

CHAPTER 14

Agreement on Textiles and Clothing

Summary

The basic aim of the Agreement on Textiles and Clothing (ATC) is to secure the removal of restrictions currently applied by some developed countries to imports of textiles and clothing. To this end the Agreement sets out procedures for integrating the trade in textiles and clothing fully into the GATT system by requiring countries to remove the restrictions in four stages over a period of 10 years ending on 1 January 2005. The flexibility available under the integration procedures has, however, enabled countries to remove restrictions in the first two stages only on a limited number of products. The first major impact of the integration programme is therefore expected when the third-stage integration takes place (on 1 January 2002); the bulk of the restrictions will be withdrawn in the last phase, when the transition period ends and the Agreement expires.

The textile and clothing industries are important to a large number of developing countries. However, the world trade in textiles and clothing has been subject to an ever-increasing array of bilateral quota arrangements over the past three decades. The range of products covered by quotas expanded from cotton textiles under the Short-Term and Long-Term Arrangements of the 1960s and early 1970s to an ever-widening list of textile products fashioned from natural and man-made fibres under five extensions of the Multi-Fibre Arrangement (MFA) over the period 1974-1994.

At the end of 1994, when MFA was terminated, it had a membership of 39 countries. Eight of these were developed countries, informally designated as 'importers'; the remaining 31 developing country members were considered 'exporters'. MFA permitted exporting and importing countries to enter into bilateral arrangements requiring exporting countries to restrain their exports of certain categories of textiles and clothing. In entering such bilateral agreements, countries were expected to adhere strictly to MFA rules:

- For determining serious damage or a threat thereof;
- For setting restraint levels; and
- For including such provisions as annual growth rates, carry-over of unutilized quotas from the previous year and carry-forward of part of the current year's quota for use in the following year.

When the WTO Agreement on Textiles and Clothing, negotiated in the Uruguay Round, became operational on 1 January 1995, several importing Members [the United States, Canada, the European Union (15 countries) and Norway] had a total of 81 restraint agreements with WTO Members, comprising over a thousand individual quotas. In addition, there were 29 non-MFA agreements or unilateral measures imposing restrictions on imports of textiles.

Integrating trade in textiles into GATT

From the strictly legal point of view, the maintenance of these restrictions was not consistent with GATT rules. However, MFA (negotiated within the framework of GATT) provided a legal cover for derogation from GATT discipline. The basic aim of the Agreement on Textiles and Clothing, which carried over the quotas from MFA, is to integrate the trade in textiles and clothing into GATT rules and disciplines by requiring countries maintaining restrictions to eliminate them over a period of 10 years. After the expiry of the 10-year period, i.e. from 1 January 2005, it will not be possible for any member country to maintain restrictions on imports of textiles, unless it can justify them under the provisions of Article XIX of the GATT as interpreted by the WTO Agreement on Safeguards. In other words, an importing country can impose restrictions only when, after carrying out investigations, it can establish that increased imports are causing or threatening to cause its domestic textile industry serious injury. Furthermore, such restrictions will have to be applied to imports from all sources, and not on a discriminatory basis to imports from one or two countries as was the case with restrictions under MFA and is now under ATC.

Methodology for integration

Agreement on Textiles and Clothing, Article 1; Annex

The methodological base for integrating the textile and clothing trade into GATT rules is the list of textile products contained in the Annex to ATC. The list covers all textile products – yarns and fabrics, made-up textiles and clothing – whether or not they are subject to restrictions. The integration process is to be carried out in four stages. At each stage, products amounting to a certain minimum percentage of the volume of the country's imports in 1990 are to be included in the integration process, that is, moved from the purview of ATC to the purview of the general rules of WTO. These percentages are:

Agreement on Textiles and Clothing, Article 2:6

□ 16% of the volume of a country's imports of the products on the list, on the date of entry into force of the Agreement (i.e. 1 January 1995);

Agreement on Textiles and Clothing, Article 2:8

□ A further 17% at the end of the third year (i.e. 1 January 1998);

□ A further 18% at the end of seven years (i.e. 1 January 2002); and

□ The balance, up to 49%, at the end of the tenth year (i.e. 1 January 2005).

In deciding on which products to bring into the integration process, countries are under no obligation to limit themselves to products subject to restrictions. Indeed, countries have begun with the least sensitive items and included very few products under quota. The only constraint the Agreement places is that the integration list should have products from each of four segments, namely, tops and yarn, fabrics, made-up-textile products, and clothing.

Experience of implementation of the integration process

In the case of the United States and the European Union, the percentage of imports of products not covered by restrictions in 1990 (the base year to be used for integration) was around 34% and 37% respectively. For the other countries maintaining restrictions the percentage was much higher. Notionally therefore, it was possible for these major restraining countries to meet their obligations to integrate products in the first two stages without significantly removing restrictions.

In fact this is what has happened in the first two stages. The three major restraining Members, viz. the United States, the European Union and Canada, have been able to meet the required percentage levels of integration (16% in the first stage and 17% in the second) by integrating products involving a very small proportion of quota restrictions.

It is therefore expected that the first major impact of the integration programmes will be felt only when the third-stage integration takes place (on 1 January 2002), and that the bulk of the restrictions will be withdrawn only on 1 January 2005, when the transition process ends and ATC expires.

Accelerated enlargement of quotas

Agreement on Textiles and Clothing, Article 2:13-2:14

The Agreement, however, tries to provide improved and enlarged access for textile and clothing products that continue to be restricted during the transition period. It seeks this by requiring that rates for annual increases in quotas should be escalated at each stage in the transition process. Thus, if the annual growth rate for a quota (say, for shirts) is fixed under a bilateral agreement at 3%, it will have to be increased by:

- 16% per year in each of the first three years (i.e. $3\% \times 1.16 = 3.48\%$);
- 25% per year in each of the next four years (i.e. $3.48\% \times 1.25 = 4.35\%$); and
- 27% in each of the next three years (i.e. $4.35\% \times 1.27 = 5.52\%$).

This will raise the growth rate of 3% to 5.52% by the eighth year. If the size of a quota is 100 tons at the beginning of the transition period, it will more than double to around 204 tons in the tenth year.

Agreement on Textiles and Clothing, Article 2:18

ATC further provides that countries which are small suppliers (i.e. countries the restrictions on which were equivalent to 1.2% or less of the total volume of the importing country's restrictions) and least developed countries should be given "an advancement by one stage of the growth rates".

Implementation of the provisions

The countries maintaining restrictions have generally abided by the provisions on growth factors. However, the extent to which countries benefit from the application of accelerated growth rates depends on the initial growth rate provided under the bilateral agreements. In the majority of cases, this initial rate is 6%. In a few instances, it is as low as 1% or even less. Many of the quotas for which higher growth rates are provided are not being fully utilized; for such quotas, the application of accelerated growth rates will not result in any meaningful advantage for the exporting country.

Moreover, developing countries had expected the enlargement of quotas to complement the process of integrating textiles into GATT through the removal of restrictions. In their view, unless positive steps are also taken to remove these restrictions, the mere application of accelerated growth rates will not achieve the expected liberalization.

Integration of non-MFA restrictions

Agreement on Textiles and Clothing, Article 3

ATC also requires countries applying non-MFA quantitative restrictions which are not allowed under a GATT provision either to phase them out in a period of 10 years or to bring them into conformity with GATT. The programme for the gradual phasing out of such restrictions is to be prepared by the importing country and presented to the Textiles Monitoring Body (TMB), the body established under the Agreement to supervise its operation.

Transitional safeguard measures

Agreement on Textiles and Clothing, Article 6

It is interesting to note that even though the aim of the Agreement is to facilitate the removal of restrictions on textiles, it permits countries to take safeguard actions during the transition period under very strict rules. Such transitional safeguard actions can be taken only in respect of textile and clothing products that are not already subject to quotas and not integrated into GATT, and if the importing country determines that:

- ❑ The product is being imported in such increased quantities as to cause serious damage or actual threat thereof to the domestic industry producing the like product, and
- ❑ There is a causal link between such serious damage to the domestic industry and sharp and substantial increase in imports from the exporting country or countries whose exports are sought to be restrained.

The right to use transitional safeguard measures is available to all WTO members, i.e. not only to countries which in the past applied quantitative restrictions under MFA but also to other countries (including developing and least developed countries), subject to the strict conditions described below.

Agreement on Textiles and Clothing, Article 6:1

First, in order to be eligible to apply such measures, countries were required to notify to WTO their intention to retain the right to use these provisions within a specified period after ATC became operational. In accordance with these provisions, 55 countries notified their wish to retain the right, while 9 notified that they did not want to retain it.

Second, the countries which notified their intention to retain the right are under an obligation to integrate their trade in textiles into GATT in four stages, following the procedures applicable to countries imposing MFA restrictions.

Third, the country proposing to impose safeguard measures is required first to enter into consultations with the exporting country or countries concerned and to demonstrate the existence of a situation of serious damage or actual threat thereof.

Agreement on Textiles and Clothing, Article 6:8

The consultations may result in agreement that the situation does indeed call for restraint on the product in question, in which case the level of the restraint and its period of application are specifically provided for in ATC. Restrictions may also be imposed by the importing member even if the consultations are not successful. But in such cases, the matter has to be referred to the Textiles Monitoring Body for prompt examination and appropriate recommendations. Further, in order to ensure that even restrictions agreed in bilateral consultations are in strict conformity with the provisions of ATC, the Textiles Monitoring Body is required to determine whether the imposition of such restrictions is justifiable under ATC.

Experience of the application of ATC provisions

Agreement on Textiles and Clothing, Article 6:2

Transitional safeguard measures are, as noted earlier, permitted sparingly and only in exceptional situations, where the industry producing a specified category of products is suffering serious damage or actual threat thereof as a result of an increase in total imports. The provisions make it clear that such transitional actions should be taken only after it has been possible for the importing country to establish that there was a causal link between increased imports and damage to the industry. For this purpose, ATC lays down economic variables that must be examined to ascertain whether there was such a causal link. It further states, that where the alleged state of the industry was

not due to an increase in imports, but was caused by such factors as “technological changes or changes in consumer preferences”, no safeguard actions shall be taken.

Since the Agreement entered into force, these provisions have been invoked by three countries, viz. the United States, Brazil and Colombia. In the first six months of its operation (January-June 1995), the United States resorted to safeguard measures in 24 cases. The review process found that many of these actions were taken without strictly following the rules of the Agreement. In the two cases which were raised under dispute settlement procedures, the Panels observed that the United States had failed to examine all of the factors that should have been taken into account in determining whether increased imports were causing injury to the producers of a particular category of products.

From the second half of 1995, there has been a substantial slowdown in recourse to these provisions, with the United States using safeguard measures only four times from mid-1995 to end-1998. This may have resulted from the interaction of two factors. In its investigation of cases, the Textile Monitoring Board stressed that the rules on the invocation of these measures should be applied strictly. There is also greater awareness that unless such measures are taken on justifiable grounds, the exporting countries affected may invoke dispute settlement procedures.

Rules of origin

For the administration of quotas allocated by country or area, it is necessary to adopt rules of origin which determine to which country's quota imported products processed in different countries should be allocated. In the United States, prior to 1 July 1996, the origin was considered to be the country where substantial transformation of the product had taken place (in the case of clothing, this was generally where the cloth was cut). Since that date, the rules of origin have provided that the country where a textile or apparel product is wholly obtained or produced or assembled shall be its country of origin. However, 16 specified product categories are subject to a separate set of rules. Thus the origin of articles made from yarn, strips, twine, cordage, rope or cables is not the country where such articles are produced, but the country where the yarn, etc. is produced. Likewise, for the other product categories listed in box 32, the origin is the country where the fabric is produced.

Box 32

United States: product groups to which special rules of origin apply

Articles of yarn, strip, twine, etc.
(HTS 5609)

Labels, badges, emblems
(HTS 5807)

Quilted products (HTS 5811)

Baby diapers (HTS 6209.20.5040)

Handkerchiefs (HTS 6213)

Shawls, scarves, etc. (HTS 6214)

Blankets and traveling rugs
(HTS 6301)

Household linen (HTS 6302)

Curtains, etc. (HTS 6303)

Bedspreads and furnishings (HTS 6304)

Sacks and bags for packing (HTS 6305)

Tarpaulins, tents, etc. (HTS 6306)

Dust cloths, mops, etc. (HTS 6307.10)

Pillow shells, banners and other items
(HTS 6307.90)

Needlecraft sets (HTS 6308)

Pillows, cushions, etc. (HTS 9404.90)

HTS: Harmonized Tariff System

The new United States rules could adversely affect the trade of several exporting countries, especially with regard to the products listed in box 32. Many of these products, such as dyed and printed fabrics, quilted products, bed linen, handkerchiefs, scarves, dust cloths and mops, and pillow and quilt shells, are restricted items for a number of countries. Some developing countries import grey fabrics, for dyeing and printing, and then re-export the processed products. Under the new rules, the origin of those exports will be the country where the grey fabric was produced. Similarly, many countries import fabrics for conversion into household linen, draperies, or for embroidery. Once again, the origin of these products will be the country from where the fabric was imported.

Other difficulties are also expected to arise for exporting countries. For example, a country supplying base fabrics will find it difficult to accommodate in its quota the goods shipped by other countries and debited to it as origin. Obtaining a visa from a country of origin may also cause considerable administrative inconvenience for the exporting country/area.

Some of these problems may be resolved when, as a result of the work being undertaken in WTO in cooperation with WCO under the Agreement on Rules of Origin, harmonized rules are adopted for the determination of origin. At present, there is no binding multilateral agreement specifying rules for the determination of origin. (See chapter 12.)

Increasing use of anti-dumping actions

Another major problem is the increasing resort to anti-dumping and countervailing actions. Box 33 lists the countries currently applying anti-dumping duties on imports of one or more textile and clothing products and the countries whose exports are affected.

In some countries, these duties were applied to products whose imports were restricted by quotas; this resulted in providing double protection to domestic goods. Investigations were often initiated without adequate justification; some were terminated within a short period on the grounds of lack of evidence. Even though investigations may be terminated without imposing anti-dumping duties, they could induce importers to change their sources of supply and result in trade harassment. It is therefore necessary for investigating authorities to examine carefully requests from industries for anti-dumping actions and exercise restraint in initiating investigations, particularly where the products concerned are subject to quota restrictions.

Box 33

Anti-dumping duties on textiles and clothing

Members applying duties:

Argentina, Brazil, Canada, the European Community, Japan, Mexico, New Zealand, the Philippines, the Republic of Korea, South Africa, Turkey and the United States

Members affected:

Brazil, Egypt, Hong Kong (China), India, Indonesia, Japan, Malaysia, Pakistan, Portugal, the Republic of Korea, Romania, Thailand, Turkey and the United States

Business implications

Preparing for increased competition

In countries whose exports to certain developed countries are subject to quota restrictions, the textile industry is no doubt disappointed at the slow progress in the removal of these restrictions during the first two stages provided for by ATC. It is, however, necessary to recognize that as the remaining restrictions are removed during the third and fourth stages, exporters will face greatly increased competition in international markets. Further, the benefits of the removal of restrictions are not likely to be evenly distributed among exporting countries.

The competitive position of countries currently subject to quota restrictions will determine whether the removal of these restrictions will be advantageous to them. Those whose industries have sharpened their competitive edge by adopting up-to-date technology may benefit fully from this removal. Other exporting countries, particularly those that are not able to use up their full quotas, may draw only marginal benefits unless they immediately take steps to assist their industries to become more competitive. Countries not now subject to restrictions on import markets will also have to prepare themselves to meet increased competition from countries whose exports are currently restrained.

Textile industries in exporting countries will therefore have to use the remaining transition period to prepare themselves to meet heightened competition. They should modernize their technology, rationalize production methods, and carry out market research to identify the textile products in which they can compete effectively in international markets on the basis of quality and price.

Traditionally, many enterprises (particularly in some developing countries) have concentrated on markets in developed countries. In adopting programmes and strategies for export development in the post-ATC period, the vast potential that now exists for increased trade with other developing countries should also be adequately taken into account. A number of these countries have unilaterally reduced under the Uruguay Round the high tariffs that they previously applied to imports of textile products. The countries currently applying quantitative restrictions are removing them by stages under the ATC integration process. Demand for textile products in these countries will expand as they make further progress in economic development and as their per capita incomes rise.