if DOC determines that it takes a certain amount of cotton and energy to produce a quantity of fabric in China, it will then look at another country, say, India, to determine what these inputs would cost there. These amounts are then applied to determine the costs in China. Labour costs for NMEs are determined through a complex formula that takes into consideration a group of countries with similar GDP levels. In practice, the surrogate country approach often results in unpredictable, higher dumping margins for the NME.

While it may ultimately take just over a year for a final decision to be made, DOC may instruct the Department of Customs to require the posting of cash deposits by importers to cover potential dumping liability, based upon a preliminary determination as to the level of dumping. In extreme cases – where DOC determines that there are "critical circumstances", such as massive imports over a relatively short period – the deposit requirement could kick in within 70 days into the investigation, as compared to 160 days in normal cases.

In the EU, too, the procedures on anti-dumping investigation are similar. On receipt of a complaint alleging dumping causing material injury to the domestic industry, the responsible authority in the European Commission issues a public notice about initiation of investigation and invites all interested parties to let their views known to the European Commission. It also issues questionnaires to known producers and exporters, inviting them to submit the information within a limited specified period. In cases in which there are a large number of exporters, the commission selects a sample of companies that must submit the information in the questionnaire. It also asks the parties to apply for hearings by the Commission.

After an investigation is initiated, the questionnaires issued by the investing authorities must be responded to by producers and exporters within the prescribed time, which is just a few weeks, and the responses must be provided in computerized form. An exporter's failure to respond, or inadequate response, can lead to the investigating authorities to rely, instead, upon "best information available". Not all exporters may get a questionnaire, but those that do not may still voluntarily complete a questionnaire in order to get the benefit of the average rate calculated for the mandatory respondents.

To be able to provide timely information in response to the questionnaires, exporters should monitor their prices, costs of production and other factors to assess their "dumping margin", and thereby their potential exposure. Exporters, especially from a market economy, can control potential dumping margins by controlling normal value and the export price. Even non-market economy exporters can help themselves by investigating the costs of the factors of production in a likely surrogate market and then trying to achieve efficiencies in factors that are likely to be valued highly in that surrogate. When the input was produced in a market economy, using inputs from market economies, such as yarn or fabric formed in Taiwan Province of China or the Republic of Korea can help, because actual rather than surrogate values will be used in this case.

Governments of exporters under anti-dumping investigations need to be prepared as well. Firstly, under the Agreement on Anti-dumping, the investigating authorities are obliged to notify the Government of the exporting country of their decision to begin the investigation. Governments have the right to tender evidence and to defend the interests of their exporters. As the legal and other costs of participating in investigations are substantial and are often beyond the resources of small and medium-sized enterprises, it is important for Governments to come to the assistance of these enterprises. Secondly, aside from the above, it is also important for developing-country Governments to closely follow the rule-making process under WTO and to see how they can seek improvements in anti-dumping disciplines to protect their interests against frivolous or unjustified recourse to these actions.

The importance of trade in textile and clothing for developing countries is well known. Manufacture of clothing, in particular, is a labour-intensive activity, and therefore, the sector is particularly important for the creation of employment opportunities in developing countries. Thus, necessary improvements need to be sought, both to protect these countries from unjustified recourse to trade remedy actions and to spare their enterprises from the costs associated with the investigative process, bearing particularly in mind that developing-country firms tend to be small or medium-sized. In this connection, consideration could be given to seeking improvements in the anti-dumping disciplines both from a short-term perspective in the wake of the abolition of quota restrictions and for the longer-term interest so that market access available to developing countries is not undermined.

CHAPTER VII

SAFEGUARD MEASURES AGAINST CHINESE TEXTILES AND CLOTHING

This chapter discusses the features of the textile-specific safeguard provisions in the Protocol of China's Accession to the WTO, the United States and EU internal procedures for invoking these provisions, and the bilateral Chinese textiles agreements concluded with the two trade partners.

China acceded to the WTO in December 2001, and as a condition, it accepted the textile-specific safeguard provisions in the Protocol. Subsequently, the United States and the EU have established their own procedures to implement these provisions and imposed safeguard measures on some textiles and clothing products from China. Meanwhile, pressures from domestic textile industries continued for more protection. Several months after the ATC expiration, the statistics showed that the EU and the United States imports of some textiles and clothing articles from China surged, and the two trade partners concluded the bilateral textiles agreements with China to limit Chinese textiles and clothing in their markets.

VII.1 Textile-specific safeguard provisions in the Protocol of China's Accession to the WTO

The textile-specific safeguard provisions are contained in paragraph 242 of the Report of the Working Party on the Accession of China, henceforth referred to the Protocol of China's Accession to the WTO. The paragraph is presented in the Box below.

Protocol of China's Accession to the WTO
Textile-Specific Safeguard

"242. The representative of China agreed that the following provisions would apply to trade in textiles and clothing products until 31 December 2008 and be part of the terms and conditions for China's accession:

"(a) In the event that a WTO Member believed that imports of Chinese origin of textiles and apparel products covered by the ATC as of the date the WTO Agreement entered into force, were, due to market disruption, threatening to impede the orderly development of trade in these products, such Member could request consultations with China with a view to easing or avoiding such market disruption. The Member requesting consultations would provide China, at the time of the request, with a detailed factual statement of reasons and

justifications for its request for consultations with current data which, in the view of the requesting Member, showed: (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption;

"(b) Consultations would be held within 30 days of receipt of the request. Every effort would be made to reach agreement on a mutually satisfactory solution within 90 days of the receipt of such request, unless extended by mutual agreement;

"(c) Upon receipt of the request for consultations, China agreed to hold its shipments to the requesting Member of textile or textile products in the category or categories subject to these consultations to a level no greater than 7.5 per cent (6 per cent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made;

"(d) If no mutually satisfactory solution were reached during the 90 day consultation period, consultations would continue and the Member requesting consultations could continue the limits under subparagraph (c) for textiles or textile products in the category or categories subject to these consultations;

"(e) The term of any restraint limit established under subparagraph (d) would be effective for the period beginning on the date of the request for consultations and ending on 31 December of the year in which consultations were requested, or where three or fewer months remained in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations;

"(f) No action taken under this provision would remain in effect beyond one year, without reapplication, unless otherwise agreed between the Member concerned and China; and

"(g) Measures could not be applied to the same product at the same time under this provision and the provisions of Section 16 of the Draft Protocol.

"The Working Party took note of these commitments."

Excerpt from the Report of the Working Party on the Accession of China, WT/ACC/CHN/49, 1 October 2001.

On receipt of the request for consultation from the affected country, China has to restrict its shipments to the country in the product concerned to 107.5 per cent of imports recorded in the recent period, which is defined as the first 12 months of the most recent 14 months preceding the month in which the consultation request is made. Thus, for example, if a consultation request is made in May 2005, imports recorded in the 12-month period of March 2004 to February 2005 constitute the reference period.

Furthermore, under the terms of another provision in the Protocol of China's Accession to the WTO, the maximum duration for which a restraint may be established is one year. It may, however, be reapplied after following the procedural requirements for consultation with China. Finally, there is another detail which effectively means that if a consultation request is made in any month from January to September, the restriction can last only up to 31 December of that year; however, if the consultation request is made in the months of October to December, the restriction will be for 12 months.

It may be noted from the Protocol of China's Accession to the WTO above that the justification for its invocation has to rest on a determination of whether imports were threatening to impede the orderly development of trade in the relevant product or products "due to market disruption". In other words, market disruption is the basic standard.

There has, however, been a controversy on the precise meaning of the terms of the accession language. Industry interests in the EU and the United States had already been exerting pressure on their Governments since early 2004 to immediately initiate safeguard restrictions on Chinese textiles and clothing. Based on China's reported capacity and the results of studies such as those produced by a member of the WTO staff in August 2004,[56] they argued that there was a "threat" of market disruption on account of Chinese imports that would flood the markets after 1 January 2005. In fact, this campaign in itself served as an incentive for importers and exporters to rush in shipments from China so as to build up the highest possible trade levels to outsmart the impending imposition of quotas.[57] As noted above, on receipt of the consultation request, China would have to restrict its shipments in the product concerned to 107.5 per cent of imports recorded in the recent period.

VII.2. Internal United States and EU procedures for implementing the Chinese textile-specific safeguard provisions

In order to implement the textile-specific safeguard provisions of the Protocol of China's Accession to the WTO, the United States and the EU established their own internal procedures.

VII.2.1.United States

According to the United States procedures issued in October 2003, within 15 days of a request from the affected parties, the United States administration's Committee on Implementation on Textile Agreements (CITA) would need to determine whether the request provided the necessary information. In case of a positive determination, CITA has to invite public comments that may be provided within 30 days of the invitation for comments. Then, after the expiry of the comment period, CITA has to make a determination within another 60 days on whether to request consultations with China. If it is decided to so request the consultation, China is bound by the terms of the Protocol of China's Accession to the WTO to start restricting its exports to 107.5 per cent of the recent representative period noted earlier. In the

[56] WTO, "The global textile and clothing industry post the agreement on textiles and clothing", Hildegunn Kyvik Nordas, WTO Discussion Paper, No. 5, 2004.
[57] International Textiles and Clothing Bureau, "Trade in textiles and clothing: post-ATC context", op. cit.

case of requests for reapplication of the measure, it "will only take place if CITA makes a new affirmative determination of market disruption".

VII.2.2. EU

The European Commission issued its own procedures by a Notice on 27 April 2005. Termed as "Guidelines", it lays out the procedure for the Commission to process cases for safeguard actions that would be requested by the industry through a member State, as well as the procedure to be followed by a Textile Committee of the European Communities to process these requests. The Notice provides that the Commission may also self-initiate a case.

There are two distinctive features of the Commission guidelines which deserve particular mention. Firstly, the Commission has established certain minimum thresholds. It has laid out that it will consider cases for action if imports from China crossed those thresholds. The thresholds are based on China's shares in imports in particular products in 2004. The Notice states that if imports increase the listed levels, "it could be considered in principle that there is a high likelihood that a 'disorderly development of imports' is taking place".

Secondly, the factors the Commission will consider include, among others, the impact that imports from China might have on other suppliers. In referring to such other suppliers, the regulation mentions in particular that "Southern and Eastern Mediterranean countries are part of the natural zone of competitiveness of the EU textile and clothing industry and are an important destination of both exports and investments of EU industry". In other words, the Commission will weigh the impact on countries that are large buyers of EU textile materials and are host to processing operations by EU companies such as Morocco, Romania and Tunisia.

Thirdly, the Commission also lays out its belief that "the vaguely worded provision of the Protocol of China's Accession to the WTO can be applied with relatively wide margin of discretion and little room for challenge in the WTO".

VII.3. Actual invocation of safeguard actions against China

VII.3.1. United States

For ease of reference, the safeguard actions by the United States may be seen under four separate, yet related, strands.

Firstly, towards the end of 2003 under the textile-specific safeguard provisions of the Protocol of China's Accession to the WTO, the United States established restrictions on three product categories that had been integrated into GATT in January 2002 pursuant to the ATC. These categories included: (a) category 222 – knit fabric; (b) combined categories 349/649 – cotton and man-made fibres brassieres; and (c) combined categories 350/650 – cotton and man-made fibres dressing gowns and robes. These restrictions were imposed in December 2003 to cover the 12-month period of 24 December 2003 to 23 December 2004. On 29 October 2004, the

United States applied another restriction on combined categories 332/432/632-part – cotton, wool and man-made fibre socks. Surprisingly, cotton socks were included even though these were still restricted by quota under the ATC. This restriction was in place for the period 29 October 2004 to 28 October 2005.

Secondly, before the restrictions noted above could run their course, the industry associations requested for their reapplication on the ground that imports from China posed a "threat" of market disruption. In addition to the request for reapplication of the three measures, the industry associations also applied for safeguards on a number of additional categories of products, alleging that "an anticipated increase in imports of these products from China threatened to disrupt the United States market for these products". These requests covered the following product categories: 447 – wool trousers; 620 – synthetic filament fabric; 301 – combed cotton yarn; 338/339 – cotton knit shirts and blouses; 340/640 – men's and boys' shirts not knit; 352/652 – cotton and man-made fibre (MMF) underwear; 638/639 – MMF knit shirts and blouses; 647/648 – MMF trousers; and 347/348 – cotton trousers.

These threat-based requests touched off a battle between industry associations demanding safeguard restrictions and the United States importers in 2005.[58] The United States Association of Importers of Textiles and Apparel (USA-ITA) challenged the validity of CITA's consideration of cases on the basis of "threat" of market disruption. Essentially, USA-ITA had complained that CITA's own procedures of 2003 did not permit the consideration of requests for action on the basis of allegations of "threat of market disruption". The United States Court of International Trade issued an injunction prohibiting CITA from considering the requests for the additional safeguards until it had ruled on the issues raised in the petition by USA-ITA.

Thirdly, in the meantime, the industry associations had been keeping up their campaign and, it so happened that data on January–February 2005 imports came in and the associations re-phrased their petitions by converting the threat-based complaints to those based on actual market disruption. The administration also started feeling the industry pressure, which became all the more palpable because of the impending consideration of the ratification of the United States Free Trade Agreement with the Dominican Republic and five Central American countries by the United States Congress.

The result was that the administration initiated the safeguard procedure on the following categories on its own: (a) categories 338/339 – cotton knit shirts and blouses; (b) categories 347/348 – cotton trousers; and (c) categories 352/652 – cotton and man-made fibre underwear. And on 23 May 2005, it formally requested consultations with China, effectively placing these products under quotas from that date. As the requests were made in May 2005, the quota limit lasted until 31 December 2005. These three cases were based on both the existence of actual market disruption and the threat of market disruption.[59]

Fourthly, a few days later, on 27 May 2005, the United States requested consultations on the following additional products: (a) category 301 – combed cotton yarn; (b) combined categories 340/640 – men's and boys' cotton and man-made fibre shirts, not-knit; (c)

[58] International Trade Daily, "U.S. textile groups to request additional safeguards: GAO raps procedures", Bureau of National Affairs, Washington, D.C., 6 April 2005.
[59] International Textiles and Clothing Bureau, "New US–China textile agreement, IC/W/303, 17 November 2005.

categories 638/639 – man-made fibre knit shirts and blouses; categories 647/648 – men and boys' and women and girls' man-made fibre trousers. With the new consultation requests, the United States effectively placed restrictions on the large bulk of imports of shirts, blouses and trousers from China.

Significantly, while the consultation requests made on 23 May 2005 were based both on the existence of "actual market disruption" and "threat of market disruption", the requests on 27 May alleged only the "threat" of market disruption.[60] The relevant United States Federal Register notices stated that the United States believed that "Imports of Chinese origin textile and clothing products in these categories are, due to a *threat of market disruption*, threatening to impede the orderly development of trade in these products".[61] In this connection, it is worthwhile to recall that the language in the Protocol of China's Accession to the WTO provides that any WTO Member may request consultations with China if it "believed that imports of Chinese textile and apparel products were, *due to market disruption*, threatening to impede the orderly development of trade in these products".

VII.3.2. EU

The EU issued its internal procedures to consider textile-specific safeguard cases relating to imports from China on 27 April 2005. In response to sustained pressure by its own textile industry lobby – the European Apparel and Textile Organization (Euratex) – and taking a clue from what had been going on in the United States, the EU also announced the initiation of investigations as part of its internal process. Consequently, it started internal consideration of whether there was market disruption in the following products:

(a) Self-initiation by the Commission on Categories: 4 – T-shirts; and 115 – flax or ramie yarn.

(b) Initiation on the basis of petitions by Euratex on Categories: 5 – pullovers; 6 – men's trousers; 7 – blouses; 12 – stockings and socks; 15 – women's overcoats; 31 – brassieres; and 117 – woven fabrics of flax.

May 2005, the Commission also did so on two product categories: 4 – T-shirts; and 115 – ramie yarn. It needs clarifying that, unlike the United States, the EU category system does not distinguish between apparel products on the basis of their fibre content. Thus, for example, the coverage of category 4 – "T-shirts" is quite broad and includes the following knitted/crocheted items: shirts, T-shirts, polo or turtle necked jumpers and pullovers (other than of wool or fine animal hair), under-vests and the like. EU category 4 is broadly comparable to United States categories 338, 339, 638 and 639 combined. In both categories 4 and 115, the EU alleged the existence of market disruption.

VII.4 Chinese bilateral textile agreements with the EU and the United States

Several months after the ATC expiry, the EU and the United States have concluded bilateral textile agreements with China to restrain imports of Chinese textiles and clothing in their

[60] Ibid.
[61] "Announcement of Request for Bilateral Textile Consultations", United States Federal Register, Volume 69, Number 210, 1 November 2004.

markets. As discussed previously, prior to these agreements, the two trade partners had already been restricting their imports of Chinese textile products, invoking the textile-specific safeguard provisions in the Protocol of China's Accession to the WTO, but pressures from the domestic industries for more protection continued and led to the conclusions of the Chinese bilateral textile agreements with the EU and the United States.

VII.4.1. EU–China Textile Agreement

The EU and China announced on 10 June 2005 that they had reached a bilateral agreement on Chinese textiles and clothing. The salient features of the agreement are:

(a) Under the ATC, China's exports to the EU in 35 product categories (out of a total of 142 Categories) were covered by quota restrictions in 2004. The agreement reached on 10 June 2005 reintroduced quotas on 10 of these product categories.

(b) The EU undertook to exercise restraint in the invocation of new restrictions on the remaining product categories. In other words, just as the "peace clause" under the Agriculture Agreement, it agreed not to invoke this provision on these product categories.

(c) Under the Protocol of China's Accession to the WTO, the textile-specific safeguard could be applied until 31 December 2008, i.e. for four years after the ATC. The mutually agreed solution, however, placed the 10 product categories under quota up to 31 December 2007. In other words, the EU also agreed to exercise restraint with respect to putting these 10 categories under restriction in 2008.

(d) As for the quota levels for the 10 categories, the agreement provides for the following limits for 2005, 2006 and 2007 as indicated in table 18. For facility of comparison, China's quota levels in 2004, the last year of the ATC, are also indicated.

Table 18. Reintroduced quotas on Chinese textiles and clothing

Category	Product	Unit	2004 Quota*	2005 Quota	2006 Quota	2007 Quota	Growth Rate
2	Cotton fabric	ton	30,556	55,065	61,948	69,692	12.5%
4	T-shirts	1 000	126,808	491,095	540,204	594,225	10.0%
5	Pullovers	1 000	39,422	181,549	199,704	219,674	10.0%
6	Trousers**	1 000	40,913	316,429	348,072	382,880	10.0%
7	Blouses	1 000	17,093	73,176	80,493	88,543	10.0%
20	Bed linen	ton	5,681	14,040	15,795	17,770	12.5%
26	Dresses	1 000	6,645	24,547	27,001	29,701	10.0%
31	Brassieres	1 000	96,488	205,174	225,692	248,261	10.0%
39	Table linen	ton	5,681	10,977	12,349	13,892	12.5%
115	Flax yarn	ton	1,413	4,309	4,740	5,214	10.0%

** Quota levels under the ATC in 2004.*
*** Category 6 actually covers both men's and women's trousers, but this case is only for men's trousers.*

VII.4.2. United States–China Textile Agreement

Following the EU–China textile agreement, the United States and China signed a memorandum of understanding in November 2005 to limit Chinese textiles and clothing exports to the United States over the period of 2006 to 2008. The salient features of the United States–China Textile Agreement are as follows:

(a) In 2004, the last year of the ATC regime, 82 Chinese textiles and clothing products to the United States were restricted by quotas. The United States–China Textile Agreement re-imposes quotas on 34 product categories, which account for about a third of China's textile and apparel exports to the United States by value.

(b) Some of these 34 categories, however, are only partially covered for restrictions under this agreement.

(c) The new restrictions on 34 product categories have been established for each of the years 2006, 2007 and 2008. These products include the major import products, i.e. shirts, trousers and underwear, covered by the new restrictions.

(d) In general, the United States–China Textile Agreement allowed imports of restricted apparel to grow by 10 per cent and restricted textiles by 12.5 per cent in 2006. In 2007, most categories are permitted 12.5 per cent growth. In 2008, most products will be able to increase their imports by 15 to 16 per cent.

(e) However, for the 19 categories that are currently subject to safeguards, a lower base level would be used to calculate the import increases, resulting in smaller growth rates. For those categories, imports increased approximately 5.5 per cent in 2006, and will increase approximately 7.8 per cent in 2007 and 10.3 per cent in 2008.

(f) Moreover, for "core" apparel products (i.e. cotton knit shirts, man-made fibre knit shirts, woven shirts, cotton trousers, man-made fibre trousers, brassieres and underwear), the United States–China Textile Agreement imposes tight limits. In 2006, the quotas for these products were smaller than any quotas that could have been imposed under the textile-specific safeguard provisions in the Protocol of China's Accession to the WTO in the same year. Quotas established by the United States–China Textile Agreement for 2007 on these products are about the same as the threshold that would be established under the textile-specific safeguard provisions for 2007, and higher than the safeguard threshold for 2008. Over the life of the United States–China Textile Agreement, China can export 3.2 per cent more of the covered products to the United States than if the textile-specific safeguard provisions were invoked on all of the covered products for all three years.

(g) Aside from the 34 product categories, the United States has agreed not to apply any restrictions on ATC products that had been integrated into the normal GATT rules before the start of the third stage of integration, i.e. before 1 January 2002. With respect to all other products, the United States has agreed to exercise restraint in the application of any further restrictions.

CHAPTER VIII

DIVERSIFICATION INTO DYNAMIC TEXTILES AND CLOTHING PRODUCTS

Competition is intensifying in the post-ATC phase, and exporters of textiles and clothing are subject to heavy pressure to cut prices. At the same time, however, the post-ATC phase provides opportunities for exporters to exit from the quota-captive markets, where competition is intense and profit margins are low, and to diversify into dynamic products with high value added and profit margins. Identifying dynamic products and diversifying into these products would be crucial for developing-country exporters of textiles and clothing to do well in the post-ATC competition environment.

The UNCTAD expert meeting on the new and dynamic sectors of world trade in February 2005 identified textiles and clothing products considered dynamic,[62] and considered policy measures that would be necessary to promote diversification into dynamic products.[63] The following discusses the products and policy measures highlighted in the expert meeting.

VIII.1 Dynamic products

VIII.1.1. Traditional product lines

In the traditional products lines, those with high growth rates were identified at the HS code four-digit level and presented below. These products grew continuously from 2001 to 2005, and their growth rates during this period were between 100 to 600 per cent. These include:

- suits, ensembles, jackets, blazer, trousers, shorts (6203, 6204, 6103, 6104);
- coats, anoraks, ski jackets (6102, 6201);
- jersey, pullovers, cardigans (6110);
- underwear, pyjamas, bathrobes, dressing gowns (6107, 6108, 6212, 6207, 6208);
- panty hose, tights, stockings, socks, shawls, scarves (6115, 6214);
- track suits, ski suits, swimwear (6112, 6211);
- other garments (6113, 6114, 6210);

[62] Dynamic products are defined as those with growing demand and high profit margin.
[63] UNCTAD intergovernmental expert meeting on developing countries' participation in new and dynamic sectors of world trade, 7–9 February 2005, Geneva. See "Report of the Expert Meeting on Strengthening Participation of Developing Countries in Dynamic and New Sectors of World Trade: Trends, Issues and Policies", TD/B/COM.1/EM.26/3, 1 March 2005.

- other made-up clothing accessories (6117, 6217);
- blankets and travelling rugs (6301);
- bed linen, table linen, toilet linen, kitchen linen (6302);
- curtains including drapes and interior blinds, bed valance (6303);
- other furnishing articles (6304);
- other made-up articles, including dress patterns (6307);
- yarn of carded wool, fine animal hair (5106, 5108, 5110);
- cotton sewing thread, cotton yarn (5204, 5207);
- woven fabrics of cotton (5212);
- synthetic thread and yarn (5401–5403, 5406, 5504, 5508–5511);
- silk yarn (5505, 5506);
- wadding of textile materials and articles, textile fibres, felt (5601-5603);
- woven pile fabrics and chenille fabrics, tulles and other net fabrics (5801, 5804);
- embroidery in the piece, quilted textile products in the piece (5810, 5811);
- other textiles (5901);
- knitted crocheted fabrics, warp knit fabrics (6004–6006).

The product categories listed above need to be disaggregated at the highest level possible in order to analyse the international market trends for individual textiles and clothing articles, but the purpose of the list is to indicate that a wide range of products is dynamic. Also, producers need to have the capability to adjust quickly to changes in consumer preferences with regard to fabric, colour and style.

VIII.1.2. Technical textiles

The demand for technical textiles is rapidly increasing, and their profit margins are high. Technical textiles are used for unconventional areas such as agriculture, construction, medical care, environmental protection, sports and so forth. With global consumption of over 1,000 tons and a value of $40 billion annually, technical textiles have emerged as a global industry.[64] In developing countries where a textile industry already exists, diversification into technical textiles could be pursued without major new investments. About 60 per cent of technical textile production has already shifted to developing countries, and the potential is promising.[65] Among developing countries, China leads in the production of technical textiles, while countries such as India, Indonesia, Mexico and Pakistan are also pursuing these textiles. The following technical textiles are growing in demand and yielding high margins:

[64] "Techtextil highlights the optimism in the technical textiles sector", Sachsisches Textilforschunginstitut, published in on-line news magazine Technical Textiles International, June 1999, http://www.technical-textiles.net/archive/org)s.htm.
[65] Ibid.

Agrotex: The agriculture and fishing industries have always used textiles to help protect, gather and store their products. Modern materials, especially non-woven, are now being used to increase the strength, lightness and durability of traditional products.

Buildtex: Their use in construction and architectural applications offers advantages of strength, resilience and flexibility combined with low weight. The boom in the construction sector, especially in China and the United States, has led to growing demand for this textile.

Clothtex: Interlinings, sewing thread, waddings and fibrefill involve a high level of product engineering to achieve specific and often critical objectives in garment manufacture and use. China is the largest market, while the ASEAN market also seems to be in growing need for this product.

Geotex: This is the textile that is used under the surface of roads to give better texture and grip. It has witnessed the highest growth rates in the field of technical textile in terms of volume. Worldwide demand is increasing and margins remain highest in this product line.

Indutex: This is widely used throughout industry for processing, filtering and separating products, as well as for cleaning and polishing. China remains the main market of this product because of its growing manufacturing sector. However, the United States and Europe are also witnessing rapid increase in demand.

Medtex: Medical applications call for very sophisticated and high-unit-value technical textiles, although these are generally sold in comparatively small volumes. It represents the largest material for disposable non-woven textiles.

Mobiltex: The transportation sector – commercial vehicles, trains, boats and aircraft – represents the single most valuable market for this technical textile. China leads in demand for this product in the wake of its growing automotive sector. Brazil, Portugal, Spain and Mexico are also key importers and exporters.

Oekotex: This includes textiles used in a wide range of environmental protection applications, and Europe is the single most important market for this technical textile.

Pactex: Packaging is a long-established application for textiles. Although sacks and bags made from natural fibres such as jute and cotton are still widely used, pactex has largely replaced natural materials. The demand for pactex is growing rapidly, particularly in high growth countries such as China and India.

Protex: This is used for protective clothing for industrial and leisure end-users, and is one the highest growing technical textiles, particularly in North America and Europe.

Sportex: Increasing worldwide interest and participation in sports has resulted in rapid growth in consumption of sportswear. Sportex, made of synthetic fibres and finished with coatings, has largely replaced traditional fabrics such as cotton for materials used for sportswear.

VIII.1.3. Anti-microbial finished textile products

Anti-microbial finished textile is made with chemical solutions that add value to materials specified for their performance characteristics such as skin comfort, sweat control, long life of products, etc. Independent research has shown that a large percentage of world consumers would prefer to purchase anti-microbial textiles and clothing. The outcome of the survey conducted in December 2002 by the Gallup Organization backs up recent reports on the growing appeal of anti-microbial finished textile products. According to the survey, approximately two thirds of British consumers would choose to buy treated rather than untreated home textiles such as towels, bed linen and kitchen cloths. In other words, even basic products lines would require microbial finishes, hence there is need for developing

countries to upgrade themselves technologically. Anti-microbial textile products can be produced by creating a protective layer on any basic textile product. The procedures for anti-microbial finish are relatively simple and do not require heavy investments.

VIII.1.4. Ethnic textiles

Another emerging textile is ethnic textile, commonly known as tribal textiles in the Chinese market. India, followed by China, Cambodia and Turkey, is taking the lead in ethnic textile. National, regional and provincial local clothing that is embroidered or printed is being exported. To promote ethnic textile export, Chinese exporters have set up help desks in major cities for local people to bring their ethnic textiles to the exporters. These products have had high margins and are being retailed by mid-level stores such as GAP and ZARA.

VIII.1.5. Niche emerging from the forum shopping trend

In the area of traditional product lines, small and medium-sized enterprises are investing in order to follow the trend of "forum shopping", whereby manufacturers buy inputs such as yarn, fabric and accessories from the most cost-effective suppliers instead of manufacturing them in-house. This trend has encouraged specialization and niche production in areas such as textile accessories, linings, specialized fabrics, technical textiles, ethnic textiles, etc., and it has led to a new era of dynamism for the textiles and clothing sector in developing countries.

VIII.2. Actions required in facilitating diversification into dynamic textile products

The expert meeting made the following policy recommendations for promoting the textiles and clothing sector in developing countries to diversify into dynamic products.

VIII.2.1. Actions required at the national level

The following actions are required at the national level:

1. To support firm's endeavours to maintain competitiveness, reform of domestic labour laws might be necessary in order to increase flexibility in employment while enforcing international labour standards.

2. Regulations affecting the competitiveness of dynamic products need to be reformed. In this respect, those on energy, telecommunications, transportation, electricity and preferential treatment for specific products at the expense of potential dynamic products are particularly relevant.

3. Enforcement of laws on intellectual property rights is necessary for the protection of traditional artistic expression and promotion of niche markets. It is also important for attracting foreign investment and buyer interest.

4. Other required national measures are investments in infrastructure to support efficient trade logistics; the construction of dry ports; the creation of export processing zones; the provision of financial incentives (grants, loans or tax relief) to improve competitiveness; the removal of bottlenecks that result in delays in shipping and customs clearance; and the abolition of export duties and other taxes. Active business advocacy to sensitize Governments about the needs of enterprises is essential.

VIII.2.2. Actions required at the international level

1. Trade in textiles and clothing is still subject to considerably higher tariffs than other industrial goods, and these tariffs are therefore serious barriers to textiles and clothing exports. Preferential rules of origin on textiles and clothing are discriminatory in respect of exporters of the products in countries that do not participate in regional trade agreements. Countries that have regional trade agreements with the EU and the United States have to use inputs from the two partners to benefit from preferential market access unless they can use input from the region concerned. The restrictive rules of origin are also a serious constraint for "forum shopping".

2. Countries seriously affected by the lifting of quotas need substantial technical and financial assistance from bilateral and multilateral donors to enhance supply capacity and develop forward and backward linkages in their textiles and clothing industries. Special problems faced by LDCs need to be taken into account in helping them adjust to the post-ATC environment. The lack of alternative sectors to absorb displaced workers is a particular problem for those countries. The international community and bilateral donors need to provide adequate assistance through existing mechanisms such as the International Monetary Fund's Trade Integration Mechanism and other new initiatives for aid for trade. Also, to extend duty-free access to textiles and clothing from all LDCs, it is crucial to assist these countries in the post-ATC context.

3. Developing countries that are entitled to preferential access to the markets in the major importing countries often have low rates of preference utility because of the restrictive preferential rules of origin. Flexible rules of origin are necessary if these countries are to benefit from preferential market access, and in order to promote South–South cooperation. In this light, application of the "single transformation" rule, and cumulation at the subregional, regional and interregional levels are of particular importance. Developing countries expressed the hope that the new EU GSP scheme would adopt user-friendly rules of origin.

4. As regards social and environmental requirements, Governments, the international community and non-governmental organizations need to endeavour to ensure that these are not imposed for protectionist reasons, and to establish balanced requirements that take into account cultural diversity and local specificities in developing countries.

5. The concentration of the textiles and clothing market in the major importing countries makes retailers very powerful. Exporters of textiles and clothing in developing countries often face uneconomical demands by these retailers. It is therefore necessary to examine the problems that exporters face in this respect and to identify ways to deal with them.

6. South–South cooperation could play an important role in increasing trade in dynamic products, as well as in technology upgrading. There is a need for an advisory service at the international level which could be made available to textiles and clothing manufactures in developing countries with regards to the latest technological developments.

CHAPTER IX

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ANNEX I

MAIN PROVISIONS OF THE ATC AND THEIR IMPLEMENTATION

AI.1. Product coverage

The ATC set out, in its annex, a detailed list of products to which it applied. The list was based on the HS Classification, and defined particular products at the six-digit level of the HS Classification. In general, the products covered were those in Section XI (Textiles and Textile Articles) of the HS Classification, excluding however natural fibres such as raw cotton, jute, silk, etc. In addition, the list included products from outside Section XI defined under some HS lines or part lines. In all, the list consisted of 781 full lines at the six-digit level of the HS Classification, and another 14 lines of which only certain portions were covered by the ATC. This extensive product coverage that included products that were not restricted laid at the root of concerns about the "back-loading" of the integration process.

AI.2. The integration process and its mechanics

The central element of the ATC framework related to its integration process. Pursuant to this, each importing member was required to notify and integrate products from the list covered by the agreement in accordance with the following schedule, in volume terms:

(a) as of 1 January 1995, products that accounted for at least 16 per cent of the member's imports in 1990;

(b) as of 1 January 1998, at least 17 per cent more;

(c) as of 1 January 2002, at least 18 per cent more;

(d) as of 1 January 2005, all remaining products.

Article 9 of the ATC provided that: "This Agreement and all restrictions there under shall stand terminated on the first day of the 121st month that the WTO Agreement is in effect, on which date the textiles and clothing sector shall be fully integrated into GATT 1994. There shall be no extension of this Agreement." Once a particular product was integrated, all quota restrictions on its imports from WTO members were terminated. Integration also meant that the importing country was henceforth bound to observe full GATT rules and disciplines with respect to that product.

The agreement left the actual choice of products for integration in the first three steps (i.e. from January 1995, 1998 and 2002, respectively) at the discretion of the importing member concerned, the only condition being that the list at each stage should include a mix of products from all four sub-sectors, (i.e. tops and yarns, fabrics, made-up textile products, and clothing). As discussed in Section I.1, restricting countries opted to postpone the liberalization of a majority of restricted products until the very end.

AI.3. Increases in quota growth rates

The ATC included provisions on quota growth and it stipulated that, until the relevant products were integrated, the levels of quota restrictions on those products should be increased according to the following formulae:

(a) As of 1 January 1995, all annual quota growth rates, which existed in respective bilateral agreements prior to the ATC, would be increased by at least 16 per cent. Thus an annual growth rate of 6 per cent should be increased to 6.96 per cent; 5 per cent to 5.80 per cent; 4 per cent to 4.64 per cent; 3 per cent to 3.48 per cent; 2 per cent to 2.32 per cent; 1 per cent to 1.16 per cent.

(b) As of 1 January 1998, the annual growth rates resulting from the above formula should be increased further by at least 25 per cent.

(c) As of 1 January 2002, the rates resulting from the above (i.e. 1998) should be increased by at least another 27 per cent.

In practice, under MFA bilateral agreements, there existed a wide range of growth rates, the average being between 3 per cent and 5 per cent. The rates also varied in each of the three restraining countries. Consequently, although the quota levels did increase from their pre-ATC levels, the average overall increase in access (particularly for the main traded products) did not prove to be significant enough to eliminate the restrictive effect of quotas. This led to a situation in which a number of quotas were fully utilized year after year. It also created a situation where, on expiry of the ATC from January 1, 2005, there was bound to be sudden downward pressure on import prices.

Table 19 shows that, despite the increase in quotas by the application of higher quota growth rates pursuant to the ATC, a large number of quotas remained fully utilized until the last year of the ATC.

Table 19. Quotas filled 80% in 2004 (last year of the ATC)

Canada					
China	18	Rep. of Korea	3	Turkey	1
Hong Kong, China	4	Pakistan	1	Taiwan Prov. China	1
Indonesia	1	Thailand	1	United Arab Emirates	1
India	2				
European Union					
China	28	Macao, China	7	Rep. of Korea	5
Hong Kong, China	7	Malaysia	1	Taiwan Prov. China	1
India	12	Pakistan	9	Thailand	3
Indonesia	3	Philippines	2		
United States					
Bangladesh	5	India	10	Pakistan	12

Bulgaria	1	Cambodia	6	Romania	2
Brazil	1	Rep. of Korea	26	Singapore	2
China	56	Sri Lanka	4	Thailand	10
Dominican Rep.	1	Macao, China	11	Turkey	2
Guatemala	2	Malaysia	6	Taiwan Prov. China	9
Hong Kong, China	16	Philippines	14	United Arab Emirates	2
Indonesia	15				

Sources: ITCB derived from Canada, Export and Import Permits Bureau; European Commission, SIGL and the United States Customs and Border Protection.

AI.4. Transitional Safeguard

Reflecting the recognition that during the transition period it might be necessary to apply a specific transitional safeguard mechanism, Article 6 of the ATC laid down the procedures and conditions under which an importing member could introduce new restrictions on imports of particular products. As a general matter, Article 6 stipulated that the transitional safeguard should be applied as sparingly as possible, consistent with the provisions of this article and the effective implementation of the process of integration.

All transitional safeguard actions were required to be reviewed by the Textile Monitoring Body (TMB). Even in cases where the importing and exporting countries concerned agreed that the situation called for the establishment of a restraint, the TMB was required to determine whether the restraint was justified in accordance with the provisions of Article 6. During the period of ATC implementation, there had been a number of cases in which safeguard actions were invoked, especially in the initial two years. Being applied soon after the coming into effect of the ATC, these actions gave rise to a widespread concern and led to three of these actions being challenged under dispute settlement procedures of WTO. Significantly, in all three, dispute panels and the WTO Appellate Body found that they were not justified under the ATC.[66] These rulings served as a sobering influence. Consequently, during the remainder of the implementation period, there were relatively few instances of the adoption of safeguard actions. Table 20 sums up the year-wise invocation of safeguards during the 10-year period.

Table 20. Invocation of safeguard actions under the ATC requests for consultations

Year	Members requesting consultations	Number of requests
1995	United States	24
1996	United States Brazil	1 7
1997	United States	2
1998	Colombia	9

[66] WTO, United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear -AB-1996-3 Report of the Appellate Body, WT/DS/24/AB/R, 10 February 1997; United States – Measures Affecting Imports of Woven Wool Shirts and Blouses from India - AB-1991-1, Report of the Appellate Body, WT/DS33/AB/R, 25 April 1997; and United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan -AB-2001-3 Report of the Appellate Body, WT/DS192/AB/R, 8 October 2001.

Year	Members requesting consultations	Number of requests
	United States	1
1999	Argentina Poland	17 1
2000	None	None
2001	Poland	1
2002	Brazil	2
2003	None	None
2004	None	None
TOTAL		65

Sources: ITCB derived from WTO.

AI.5. Supervision of Implementation

Unlike the other agreements negotiated in the Uruguay Round, the ATC did not envisage a committee to review and consult on the implementation of the ATC periodically. Instead, it created a standing TMB to regularly supervise the implementation of the ATC and, perhaps most significantly, to examine *all* measures taken under the ATC and their conformity with its provisions. In addition, for oversight of implementation of the ATC at the multilateral level, the agreement provided for the WTO Council for Trade in Goods (CTG) to conduct a major review before the end of each stage of the integration process. In the light of these reviews, the CTG was required to take appropriate decisions to ensure that the balance of rights and obligations embodied in the agreement was not being impaired.

AI.6. Other miscellaneous provisions

Besides the main elements summarized above, the ATC contained provisions for preferential treatment in access for small suppliers, administration of restrictions, and prevention of circumvention of the agreement. It also provided that members take such actions as might be necessary to abide by GATT rules, and disciplines so as to achieve improved access to markets and to ensure the application of policies relating to fair and equitable trading conditions in such areas as anti-dumping rules, subsidies and countervailing measures and the protection of intellectual property rights.

ANNEX II

MAIN FEATURES OF THE NEW EU GSP SCHEME FOR TEXTILES AND CLOTHING

In July 2005, the European Commission adopted the guidelines for the EU GSP scheme for the period 2006–2015, and the first implementation period of 1 January 2006–31 December 2008 has begun.[67] The new EU GSP scheme addresses the concerns of LDCs and other vulnerable countries for their textiles and clothing exports in the post-ATC phase, and it introduced the new graduation mechanism to focus the GSP benefits on those developing countries most in need. The new criterion for graduation of textiles and clothing include:

- Graduation would take place when a "group of products" from a particular country exceeds 12.5 per cent on average of total EU imports of the same products under GSP over the previous three consecutive years. Groups of products are defined by reference to the "sections" in the EU Customs Code, which are identical with sections of the HS Classification. Section 11 of the HS Classification (HS Chapters 50 to 63) covers textiles and clothing, and within Section 11, textiles (HS chapters 50 to 60) and clothing (HS chapters 61 to 63) are treated separately for graduation.
- Vulnerable countries, i.e. those representing less than 1 per cent of total EU GSP imports of those for which a group of products represents more than 50 per cent of its total exports to the EU under GSP, will not be graduated.

For textiles and clothing, review on graduation will take place annually to reflect the possibility of sharp increases in beneficiary country exports, while for other products, the assessment on graduation will be at the end of 2008. Under the current cycle of the EU GSP scheme, textiles and clothing from China and textiles from India are removed from the EU GSP scheme.

Also, textiles and clothing exports from "vulnerable" developing countries may benefit from the "GSP-Plus" provision under certain conditions. The "GSP-Plus" benefits include duty-free access to the EU for around 7,200 products that include textiles and clothing. For the required conditions, they first need to demonstrate that they are "vulnerable", i.e. the five largest sections of its GSP-covered imports to the EU must represent more than 75 per cent of its total GSP-covered imports, and GSP-covered imports from that country represent less than 1 per cent of total EU imports under GSP. Then, they need to ratify 27 key international conventions on sustainable development and good governance, which are listed in chapter IV, sub-section IV.2 a.i. During the current cycle, 15 developing countries benefit from the GSP-Plus provision. These countries include Bolivia, Colombia, Costa Rica, Ecuador, Georgia, Guatemala, Honduras, Sri Lanka, Moldova, Mongolia, Nicaragua, Panama, Peru, El Salvador, and the Bolivarian Republic of Venezuela.

[67] "Generalized System of Preferences Communication from the European Communities", WTO document, WT/COMTD/57, 28 March 2006.

The EU is also in the process of reforming the rules of origin that govern GSP eligibility. The objective is to simplify and, where appropriate, relax these rules to increase the effectiveness of the EU GSP scheme, but for textiles and clothing this issue is reportedly facing difficulties, due to sensitivity in the domestic sector.

ANNEX III

IMPLICATIONS OF WTO ACCESSION FOR THE TEXTILES AND CLOTHING SECTOR IN ACCEDING COUNTRIES

As of February 2007, 29 countries were in the process of WTO accession negotiations.

A country that is not a member of the WTO does not have the protection of WTO rules and therefore is exposed to the possibility of being targeted by unilateral trade restriction measures and of being in an unpredictable international trading environment. The most important implication of such a situation for acceding countries' textiles and clothing is the possibility of being restricted by quota. With the ATC expiry, all the remaining MFA quotas were abolished, and WTO rules do not permit the use of quota restrictions. However, for non-WTO member countries, quota restrictions can be used, and in fact, the United States has done so after the ATC expiry for Belarus, Russia, Ukraine and Viet Nam. On the other hand, if they become WTO member, the United States cannot use quota measures any longer. Except for China, the EU has not imposed quotas so far on textiles and clothing from non-WTO member countries, but it can do so if it so wishes.

For the tariff concessions, simple average bound rates for textiles (HS Chapters 50 to 60) and clothing (HS Chapters 61 and 62) in the seven acceded countries – Cambodia, China, Jordan, Mongolia, Nepal, Taiwan, and Viet Nam – could be the benchmark for acceding countries.[68] For Cambodia and Nepal, which are LDCs, average bound tariffs for textiles are between 8 and 31 per cent, and the maximum rate goes up to 50 per cent. For clothing, the corresponding figures are between 17 and 30 per cent, and the maximum rate goes up to 30 per cent. For China, Jordan, Mongolia, Taiwan and Viet Nam, average bound rates for textiles are between 2 and 27 per cent, and the highest rate is 40 per cent. For clothing, the corresponding rates are 12 to 29 per cent, and the maximum rate is 30 per cent.

Other issues discussed in the accession negotiations that would have direct relevance to textiles and clothing in acceding countries are: state ownership and privatization; quantitative import restrictions, including prohibitions, quotas and licensing systems; anti-dumping, countervailing duties and safeguard regimes; industrial policy, including subsidies; and free zones and special economic areas. These issues are examined in the context of compliance with the WTO agreements.

[68] Tariff rates indicated are from the WTO documents, "Schedule of Concessions and Commitments on Goods", WT/ACC/MNG/9/Add.1, 27 June 1996, WT/ACC/JOR/33/Add.1, 3 December 1999, WT/ACC/CHN/49/Add.1, 1 October 2001, WT/ACC/TPKM/18/Add.1, 5 October 2001, WT/ACC/KHM/21/Add.1, 15 August 2003, WT/ACC/NPL/16 Add.1, 28 August 2003, and WT/ACC/VNM/48/Add.1, 27 October 2006.

ANNEX IV

TABLE 21

COMPARATIVE MFN TARIFFS IN DEVELOPED COUNTRIES, SELECTED APPAREL PRODUCTS

	United States	EU	Japan	Canada
Knit apparel:				
Trousers WG				
Wool	14.9%	12%	10.9%	18%
Cotton	14.9%	12%	10.9%	18%
Synthetic	28.2%	12%	10.9%	18%
Shirts MB				
Wool	14.9%	12%	10.9%	18%
Cotton	19.7%	12%	10.9%	18%
MMF	32.0%	12%	10.9%	18%
Blouses/shirts WG				
Wool	13.6%	12%	10.9%	18%
Cotton	19.7%	12%	10.9%	18%
MMF	32.0%	12%	10.9%	18%
T-shirts				
Wool	5.6%	12%	10.9%	18%
Cotton	16.5%	12%	10.9%	18%
MMF	32.0%	12%	10.9%	18%
Pullovers				
Wool	16.0%	12%	10.9%	18%
Cotton	16.5%	12%	10.9%	18%
MMF	32.0%	12%	10.9%	18%

Non-knit apparel:				
Overcoats MB				
Wool	41c/kg+16.3%	12%	9.1%	18%
Cotton	9.4%	12%	9.1%	17%
MMF	27.7%	12%	9.1%	18%
Overcoats WG				
Wool	41c/kg+16.3%	12%	9.1%	18%
Cotton	8.9%	12%	9.1%	17%
MMF	27.7%	12%	9.1%	18%
Anoraks MB				
Wool	49.7c/kg+19.7%	12%	9.1%	18%
Cotton	9.4%	12%	9.1%	17%
MMF water resist.	7.1%	12%	9.1%	17%
MMF other	27.7%		9.1%	18%
Anoraks WG				
Wool	36c/kg +16.3%	12%	9.1%	18%
Cotton	8.9%	12%	9.1%	17%
MMF water resist.	7.1%	12%	9.1%	18%
MMF other	27.7%		9.1%	18%
Trousers MB				
Wool	41.9c/kg+16.3%	12%	9.1%	18%
Cotton	16.6%	12%	9.1%	17%
Synthetic fibres	27.9%	12%	9.1%	18%
Artificial fibres	27.9%	12%	9.1%	18%
Trousers WG				
Wool	13.6%	12%	9.1%	18%
Cotton	16.6%	12%	9.1%	17%
Synthetic fibres	28.6%	12%	9.1%	18%
Artificial fibres	28.6%	12%	9.1%	17%
Jackets WG				
Wool	17.5%	12%	9.1%	18%

Cotton	9.4%	12%	9.1%	17%
Synthetic fibres	27.3%	12%	9.1%	18%
Artificial fibres	27.3%	12%	9.1%	17%
Dresses				
Wool	13.6%	12%	9.1%	18%
Cotton	8.4%	12%	9.1%	17%
Synthetic fibres	16.0%	12%	9.1%	18%
Artificial fibres	16.0%	12%	9.1%	18%
Skirts WG				
Wool	14.0%	12%	9.1%	18%
Cotton	8.2%	12%	9.1%	17%
Synthetic fibres	16.0%	12%	9.1%	18%
Artificial fibres	16.0%	12%	9.1%	17%
Shirts MB				
Wool	17.5%	12%	7.4%	18%
Cotton	19.7%	12%	7.4%	17%
MMF	29.1c/kg+25.9%	12%	7.4%	0.18
Blouses WG				%
Wool	17.0%	12%	9.1%	18%
Cotton	15.4%	12%	9.1%	17%
MMF	26.9%	12%	9.1%	18%
Brassieres	16.9%	6.5%	8.4%	17%
Made-ups:				
Bed linen				
Cotton embroid.	20.9%	12%	4.5%	17%
Cotton not embr.	6.7%	12%	4.5%	17%
MMF embroid.	14.9%	12%	5.3%	18%
MMF not embr.	11.4%	12%	5.3%	18%
Toilet and kitchen linen cttn terry tow.	9.1%	12%	7.4%	17%

Woven fabrics of:				
Carded wool	25%	8%	5.3%	14%
Combed wool	25%	8%	5.3%	14%
Cotton (HS 5208)	9%	8%	3.7%	12%
Blue demin	8.4%	8%	3.7%	12%
Synth. filam. yarn	14.9%	8%	5.7%	14%
Synthetic fibres	14%	8%	8.8%	14%
Artif. staple fibres	10%	8%	6.6%	14%
Yarns of:				
Wool	6%	3.8%	2.7%	8%
Cotton	7.3%	4%	1.9%	8%
Synth. filament	8%	4%	6.6%	8%
Synth. staple fib.	10%	4%	6.6%	8%

Notes:

1. The products selected are the most representative in terms of trade.

2. Abbreviations: MB: Men and boys; WG: Women and girls; MMF: Man-made fibres

Source: WTO, Uruguay Round of Multilateral Trade Negotiations, Legal Instruments Embodying the Results of the Uruguay Round

ANNEX V

INTELLECTUAL PROPERTY RIGHTS IN THE CONTEXT OF TEXTILES AND CLOTHING

Protection of intellectual property rights (IPRs) is an issue that keeps coming back largely at the insistence of rights holders in developed countries. In a compliance report to the United States Congress' textile caucus in October 2003, the administration claimed that textile design piracy by foreign manufacturers was a chronic problem for the domestic textile industry and cost United States textile companies $100 million or more annually in lost sales. In a similar report on "European textiles and clothing in a quota-free environment", the European Commission stated that intellectual property rights were of particular concern to Europe's textile and clothing industry because textile and clothing designs and models were being copied on a large scale, both within the EU and by companies beyond its boundaries. The report claimed that, although customs seizures overall fell by 10 per cent between 2001 and 2002, the number of seizures of textile goods grew by 93 per cent, and accounted for more than 10 per cent of all seizures.

The United States Trade Promotion Authority Act (formerly called "fast-track" negotiating authority) describes providing strong "enforcement of IPRs including through accessible, expeditious, and effective civil, administrative and criminal enforcement mechanisms" to be a "principal" negotiating objective of the United States. Consequently, protection of intellectual property rights is routinely included in almost all United States legislation relating to trade negotiations or the country's preference programmes such as AGOA and CBI.

The European Commission report referred to above also recommended that, to overcome the problem of counterfeiting piracy in the textiles and clothing industry, three essential aspects need to be taken into consideration: (a) combating the problem within the boundaries of the enlarged EU; (b) taking appropriate steps to ensure that imported counterfeit textiles and clothing are intercepted, and perpetrators are brought to justice; and (c) assuring exporters of European products to third countries that their designs and models will enjoy all necessary protections on the markets of those countries, as required by Article 25.2 of the WTO Trade-Related Intellectual Property Rights (TRIPS) agreement.

Article 25.2 makes specific reference to the protection of textile designs and models. It provides: "Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law". Insofar as the enforcement of intellectual property rights is concerned, the TRIPS agreement contains detailed provisions with respect to members' obligations, including those relating to WTO members' general obligations and those regarding civil, administrative and criminal measures and procedures for border measures.

DNA authentication technology is applied in detection of counterfeit goods

An anti-counterfeit marker system that uses embedded DNA authentication technology is being developed specifically for the textile industry. The DNA markers would also protect

intellectual property such as brands, designs, patterns and trademarked products from counterfeiting and fraud. The DNA markers are inserted during the textile manufacturing process and remain embedded in the fabric or yarn for more than 100 years. Applied DNA science believes that the DNA markers will be able to withstand extremely harsh textile processes including designing, scouring, bleaching and mercerizing. The origin of raw textile materials and finished goods can be verified using applied DNA's proprietary DNA detection methods. Countries such as Singapore and Thailand are also following suit and are increasingly using technological devices for trade facilitation.

Finally, the issues of protection of designs and models are not confined to developed countries alone. These are equally relevant in the case of developing economies, especially as concerns the protection of traditional designs and patterns incorporated into what are sometimes referred to as ethnic and tribal textiles and are becoming increasingly popular.

ANNEX VI

TABLE 22

ORIGIN REQUIREMENTS FOR TEXTILES AND CLOTHING IN THE UNITED STATES FTAS AND NON-RECIPROCAL PREFERENCE PROGRAMMES

	Duty exemption/concession applicable if components of imported product consist of or are made as follows:						
Imported product/relevant arrangement	**Yarns**	**Woven fabrics**	**Knit to shape components**	**Cut**	**Sewn or assembled**	**Sewing thread**	**Ceiling/time limit for duty concession**
Africa Growth and Opportunity Act							
Apparel assembled	US	US		US	SSA		
Apparel assembled	US	US		SSA	SSA	US	
Apparel assembled from regional fabrics	US/SSA	SSA			SSA		4.7% - 7% of total apparel imports [1]
Lesser developed beneficiaries	any origin	any origin			SSA		2.4% - 1.6% upto Sept.2007 [2]
Cashmere sweaters			SSA		SSA		
Merino wool sweaters			SSA		SSA		
Apparel from fabrics in short supply	any origin	any origin	SSA	SSA	SSA		

Andean Trade Preference and Drug Eradication Act							
Apparel assembled	US/Andean	US/Andean	US/Andean	Andean/US	Andean/US		
Appared assembled made of llama, alpaca and vicuña	Andean	Andean	Andean	Andean/US	Andean/US		
Apparel assembled from fabrics in short supply in NAFTA Annex 401	any origin	any origin		Andean/US	Andean/US		
Apparel assembled from additional fabrics in short supply	any origin	any origin		Andean/US	Andean/US		
Apparel assembled from regional fabrics	US/Andean	Andean	Andean	Andean/US	Andean		2% - 5%
Brassieres				Andean/US	Andean/US		75% US content
Luggage	US	US	US	Andean/US	Andean		
North American Free Trade Area							
Yarns	NAFTA fibre						
Fabrics	NAFTA	NAFTA	NAFTA				
Made-ups	NAFTA	NAFTA			NAFTA		
Apparel	NAFTA	NAFTA	NAFTA	NAFTA	NAFTA		
Hosiery	NAFTA		NAFTA				
Apparel assembled from fabrics in short supply	any origin	any origin	NAFTA	NAFTA	NAFTA		
FTA US – Jordan [3]							
Yarns	Jordan						
Fabrics	Any origin	Jordan	Jordan				
Apparel not knit	Any origin	Any origin		Jordan	Jordan		
Apparel knit	Any origin		Jordan		Jordan		

FTA US – Singapore							
Yarns	US/Singapore						
Fabrics	US/Singapore	US/Singapore	US/Singapore				
Apparel	US/Singapore	US/Singapore	US/Singapore				
Apparel assembled from fabrics in short supply	any origin	any origin	US/Singapore	US/Singapore	US/Singapore		
Tariff preference level for apparel	any origin	any origin	Singapore	Singapore	Singapore		25 million SMEs reduced to zero in 8 years
FTA US – Chile							
Yarns	US/Chile						
Fabrics	US/Chile	US/Chile	US/Chile				
Apparel	US/Chile	US/Chile	US/Chile	US/Chile	US/Chile		
Tariff preference level for textiles	any origin	US/Chile	US/Chile				1 million SMEs per year
Tariff preference level for apparel	any origin	any origin	any origin	US/Chile	US/Chile		2 million SMEs reduced to 1 million after 10 years
Caribbean Basin Initiative (CBI)							
Apparel assembled	US	US		US	CBI		
Apparel assembled	US	US		CBI	CBI	US	
Apparel knit to shape	US		CBI				Knit apparel: 250 million SMEs and for knit apparel other than T-shirts 4.2 million dozens, both limits increased by 16% yearly up to 2004

Brassieres				US/CBI	US/CBI		From 2001 onwards at least 75% US fabric content
Apparel from fabrics in short supply	any origin	any origin	CBI	CBI	CBI		
Luggage	US	US		US	CBI		
FTA US - Central America							
Yarns	US/CA						
Fabrics	US/CA	US/CA	US/CA				
Apparel	US/CA	US/CA	US/CA	US/CA	US/CA		
Apparel assembled from fabrics in short supply	any origin	any origin	any origin	US/CA	US/CA		
Tariff preference levels							
TPL for apparel (Nicaragua)	any origin	any origin	any origin	Nicaragua	Nicaragua		100 million SMEs reduced to zero in 10 years
TPL for wool apparel (Costa Rica)	any origin	any origin	any origin	Costa Rica	Costa Rica		500,000 SMEs for 2 years

Note: Tariff Preference Levels (TPLs) in the table denote the ceiling on imported product made of non-originating materials.

[1.] *The ceiling of 4.7% for first year increases to 7% by 2007.*

[2.] *The ceilings are 2.36% for year starting Oct.2003, 2.64% for year starting Oct.2004, 2.93% from Oct.2005, but decreases to 1.61% from Oct.2006.*

[3.] *Component of imported products should either be US or Jordan-made. To avoid confusion, in the table only Jordanian origin is shown.*

ANNEX VII

TRENDS IN TEXTILES AND CLOTHING IN 2005

Many studies predicted that developing-country exporters of textile products would be heavily impacted by the ATC expiry and that the abolition of quotas would cause a sharp drop in prices, particularly for products from countries with tight quota restrictions. The data on United States and EU imports of textile products in 2005 indicated mixed results. The dire consequences predicted for some specific exporting countries did not occur, and certain developing countries that were anticipated to be casualties of the ATC-expiry performed well in 2005. On the other hand, countries that were predicted to dominate the international market did not do so. Also, many countries experienced declines in their exports of textiles and clothing. Some of the countries that experienced negative growth in 2005 had also done so in 2004, when the quota restrictions were still in effect.

Major factors that contributed to favourable results of some countries were competitiveness based on modernization and vertical integrated production, as well as the shift in the export mix to products that command higher prices. The price collapse that was predicted before the ATC expiry did not occur, but prices of articles that were restrained by quotas fell. Exporters that performed well also felt the impact of the price decline.

In the light of this overall picture, the following reviewed trends with regards to the United States and the EU markets that account about 70 per cent of textiles and clothing import worldwide. The data for these markets were derived from the United States Department of Commerce, Office of Textiles and Apparel, and the Eurostat.

AVII.1. United States market

Table 23 shows United States imports of textiles and clothing from selected countries, five regional groups and the world in dollar value terms during the period 2003–2005. United States imports of these products rose by 7 per cent in 2005 from the previous year. For regional groups, United States imports from ATPA and ASEAN countries grew by 8 and 5 per cent, respectively, while those from CAFTA and CBI countries fell by 4 per cent. Imports from the sub-Saharan region declined steeply, falling by 17 per cent from 2004.

Examination of individual countries shows there are winners and losers in each region. For Asia, in spite of lack of preferential access to the United States market, a majority of the selected countries substantially increased their exports of textiles and clothing to the United States in 2005, registering 6 to 54 per cent growth. Among these countries, Bangladesh (19 per cent), Cambodia (20 per cent), China (54 per cent), India (27 per cent), Indonesia (18 per cent) and Pakistan (14 per cent) did particularly well and all recorded double digit growth. On the other hand, exports from the Maldives (-94 per cent), Nepal (-27 per cent), Philippines (-1 per cent) and Thailand (-3 per cent) decreased. These countries, except Thailand, had also registered decline in their exports to the United States in 2004. For the Maldives, it was

reported that Sri Lankan firms that had operated there shifted their operations back home and that five garment factories that had exported principally to the United States closed in 2005.[69]

For Latin American countries, exports of textiles and clothing from Nicaragua and Peru to the United States boomed in 2005, but those of other countries declined by 2 to 10 per cent, in spite of the advantages of duty-free access and market proximity. Exports from Costa Rica, the Dominican Republic and Mexico to the United States also declined in 2004. The preferential rules of origin applied to these countries prohibit use of most competitive inputs, and this could be a reason for their export decline. As noted below, Jordan, which can apply flexible preferential rules of origin, continued to increase its exports.

Among African countries, Botswana, Ethiopia, the United Republic of Tanzania, and Uganda registered significant increases in their exports of textiles and clothing to the United States in 2005. However, in value terms, their exports were small, accounting for less than $10 million for each country. Exports from countries such as Kenya, Lesotho, Madagascar, Mauritius and Swaziland amounted to $160 million to $390 million in 2005, but except for Kenya, their exports markedly dropped from the 2004 level, registering 10 to 27 percentage points of decline. Kenya's exports fell by 2 per cent. Among these countries, only Mauritius experienced negative growth in 2004.

Egypt, Jordan and Turkey are also major exporters of textiles and clothing to the United States. Exports from the first two countries grew significantly in 2005, accounting for 9 and 13 per cent of growth, respectively, but that of Turkey contracted by 9 per cent. Jordan's textiles and clothing have duty-free access to the United States since 2002 under the free trade agreement, and they are accorded highly flexible rules of origin treatment. Egyptian textiles and clothing exported from the Qualifying Industrial Zones receive duty-free access in the United States market. This agreement was singed among Egypt, the United States and Israel in December 2004.

For countries that experienced decline in their exports of textiles and clothing to the United States in 2004 and 2005, market saturation might be a factor contributing to the trend. Severe competition brings down prices and drives out exporters that are not highly competitive. Pulling out of investments in anticipation of the ATC expiry would be another possible cause, but proven information is necessary to confirm this aspect. At present, there is not enough systematic information available on the trends in foreign direst investment to draw firm conclusions.[70]

A recent study calculated Risk Index, which identified countries that were potentially highly vulnerable to the post-ATC impact.[71] The Risk Index underlies three risk components: (a) concentration in exports of textiles and clothing; (b) concentration in exports to the United States and the EU; and (c) concentration on exports as a stimulus to GDP. Among the countries that experienced decline in their exports of textiles and clothing to the United States in 2005, Honduras, Lesotho, Mauritius, Madagascar, the Maldives, Guatemala and Swaziland

[69] United States Department of State, Background Notes: the Maldives, Bureau of South and Central Asian Affairs, February 2006.
[70] UNCTAD, "TNCs and the Removal of Textiles and Clothing Quotas", United Nations, New York and Geneva, UNCTAD/ITE/IIA/2005/1, 2005, p.11.
[71] Conway P. "Global Implications of Unraveling Textiles and Apparel Quotas", 30 May 2006, Department of Economics, University of North Carolina, p.4.

fall in the category of the top 20 high Risk Index countries. Particular attention should be given to these countries in post-ATC monitoring for the United States market.

Table 23. United States imports of textiles and clothing from selected countries, 2003–2005

Import from	**2003 Million dollars**	**2004 Million dollars**	**2005 Million dollars**	**2004–2005** (percentage)
World	80,399	83,310	89,205	7%
Region				
ATPA	1,107	1,387	1,495	8%
ASEAN	11,678	12,143	12,788	5%
CAFTA	9,244	9,578	9,169	-4%
CBI	9,675	10,022	9,661	-4%
Sub-Saharan Africa	1,534	1,781	1,486	-17%
Asia				
Bangladesh	1,939	2,065	2,457	19%
Cambodia	1,251	1,441	1,727	20%
China	11,608	14,559	22,405	54%
India	3,211	3,633	4,617	27%
Indonesia	2,375	2,620	3,081	18%
Maldives	94	81	5	-94%
Nepal	155	131	96	-27%
Pakistan	2,215	2,546	2,904	14%
Philippines	2,040	1,938	1,921	-1%
Sri Lanka	1,493	1,585	1,677	6%
Thailand	2,071	2,198	2,124	-3%
Viet Nam	2,484	2,720	2,881	6%
Latin America				
Colombia	539	636	618	-3%
Costa Rica	594	524	492	-6%
Dominican Rep.	2,128	2,066	1,855	-10%
El Salvador	1,757	1,757	1,646	-6%
Guatemala	1,773	1,959	1,831	-7%
Honduras	2,507	2,677	2,629	-2%
Mexico	7,940	7,793	7,246	-7%
Nicaragua	484	595	716	20%
Peru	516	692	821	19%
Africa				
Botswana	7	20	30	50%
Cape Verde	3	3	2	-33%

Import from	2003 Million dollars	2004 Million dollars	2005 Million dollars	2004–2005 (percentage)
Ethiopia	2	3	4	33%
Ghana	5	7	5	-29%
Kenya	188	277	271	-2%
Lesotho	393	456	391	-14%
Madagascar	196	323	277	-14%
Malawi	23	27	23	-15%
Mauritius	269	228	167	-27%
Namibia	42	79	53	-33%
South Africa	253	164	86	-48%
Swaziland	141	179	161	-10%
United Republic of Tanzania	2	3	4	33%
Uganda	2	4	5	25%
Other countries				
Egypt	535	564	614	9%
Jordan	583	956	1,083	13%
Turkey	1,744	1,764	1,609	-9%

Source: United States Department of Commerce, Office of Textiles and Apparel.

AVII.2. EU market

Table 24 shows the trends of EU 25 imports of textiles and clothing in euro value terms during the period 2003–2005. In 2005, EU imports from non-EU countries increased by 6 per cent, while EU-intra imports decreased by 3 per cent. Of 40 selected countries, only seven increased their exports that year. These include China, India, Viet Nam, Peru, Ethiopia, Madagascar and Turkey. China increased its exports of textiles and clothing significantly, registering 40 per cent growth. India, Peru and Madagascar also performed well and increased their exports by 17, 15 and 13 per cent, respectively. Exports from Turkey and Viet Nam grew by 3 and 6 per cent, respectively. Ethiopia increased its exports in 2005, but the total value of the exports was marginal. Exports from other countries fell in 2005, and falls of exports of some other Asian countries were particularly notable. Among the countries that experienced decline in their exports in 2005, 12 countries – Indonesia, the Maldives, Colombia, El Salvador, Mexico, Mauritius, South Africa, Swaziland, Uganda, Jordan, Morocco and Tunisia – registered declines in their exports of textiles and clothing in 2004 as well.

Countries such as Cambodia, Mauritius, Sri Lanka, Tunisia and Bangladesh fall in the category of top 15 high Risk Index countries.[72] Exports of Mauritius and Tunisia declined both in 2004 and 2005, and those of the other countries fell in 2005. Special attention should be given to the five countries in post-ATC monitoring for the EU market.

[72] "Global Implications of Unraveling Textiles and Apparel Quotas", p.4, op. cit.

Table 24. EU imports of textiles and clothing from selected countries, 2003–2005

	2003 Million euros	**2004 Million euros**	**2005 Million euros**	**2004-2005** (percentage)
EU 25 Extra	66,723	69,933	74,285	6%
EU 25 Intra	75,897	76,393	73,930	-3%
Asia				
Bangladesh	3,240	3,894	3,704	-5%
Cambodia	424	520	477	-8%
China	14,309	16,076	22,442	40%
India	4,526	4,759	5,551	17%
Indonesia	1,867	1,795	1,613	-10%
Maldives	5	0	0	0%
Nepal	71	79	74	-6%
Pakistan	2,298	2,519	2,218	-12%
Philippines	328	373	253	-32%
Sri Lanka	774	878	866	-1%
Thailand	1,270	1,323	1,226	-7%
Viet Nam	630	752	800	6%
Latin America				
Colombia	47	44	39	-11%
Costa Rica	2	2	2	0%
Dominican Republic	12	12	10	-17%
El Salvador	10	9	10	11%
Guatemala	5	5	5	0%
Honduras	24	26	20	-23%
Mexico	107	105	103	-2%
Nicaragua	1	2	2	0%
Peru	76	88	101	15%
Africa				
Botswana	6	10	5	-50%
§Cape Verde	4	4	4	0%
Ethiopia	6	7	8	14%
Ghana	1	1	0	-100%
Kenya	4	6	6	0%
Lesotho	1	1	1	0%

Madagascar	133	166	188	13%
Malawi	0	0	0	0%
Mauritius	560	523	450	-14%
Namibia	1	1	1	0%
South Africa	163	154	131	-15%
Swaziland	8	5	2	-60%
United Republic of Tanzania	4	9	5	-44%
Uganda	1	0	0	0%
Other countries				
Egypt	540	611	605	-1%
Jordan	12	11	9	-18%
Morocco	2,623	2,572	2,388	-7%
Tunisia	2,982	2,848	2,686	-6%
Turkey	10,151	10,606	10,976	3%

Source: Eurostat

AVII.3. Trends in unit import values

The quota system limited exports of textiles and clothing from competitive countries. Consequently, it was expected that removal of the quotas would lead to a reduction in the price of these goods in the United States and EU markets, through the elimination of quota rents and increased price competition.

The price collapse of textiles and clothing predicted for the post-ATC phase did not occur, but decline in unit values was observed for the products that had been limited by the quotas.[73] This trend was particularly pronounced in the United States market. Pressures on prices reduced profit margins of textiles and clothing exports, and exporters in the countries that did well in the post-ATC phase have also felt the impact of price decline.

In the United States market, products for which unit values fell were: men's and boys'/women's and girls' knit cotton shirts and blouses (338, 339), women's and girls' not-knitted man-made fibre (MMF) shirts and blouses (641), MMF skirts (642) and women's MMF (646) sweaters. Their unit values fell from 20 to 40 per cent. In the EU market, the change in unit values of restrained textiles and clothing were observed, but to a lesser extent than in the United States. For trousers (categories 6 and 28 in the United States Department of Commerce classification), China, Myanmar, Indonesia and Hong Kong (China) had the largest drops in unit value, while Turkey, the Russian Federation, Poland, Tunisia, Slovakia and Croatia had the largest increase. For shirt and T-shirts, countries with binding quotas in 2004, i.e. China, Indonesia and India, had reduced unit values. Others experiencing significant reductions in unit value were Ukraine, Mauritius and Morocco.

[73] Ibid.