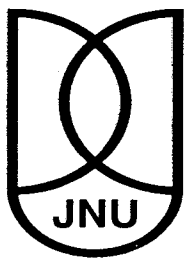
TRADE IN TEXTILES AND CLOTHING UNDER GATT/WTO

Dissertation submitted to the Jawaharlal Nehru University in partial fulfillment of the requirements for the award of the Degree of

MASTER OF PHILOSOPHY

ELSA CATHERINE GEORGE



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DECLARATION

I declare that the dissertation entitled **TRADE IN TEXTILES AND CLOTHING UNDER GATT/WTO** submitted by me in partial fulfillment of the requirements for the award of the degree of **MASTER OF PHILOSOPHY** of the Jawaharlal Nehru University is my own work and has not been previously submitted for the award of any other degree of this University or any other university.

Elsa Catherine George

CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

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TABLE OF CONTENTS

LIST OF ANNEXES

LIST OF TABLES

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Elsa Catherine George

ABBREVIATIONS

ABI	:	Argentina Brazil and India
ACP	:	African-Caribbean-Pacific
AGOA	:	Africa Growth and Opportunity Act
APEC	:	Asia Pacific Economic Cooperation
ASEAN	:	Association of South East Asian Nations
ATC	:	Agreement on Textiles and Clothing
ATDC	:	Apparel Training and Design Centre
BISD	:	Basic Instruments and Selected Documents
BTN	:	Brussels Tariff Nomenclature
CAFTA	:	Central American Free Trade Agreement
CARIFTA	:	Caribbean Free Trade Area
CBI	:	Caribbean Basin Initiative
CBP	:	US Bureau of Customs and Border Protection
CBPTA	:	US-Caribbean Basin Partnership Agreement
CENVAT	:	Central Value Added Tax
CITA	:	Committee for Implementation of Textile Agreements
CTM	:	Cut, Make and Trim
CVD	:	Countervailing Duties
DGCI&S	:	Director General of Commercial Intelligence and Statistics
DR-CAFTA	:	Dominican Republic- Central American Free Trade Agreement
EBA	:	Everything But Arms
EC	:	European Community
EDI	:	Electronic Data Interchange
EEC	:	European Economic Community
EFTA	:	European Free Trade Area
ELVIS	:	Electronic Visa Information System
EU	:	European Union
FDI	:	Foreign Direct Investment

FTA	:	Free Trade Agreement
GATS	:	General Agreement on Trade in Services
GATT	:	General Agreement on Tariff and Trade
GDP	:	Gross Domestic Product
GI	:	Geographical Indications
GNG	:	Group of Negotiation on Goods
GNS	:	Group of Negotiation on Services
GSP	:	Generalized System of Preferences
HS Code	:	Harmonized Commodity Description and Coding System
IDBI	:	Industrial Development Bank of India
IFCI	:	Industrial Finance Corporation of India
ILM	:	International Legal Materials
ILO	:	International Labour Organization
IMF	:	International Monetary Fund
IPR	:	Intellectual Property Rights
ITC	:	International Trade Centre
ITCB	:	International Textiles and Clothing Bureau
ITO	:	International Trade Organization
LDC	:	Least Developing Countries
LTA	:	Long Term Arrangement Regarding International Trade in Textiles
LTFR	:	Less Than Full Reciprocity
MERCOUSER	:	Southern Core Common Market
MFA	:	Multifibre Arrangement
MFN	:	Most Favourable Nation
NAFTA	:	North American Free Trade Agreement
NAMA	:	Non Agricultural Market Access
NIFT	:	National Institute for Fashion Technology
NTB	:	Non Tariff Barriers
OEEC	:	Organization of European Economic Cooperation
OMA	:	Orderly Marketing Arrangement
PTA	:	Preferential Trade Agreement

QR	:	Quantitative Restriction
RTA	:	Regional Trade Arrangements
SARS	:	South African Revenue Services
SIDBI	:	Small Industries Development Bank of India
SITC	:	Standard International Trade Classification
SME	:	Square Metre Equivalent
SSI	:	Small Scale Industries
STA	:	Short Term Arrangement Regarding International Trade in Textiles
SVPITM	:	Sardar Vallabhbhai Patel Institute of Textile Management
TBT	:	Technical Barriers to Trade
TMB	:	Textiles Monitoring Body
TNC	:	Trade Negotiations Committee
TPL	:	Tariff Preference Level
TRIMS	:	Trade Related Investment Measures
TRIPS	:	Trade-Related Aspects of Intellectual Property Rights
TSB	:	Textile Surveillance Body
TUFS	:	Textile Upgradation Fund Scheme
UK	:	United Kingdom
UNCTAD	:	United Nations Conference on Trade and Development
UNDP	:	United Nations Development Programme
UNTS	:	United Nations Treaty Series
US	:	United States
USA-ITC	:	US Association of Importers of Textiles and Clothing
USITC	:	United States International Trade Commission
VER	:	Voluntary Export Restraints
VRA	:	Voluntary Restraint Arrangement
WITS	:	World Integrated Trade Solutions
WTO	:	World Trade Organization

CHAPTER I
INTRODUCTION

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INTRODUCTION

I.1. Introduction

The existence of an integrated, predictable and stable multilateral trading system has been regarded as an essential pre-condition to sustain the ever expanding international trade. Accordingly, it was argued that a global trading system could secure for all countries an equitable share in international trade commensurate with the needs of their economic development. According to one view,[1] considering the inequitable distribution of world resources and economic bargain, a system based on the principles of free trade, non-discrimination and transparency could be useful to attain this ideal. However, while designing a system on just and equitable basis, due consideration to independent variables in terms of trade interests was mandated. According to another view,[2] the operation of market forces alone in determining trade was likely to lead to imbalances and injustice in the existing economic order. Therefore, in order to sustain, the global trading system had to sufficiently address the special and differential concerns of individual members and particular trading sectors operating within it.[3]

The level of development had in turn decided the comparative bargain for countries in the post-War economic order espoused through the General Agreement on Tariff and Trade (GATT). But over a period of time, changes in production and cost structure brought transition in the international economic organization at least in certain manufacturing sectors. It brought about comparative advantage in favour of

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[1] On this point see, Bagwell and Staiger (1999), Croome (1999) and Jackson (1997).

[2] For a comprehensive study of the case for and against free trade see generally Irwin, Douglas (1996), Against the Tide: an Intellectual History of the Free Trade, Princeton: Princeton University Press. Also Rodrik, Dani (1997), "Has Globalization Gone Too Far?", Washington DC: Institute of International Economics and Bagwell and Staiger (1999).

[3] In this sense, often, the inter-linkages between trade and industrial production in member countries have a profound impact on 'the way in which the politics of a trade regime unravel over time' (Underhill 1998). The pace of industrialization at one time determined the economic transition of countries and had ensured sustained growth and development of individual economies over the years. As it is known, the Industrial Revolution in Europe was a major impetus for the development of global trade. A substantial progress was in the development of textile mills which provided employment and enterprise since the 16th century.

small and developing country members, [4] an unacceptable preposition to the economically more powerful industrialized developed countries, prompting apparently permanent protectionist reflexes in those sectors. This development called for a manipulation of exemptions to retain trade in non-profitable sectors outside the disciplines of GATT multilateral system. The chief concern was accommodating the adjustments within the legal framework of the global trading system without aberrations, but this led to a considerable erosion of the credibility and effectiveness of the system. The present study attempts to examine the international trade regime for one such sector- textiles and clothing- legally devised under the GATT structure but operated outside the Agreement.[5]

I.2. Textiles and Clothing in World Trade

The textiles and clothing sector emerged as a part of the First Industrial Revolution in the 1770s as a major component of the capitalist regime existing at that time.[6] It is estimated to have played a critical role in the economic development of the advanced industrial countries like the United Kingdom (UK), United States (US) and Japan since the beginning of the early 19th century.[7] But over the years, textiles and clothing came to be regarded as a crucial sector particularly for the developing world. The particular impact of the Textiles and Clothing industry was due to a series of reasons, such as - it was an indispensable sector that satisfied the primary human needs and had received high priority in the national as well as international economic

[4] In fact, the history of trade in countries like India indicates that there was clothing manufacture from the earliest ages and a textile industry flourished here (Nehru 1946). The trade in products like silk and spices from China and India was a major cause for European trade and subsequently political invasion of the Indian sub-continent.

[5] The international trade in Textile and Clothing has come a long way since the distinct recognition of trade in this sector under the GATT framework. The trade in this sector is liberalized ultimately, since 1 January 2005, and the expectation is for a greater benefit for the developing world as a result. Chapters III and IV of this dissertation deal with this issue.

[6] It has been held that the capitalist system follow cyclical patterns of economic booms and depressions in its evolution. Its evolution was considered to bring high-tech industries to overcome the inherent problem of stagnation and thus promote expansion of industrial space by relatively rapid industrial expansion- the emergence of textiles and clothing industries has been explained in this relation (B. P. Y. Loo 2002: 847).

[7] The benefits accorded by the development of the textiles and clothing sector has been illustrated as follows: firstly, the sector absorbed large magnitudes of unskilled labour; secondly, it produced goods that satisfied elementary needs for large segments of the domestic population; thirdly, despite low investment requirements, it served to build capital for more technologically demanding production in other sectors and fourthly, it financed imports of more advanced technologies by generating export earnings (Palpaceur 2005: 409).

organization; textile and apparel manufacturing industry was highly labour intensive, interlinking industry with socio-economic developments and has been comparatively advantageous to the developing economies and the like. For these reasons, developing countries with their abundant labour, while adopting labour intensive policies placed high priority on textiles and clothing in their economic development agenda (Bhat 1978). Most of them accordingly, had attained a high level of self-sufficiency in textile manufacture and had become net exporters in a short while. On the other hand, high labour cost resulting from higher standards of living in the developed countries caused high unit cost of textiles and clothing, thereby eclipsing the relative advantage otherwise rendered by superior technology and economies of scale. The contraction of textile sector in developed countries and the growing demand for textile and clothing products brought benefits to developing countries, which had comparative cost advantage due to labour abundance, simple technology and availability of raw materials.

The development of textiles and clothing industry has been described as the indispensable stage of industrialization in developing countries (Tang 1989) and the backbone of export drive through which the developing countries had entered the world market for manufacturing goods[8] (Singer H. et. al 1990). It hosted a substantial share of manufacturing jobs[9] in those countries (Tang 1989; Adhikari and Yamamoto 2005) and had been regarded as a significant sector for poverty alleviation (Jha et. al 2004). The global trade in textiles and clothing has played an important role in the development process of many countries and in their integration into the world economy. The developed world viewed these developments with caution. Accordingly, the threat to domestic textile and clothing industries in developed countries from cheaper imports of developing countries prompted a number of bilateral discriminatory trade restrictions, thereby resulting in a worldwide web of

[8] The clothing sector accounted for a major part of exports of a large number of low and middle income countries. Developing countries as a group accounted for more than one half of the world exports in textiles and clothing in 2004. As indicated by studies, in no other category of manufactured goods did developing countries enjoy such a large net-exporting position (World Trade Report 2006).

[9] The clothing industry had been particularly labour intensive and offered entry level jobs for unskilled labour in developed as well as developing countries (Nordas 2004). Many millions of people, especially women, work in these sectors and many are elevated from a subsistence level due to employment opportunities offered by these sectors. It is more significant that these industries offered jobs in areas where alternative jobs may be difficult to find (Adhikari and Yamamoto 2005).

quantitative and other similar restrictions. Thus the competing interests of both the sides led to the initiation of a wide range of protectionist measures in this sector.

I.3. Protectionism in Textiles and Clothing Trade

The framework for regulation of international trade in textiles had evolved over a long period and followed distinct patterns in different periods.[10] The history of trade in textiles and apparels reveals that it was one sector that had received more comprehensive and persistent protection than any other (Cline 1987: 1). By the nineteenth century, the industrialized countries in the Western Europe and North America became dominant forces in the world textile market.[11] However the highly protectionist measures applied in this sector was generally attributed to such a development.[12] Apart from them, Japan was the only other country that had a rapid expansion of domestic industry. In the inter-war period Japan had first placed pressure on the industrial country markets.[13] As a result, by 1936, Japanese textiles faced quota

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[10] The pre-War periods indicated the existence of voluntary restraint measures while the GATT-period witnessed bilateral restraints which were subsequently institutionalized in the form of multilateral arrangements- short term (STA), long term (LTA) and finally in the Multifibre Arrangement (MFA). For a detailed discussion, see the respective paragraphs in Chapter II. The Uruguay Round negotiations concluded a transitory arrangement under the Agreement on Textiles and Clothing (ATC) to phase out the restrictive arrangements over a ten year period. For a detailed discussion on ATC, refer Chapter III.

[11] In the period preceding and immediately following the First World War, United Kingdom had dominated the world textile market. By the end of 19th century, the US became a major textile producer, mainly through its restrictive policy measures (GATT 1984: 62).

[12] Protection of textile and clothing sector has a long history in US and Europe (Nordas 2004: 13). The earliest US protectionist policy could be traced to 1808 when imports of foreign goods was first impeded and soon severely curtailed. This imposed highly protectionist tariff measures under the Tariff Act of 1913, with high ad valorem duties, and a highly intricate cotton tariff schedule "with duties varying according to the count of threads per square inch, the number of yards to the pound, the bleaching, the colouring, and staining and finally with a most elaborate fence system of value points. Just what the whole intricate array signified could be known only to persons conversant in every detail: that is chiefly to the manufactures themselves" Taussig F. W. (1914), *The Tariff History of the US*, New York: G P Putnam's Sons, as quoted in GATT (1984: 137, footnote 2). As for the Western Europe, it had followed free trade policy between 1860 and 1880, but reverted to protectionism subsequently.

[13] UK's reaction was to "protect and hold" the market by enacting the scheme for Imperial Preferences negotiated under the Ottawa Agreements of 1932 under which the trade of Common Wealth countries was conducted. The Agreement provided reciprocal preferential tariffs for intra-Commonwealth trade and the British textile industry derived considerable benefits from the preferential entry during this period. France, in 1931, made use of quotas as a commercial policy instrument. In US, Tariff Commission undertook an investigation into rise of imports of Japanese Cotton Cloth in 1935. By December, the Japanese Ambassador reported Japanese industry's "unilateral" agreement to voluntarily restrict its shipments to US. Due to the inadequacy of this measure in restraining imports, the President accepted a Tariff Commission Recommendation for selective tariff increases on cotton cloth in 1936. (GATT 1984: 63).

restrictions and discriminatory tariffs in 40 out of 106 markets in the world (Manchester Chamber of Commerce 1936; Dilip K. Das 1985: 70). The continued flow of Japanese imports despite restrictive measures prompted the possibility for private and voluntary negotiation of agreements between individual countries or respective industries. [14] The arrangements for voluntary export limitation were favoured on account of the unofficial approach and lack of transparency. As clearly indicated, the unfavourable attitude towards newly industrialized competitors, structural adjustment problems and protection against imports through the use of voluntary export limitations were characteristic of the post World War trade in textiles and clothing (GATT 1984: 63).

The post War developments inter alia, provided a global economic structure for free and non-discriminatory trade under the General Agreement for Tariffs and Trade, 1947.[15] Though the liberalization efforts also undertaken by the Organization of European Economic Cooperation (OEEC), implementation of the European Community (EC) Customs Union and the European Free Trade Area (EFTA) around this period benefited the developed country textile and clothing industry, the restrictions on imports from Japan and other East European and developing countries were made more stringent on account of the increased threat of imports from these countries.[16] In doing this, the United States relied on administrative actions while European countries stressed on import restrictions.[17]

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[14] US and Japanese Trade Associations subsequently reached a two year "Gentleman's Agreement" where Japan limited its shipments from January 1937 to the 155 million square yards already on order, and to 100 million in 1938. In return, the US negotiators agreed not to press for formal restrictions in Japanese imports which would have required the finding of injury before concessions were withdrawn. A separate three year agreement limited Japan's exports of hosiery to US beginning January 1937, while another inter-industry agreement was arranged to regulate Japanese shipment of velveteen and corduroys for a two year period beginning in March 1937 (GATT 1984).

[15] Among its general principles, GATT provides for a general elimination of quantitative restrictions on imports and exports (Article XI) and that trade measures must not discriminate between supplying countries (Article I and Article XII).

[16] The US industry was particularly alarmed by mid 1950s when the rapid rise in cotton textile imports into US, turned its textile surplus into a trade deficit. In 1955, the Japanese imports of cotton cloth crossed the pre-war peak and reached 140 million square yards. The US agricultural price support to cotton and a highly restrictive quota on cotton imports caused the US cotton industry to pay higher prices domestically than the world price for cotton (ITCB 2000: 4). The domestic pressure for restraining Japanese imports into the US arose mainly from US textile regions of Maine, South Carolina, Alabama, Georgia, Louisiana, Mississippi and Massachusetts which organized state government action against Japanese textiles as well as boycotts at local level (Ram Khanna 1990: 72).

[17] By the Agricultural Act 1956, the US Administration was empowered to reach agreements to restrict textile exports and to order unilateral import restrictions to protect national industry and jobs (Cortes

When Japan acceded to GATT in 1955, Europe responded with exemptions to liberalization for Japan under special GATT provisions withholding the application of GATT rights and obligations (Article XXXV) while the US negotiated bilateral restraint arrangements on Japan in the late 1950s (Cline 1987: 10).[18] The US had successfully applied political pressure to make post-war Japanese government to agree to Voluntary Export Restraints (VERs) on textiles in 1957 for a period of five years.[19] A similar solution was reached by the US with Italy regarding velvet, although only for 1957 (Cortes 1997: 49). Both these accords were concluded without the finding of 'injury' as required under the US domestic legislation, that is, US Agricultural Adjustment Act and set a pattern for subsequent agreements concluded by the US (GATT 1984: 64). With this, the exceptional character of the sector through voluntary and selective agreements was institutionalized.

Thus, it was held that 'with its lack of transparency and informal gentleman's agreements,[20] the textile sector left the sphere of GATT, and therefore the free market, without achieving the pursued goal' (Cortes 1997: 49) of GATT. These 'without injury actions' marked the beginning of voluntary restraints in the sector, thereby heralding a new era in textile trade.

I.4. Scope of the Study

The present study will attempt to show that the international trade in textiles and clothing was always under a set of legal norms which could be termed as 'sui generis.' Unlike the other manufactured goods, this mostly "managed trade" was

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1997: 49). On the other side, severe balance of payment difficulties forced the European Countries to maintain import restraints pursuant to Article XII.

[18] US was not inclined to use provisions of GATT due to a number of reasons: Article XII restriction to improve balance of payments was avoided because of the possible consequences it would have on the world economy considering the predominant role played by US dollar; Article XXXV was avoided because it would exclude Japan from the post-war global trading system designed by US. Though Article XXV waiver was more suitable in the situation, US did not fall back on it because it had already applied this in the agricultural sector subject to much criticism. Applying this provision again in textiles, was likely to tarnish the 'liberal' image US carried (Cortes 1997: 63).

[19] The voluntary restraint was a five-year plan to control Japanese textile exports to US setting the 1957 quota at 235 million square yards. The programme did not provide for any guaranteed growth; put sub-quotas on a number of products; provided for consultation to set additional quotas as might be needed and authorized transfers between groups and categories within certain limits.

[20] In the legal literature, the term 'gentleman's agreement' means an informal agreement between two parties which may be oral or written. The essence of the gentleman's agreement is that it relies upon the honour of the parties for its fulfillment rather than being in any way enforceable.

subject to regulation in one form or other for over five decades, the earliest instance being the Voluntary Export Quotas negotiated by the US on Japanese textile imports as early as in 1930s. As explained above, the unilateral restraint imposed by Japan in 1955 and the agreement reached between US and Japan to limit overall textile exports to US marked the beginning of a long chronology of restrictions in the textiles and clothing trade. As a result, even when the post-War developments under the GATT had led to a trading system based on the principles of Most Favoured Nation or non-discrimination, the trade in strategic sectors like the textiles and clothing, with considerable advantage for the developing world, remained an exception to these high sounding international trading norms.

In the 1960s the GATT Contracting Parties recognized the problem of "market disruption" and the mere threat of disruption itself prompted the excuse of establishing Non Tariff Barriers to textile trade. The result was the Short Term Arrangement Regarding International Trade in Cotton Textiles (STA 1961) deliberated by a GATT Working Party, stressing on the voluntary restraint by exporting country, and providing for unilateral imposition of restrictions where it did not. Thus a formalized arrangement to discriminate against imports from particular sources, as a departure from the non-discrimination principle was arrived at. The further negotiations led to a Long Term Arrangement (LTA) for five years from 1962, which was eventually extended up to 12 years. The attempts to include wool and man-made fibre products secured the Multi Fibre Arrangement (MFA) since 1 January, 1974.

The MFA, negotiated within the multilateral framework itself, aimed at expansion and progressive liberalization of trade in textiles, while avoiding the disruption of individual markets and individual lines of production in both importing and exporting countries. The key feature of MFA was the provision for bilateral agreements on mutually acceptable terms to eliminate the real risk of market disruption. The US and EU were quite successful in negotiating comprehensive bilateral agreements with all major low cost developing country suppliers, which contained extremely restrictive provisions and substantially deviated from MFN disciplines. Each of the four renewals of MFA saw increased protectionist sentiments calling for the re-establishment of economic law and order, and continued until the Uruguay Round Negotiations came into force.

The MFA formally governed application of quantitative restrictions on textile and clothing trade until 1994, when the Uruguay Round Agreement on Textiles and Clothing (ATC) was reached. ATC provided for a ten-year phase out of all MFA and other quotas on textiles, with three successive stages for integration of textiles and clothing products into the rules of GATT 1994, and for the acceleration of growth rates for remaining quotas so as to make the existing quota restriction less and less binding. Under this, the integration process culminated in the elimination of all quantitative restrictions by 1 January, 2005. In the Uruguay Round, textiles and clothing had been one of the crucial areas of negotiation. ATC for the first time arrived at a date for the termination of the bilateral quota regime, as against the previous unsuccessful attempts during the negotiations of LTA and MFA to eliminate the existing bilateral quotas, and provided for restoration of normal GATT rules to this sector pending a ten year transitory arrangement from 1994-2004. Throughout the period there were considerable doubts of a 'faking liberalization' (Spinanger 2005) and of a dilution of Uruguay Round achievements. It was alleged that the major developed countries had secured the most sensitive sectors from integration, and thereby kept out the most competitive exporters especially in Asian countries as long as possible, delaying the benefits of liberalization further.

1.4.1. Explanation of Terms Used

The present study addresses the legal issues related to regulation of trade in textiles and clothing, and consistently uses the phrase 'textiles and clothing' to mean the whole 'textile complex' (GATT 1984), as a single sector. These industries are usually treated as a "sector" due to the high degree of technical integration in textiles and clothing (GATT 1984: 28). So also, textiles and clothing are closely related both technologically and in terms of trade policy (Nordas 2004). Textiles provide the major input to the clothing industry, creating vertical linkages between the two.[21] But the factors like employment, value addition, foreign trade and corporate structures are all different for both (GATT 1984: 28). Firstly, the textile industry is usually more capital intensive than the clothing industry and it is highly automated, particularly in

[21] At the micro level, the two sectors are said to be increasingly integrated through vertical supply chains that also involve the distribution and sales activities. Indeed, the retailers in the clothing sector increasingly manage the supply chain of the clothing and textiles sector (Nordas 2004: 1). For a detailed enumeration of the process and product chains in the sector refer to *Annex I* at the end of this Chapter.

developed countries. It consists of spinning, weaving and finishing, and the three functions are often undertaken in integrated plants. On the other hand, clothing is both a labour-intensive, low wage industry (Nordas 2004), mostly employing women in poor countries who do not have alternative employment options.

Secondly, the market segments are diverse for both categories: for example, clothing is dynamic and innovative, depending on the different segments- high quality fashion market, lower quality and/or standard products, high value added sportswear etc (Nordas 2004). There are also the industrial textiles and the largely upcoming technical textiles segments in the textiles group. Thirdly, the trade interests of country groups are different in both the categories. Clothing is generally considered as exported by poorer countries and is imported by rich ones, whereas textiles, in contrast, are exported mainly from the most industrialized countries, including the developing industrialized countries in Asia, and are imported in substantial terms by both the poor as well as the rich countries (Keesing and Wolf 1988).

Moreover, the category of textiles and clothing are highly intrinsic in terms of trade concerns.[22] The cotton which is the basic raw material for both the sectors is regarded as an agricultural product and hence the study excludes the entire debate on cotton trade. The fibre, which can be predominantly cotton and polyester, or other categories like rayon, wool, jute, flax and silk, is spun into yarn. Yarn is either woven or knitted into fabric. Fabric is then dyed, printed or otherwise finished with softeners, wrinkle resistant resins, or other processes contributing to value addition. Generally, the term 'textiles' refers to yarn and fabric. Clothing is produced from the fabric that has been cut and then sewn (MacDonald and Vollrath 2005).[23]

The product categorization is particularly significant in textiles and clothing- an analysis of the textile arrangements can reveal that the measures devised under the legal instruments are expressed in terms of product classification under Brussels Tariff Nomenclature (BTN), or Standard International Trade Classification (SITC). The term 'textiles' was used generally to mean SITC 84 and 'clothing' refers to SITC 84 (Mayer 2005: 399). The Agreement on Textiles and Clothing (ATC) appended a comprehensive list of all traded textiles which covered Section 11 of the six-digit

[22] This paragraph mainly draws from the study by the Economic Research Service of the US Department of Agriculture undertaken by MacDonald and Vollrath (2005).

[23] A sketch of the structure of textiles complex is annexed to this Chapter as *Annex I- Textiles and Clothing Value Chain* (at page 17).

level of Harmonized Commodity Description and Coding System (HS code), and some other products from other chapters which include textile materials like luggage, umbrellas, watch straps and parachutes. It is regarded that the negotiations on textiles and clothing should consider the level of customs classification as it can be decisive in determining the overall level of protection or liberalization attained.[24] This is expected to be particularly significant in the period following the dismantling of ATC. It is estimated that the post ATC scenario could be very complex within the WTO framework. The developed countries are generally expected to evolve some mechanism to protect their own textile and clothing industries through various mechanisms within and outside the framework of GATT/WTO. The present study therefore focuses on the developments in textiles and clothing trade in the post-ATC period. The survey of the available literature made in relation to this study may be summarized as under.

I.5. Review of Literature

The significance of the textile and clothing sector in the debate on industrial goods has been illustrated by John H. Jackson (1997) who described that one of the most pronounced anomalies of our liberal trade period since World War II has been an elaborate system of voluntary agreements which perpetrates a quota system for international trade in textiles and clothing. He addressed the textile program furthered by the concept of market disruption, as a probable violation of GATT, and considered ATC as a good start in the direction of liberalization. With the policy for the textile sector clearly laid down, it could reduce the risk of textile quota approach as a model for other sectors. Though the study barely outlines the history of textile arrangement, it provided important references to relevant GATT/ WTO documents. Another significant literature by Hoekman and Koestecki (2001) provided a similar insight into sector-specific multilateral trade agreements, with a chronology of managed trade in textiles and clothing. Textiles being one sector with a long history of protectionism in many countries much needed to be done to lower barriers to trade to levels that approach the average prevailing in other sectors. A more recent study by Raj Bhala (2005) described the global quota system for textile and apparel as a potential

[24] For example, a tariff reduction negotiated at a lower level of product classification could encompass the whole tariff lines coming under it and hence more beneficial than a higher level concession (Hoekman and Kostecki 2001).

deterrent to progressive economic transition of agrarian economies. Therefore, under the grand bargain of the Uruguay Round, the phasing out of global quotas was likely to have significant impact for many developing and least developed countries. These authors provided a general reading on the proposed Study.

A considerable volume of literature could be seen available on the various aspects of textile sector and MFA and could be examined as follows. The impact of strong industrial lobbies and other influential groups, leading a country to impose barriers to its trade, thereby distorting trade and inflicting economic growth, has been a significant trend even in the textile sector. As Amrita Narlikar (2005) pointed out, the GATT/WTO was designed to address these protectionist measures by providing a forum for states to reduce barriers to trade. However certain arrangements like the MFA permits protectionist measures within the GATT framework, thus taking away this fundamental principle of free and fair trade. The trend towards MFA could be traced to the Voluntary Export Restraint agreements between US and Japan, which has been documented by Stephen D. Cohen (1985), who illustrated the political and economic aspects of the US-textile dispute.

The birth of a special system for textiles was given in the comprehensive thesis by Claudia Jiminez Cortes (1997). It brought out that as a case for unilateral action by states, textiles had proceeded under short term and long-term quantitative restrictions. Through a comparative study of the aims and obligations, legal principles and trade liberalization between the GATT and MFA, it argued that MFA was a mere form of safeguard, while its general rule for prohibition of restrictions, elimination of pre-existing quotas and transparency policy directed towards liberalization in this sector. Earlier, Hans- Helmut Taake and Dieter Weiss (1974) had regarded the World Textile Arrangement as a balanced compromise, based on a more equitable and balanced distribution of income and market opportunities. However, the protection of textiles under the MFA, with the high level of protection, wide disparity across the activities in the sector, discrimination between supplying countries and high degree of bureaucratic discretion in the administration has been regarded as distorted (Gary P. Sampson 1990). It was often argued that the MFA II and MFA III departed from the original framework with great stress on the rights and obligations of both importing and exporting countries, and moved to a system of bilateral or voluntary export restraints (Madhavi Majmudar 1988). Keesing and Wolf (1988) pointed out the diverse movement of developed and developing country trade in textiles and clothing.

According to them, strict quotas limited developing country trade, but the trade between developed countries themselves moved on mutually advantageous basis, and under very different rules from those of the MFA, thus requiring a strong recommendation for revival of MFA.

Tang (1989) argued that the perpetuation of restraint under MFA had disrupted the autonomous industrial adjustment, and its proliferation in a number of sectors had disruptive effects on the multilateral trading system. Even when the Uruguay Round agreement was reached, there were fears that the liberalization only extended to the quantitative restrictions, that the liberalization agreement was backloaded and that temporary safeguards would nullify the benefits of liberalization (Debroy 1996). The structure and content of the ATC were subject to strict analysis. An examination of the litigation under the ATC brought forth the likely use of remaining safeguard measures by the developed world (Sara Dillon 2002). It was argued that the effect of elimination of quotas would vary with the level of competitiveness of each country (Cattaneo 2004; Nordas 2004). Spinanger (2005), in a detailed study on the post ATC impact considered two aspects: first, the highly complex interaction between tariff reductions and quota liberalization on one side and changes in trade flows and key economic indicators on the other and second, the benefits to China, the largest exporter of textile and clothing products, with the removal of quotas on these products and the MFN access to all markets, especially on the accession to WTO.

However, there were scholars who doubted the resurfacing of protection through alternative sources. Jackson (1997) pointed out that even with the phase out of textile quotas, governments could negotiate item by item on the tariff they may charge for the textile product imports. As known, the textiles and clothing sector has been one of the few categories with the highest bound and applied tariff averages, and the largest number of tariff peaks (Bachetta and Bora 2004). It was therefore argued that with the ATC, which was not addressing the issues of tariff protection, the integration of textiles and clothing sectors into the GATT by eliminating quantitative restrictions would bring tariffs to the forefront. It was also pointed out that the significant variations in the level of applied tariffs under preferential and other schemes would be critical determinants in textile trade (Mayer 2005). Hoekman and Koestecki (2001) predicted greater pressure on anti-dumping as a safety valve. So also, the transitional safeguard clauses under China's accession protocol are presently

expected to bring new trends in protectionist trends (ITCB 2006). However, it could be said that the available literature on post ATC textiles and clothing trade is extremely limited, as all studies halt at the phasing out of ATC (only exception is UNDP Tracking Report 2005). The question as to where the textile and clothing sector will go post 2005 is not yet clearly answered. It is argued from some quarters that this would come within the Non Agricultural Market Access negotiations, with the whole thrust on the debate on industrial tariffs and tariff cutting formulae (Ranjan, *Centad Working Paper* 2005).

One of the earliest studies on the broader theme of the relationship between industrial growth and international trade in manufactured goods was undertaken by Alfred Maizels (1971), which was an empirical study of the trends in production, consumption and trade in manufactures from 1899-1959. The book explained the trends in world trade in manufactured goods by industrial and economic changes in the main importing countries. This study served as an introductory reading to the world trade in manufactures with special reference to commodity groups including textiles and clothing. Another significant reading has been the research project by Underhill (1998) on *Industrial Crisis and Open Economy*, which was a sectoral case study of international trade and industrial adjustment over the period of contemporary globalization. It addressed the issues of manufacturing industry in the global political economy and the significant aspects of international trade in textiles and clothing sector, with the premise that this one sector could serve as a basis for important generalizations about the broader political economy of trade liberalization. While tracing the global trade in textiles and clothing since 1974, stressing on the political and economic underpinnings, the study concluded with the Uruguay Round ATC accord holding that it represented a significant victory for the advocates of liberalization in a sector where protectionist reflexes appears most entrenched.

The available literature was also on the impact of liberalization of textile trade for countries like India, where textiles and clothing has been a sector with a high potential for poverty alleviation (Jha et al., 2006). Another comprehensive study of export competitiveness of Indian textile and garment industry (Samar Verma, 2002) considered the domestic factors holding back the Indian industry, ranging from supply chains to government policy and other non-price factors. The most recent data argued that the trends in India's exports to the US and EU in 2005 provided a clear impact of the abolition of quotas (Survey of Indian Industries, 2006). However the literature on

particular problems of Indian Industry especially in terms of handloom and power loom sectors (Palaha, 1994) has been extremely limited.

The GATT/ WTO jurisprudence on textiles and clothing trade is also a rich source for understanding the nuances of trade in this sector and other issues on ATC implementation. The GATT jurisprudence in *Cuban Textile crisis* (1949), *United Kingdom- Import restrictions on import of cotton textiles* (1973) and *Japan- Measures on import of silk yarn* (1978) illustrated the difficulties in balancing the developed and developing country interests under the discriminatory arrangements. The GATT Working Parties had adopted the bilateral settlement agreements reached between the parties for resolution. Subsequently, in the first years of ATC implementation, in two textile disputes (*US- Measures Affecting Imports of Woven wool Shirts and Blouses*: 1997; *US- Restrictions on Imports of Cotton and Man-made Fibre Underwear*: 1997), WTO Dispute Settlement Body found importing country restraint measures inconsistent with GATT ATC obligations. So also, in the *US- Cotton Yarn* (2001) case, the WTO Panel and Appellate Body had suggested the US to bring safeguard measures imposed on import of yarn from Pakistan in conformity with its obligations under ATC. The apparent reluctance of the developed countries to implement provisions designed to assist developing country trade was further illustrated in the *EC- Imports of Cotton-type Bed Linen from India* (2001).

I.6. Research Questions

The Study proposes to examine the following issues:

(a) Whether the measures like Safeguards and Anti-dumping will resurface as protectionist measures in the post-MFA era?

(b) Whether would there be new legal and policy mechanisms (such as for example, "market disruption" evolved in the 1960s, to restrict textile trade) to limit the textile trade?

(c) Whether the likely benefits, which could accrue for the developing world, particularly for India, could be sustained in the context of increasing reliance on non-tariff barriers?

I.7. Hypothesis

The study advances the following hypothesis:

The regulation of international trade in Textiles and Clothing in the post-Agreement on Textiles and Clothing era will inevitably move under alternative

regimes within GATT/ WTO framework, imposing restrictive measures in the form of trade remedies like safeguards, anti-dumping, tariffs and others.

I.8. Objectives of the Study

(i) To understand the relevant legal issues in the GATT/ WTO negotiations in the sectors of industrial goods and manufactures, with particular emphasis on textile and clothing.

(ii) To examine the reasons for increasing isolation of textile and clothing trade from the category of industrial goods and its implications for the developing countries.

(iii) To study the causes and concerns for the complex pattern of restrictions such as (a) quantitative restrictions (b) bilateral restrictions (c) GATT/ WTO restrictions under Articles XII and XIX and (d) other restrictive measures in these sectors during the GATT period, the ATC and the post-ATC periods.

(iv) To analyze the impact of international trade in textiles and clothing on the domestic industry, with particular reference to India.

I.9. Outline of the Study

The study is divided into six chapters. Chapter I introduces the concept of sectoral issues within multilateral negotiations, examines the historical importance of textiles and clothing especially to the developing countries and the emergence of protectionist trends in the sector. An analysis of the scope of the present study and a review of the available literature relating to the subject is made. Also, an enumeration of the research questions addressed and the hypothesis advanced by the study as well as a mention of the objectives of the study and applied research methods finds place.

Chapter II attempts to trace the history and evolution of a World Textile Arrangement through the Short Term (1961) and Long Term Arrangement (1962) and Multifibre Arrangement (MFA, 1974) as exceptions to the GATT Rules, its impact on the trade and the legal issues involved. It attempts a study of the emergence of the separate regime for textiles and clothing and a comparative analysis of the different arrangements that operated so far.

Chapter III attempts to examine the process of integration of textiles and clothing into GATT/WTO under the Agreement on Textiles and Clothing through an

insight into the negotiating positions and the processes towards the development of the multilateral agreement. It tries to examine the impact of the Agreement and the legal issues involved during the ten-year transition period from 1994-2004.

Chapter IV addresses the impact of phasing out of ATC since 1 January, 2005 and examines the effectiveness of liberalization achieved so far. A comprehensive study of the subsequent trade practices and the performance of this sector will be attempted in order to identify the legal system under which the trade is proceeding since then. It attempts to illustrate that the post ATC trade in textiles and clothing is moving under alternative regimes through restrictive devices in the form of trade remedies.

Chapter V attempts a particular study of India and the global trade regime on textiles and clothing. This includes an overview of the Indian Textile and Clothing industry, the concerns of India in GATT negotiations and the developments in the post ATC period in the broader context of the performance of developing country trade with particular emphasis on the framing of legal mechanisms.

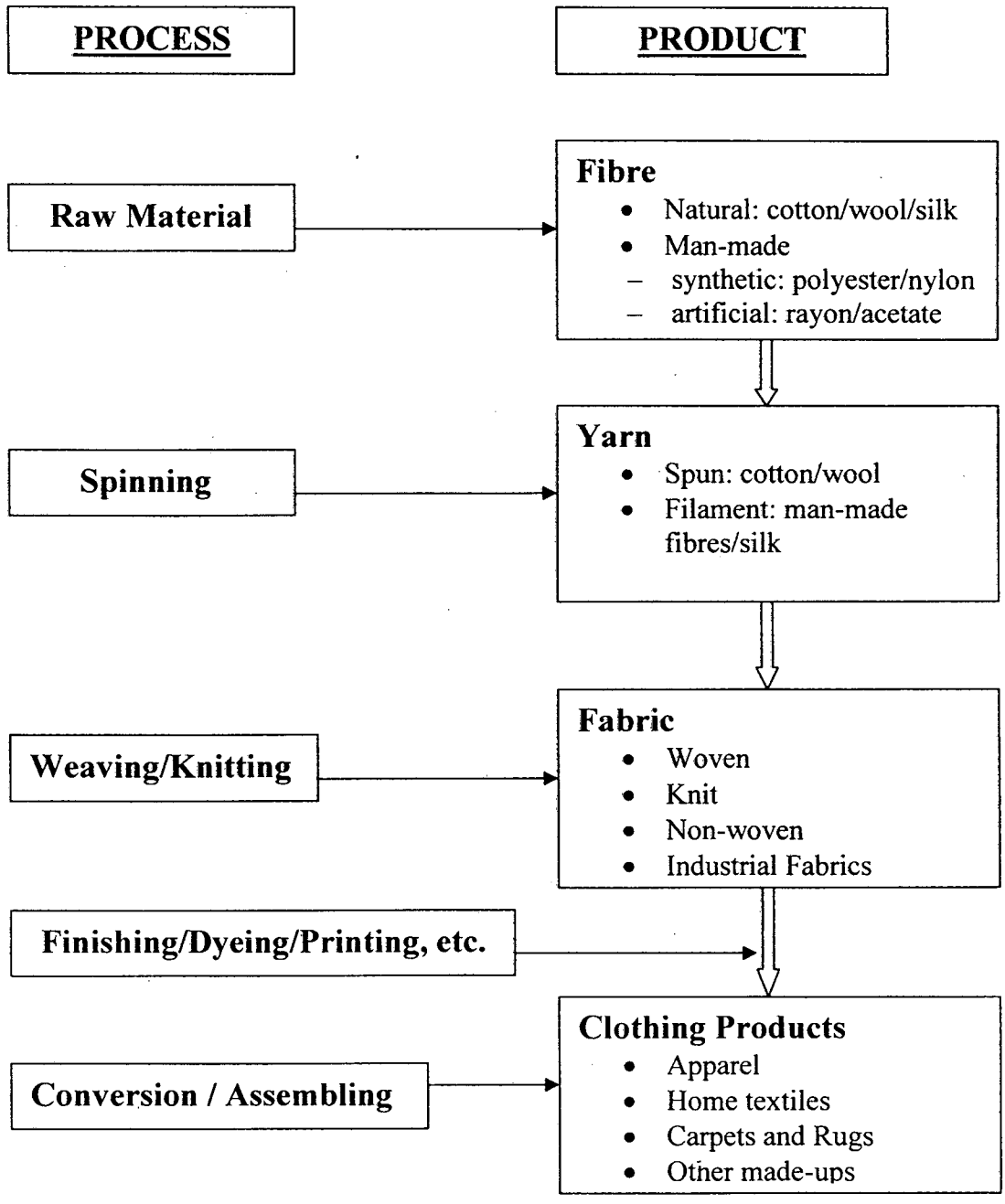
Chapter VI summarizes the observations and conclusion on the various issues addressed. It will also attempt to make certain suggestions to legally sustain the sector in the light of the observations.

I.10. Research Methods

The Study is done on the basis of the available primary sources including the relevant legal texts of the WTO Agreement and the Covered Agreements, other multilateral/bilateral trade agreements, GATT/WTO documents, GATT/WTO Dispute Settlement Reports, relevant documents/briefs prepared by the Member States to the WTO and the policy papers published by the Government of India. The secondary sources would include books, articles, institutional working papers, discussion papers and relevant Internet sources. The Study initially applies the historical method to trace the emergence of the legal regulation of the studied sector through the legal texts, various documents and other available secondary sources. Also, it adopts comparative and analytical methods to study the various regimes that had existed in the sector considered. Further the Study attempts a projection of the likely developments in the sector by means of Statistical and other relevant data from authoritative sources.

ANNEX I

TEXTILES AND CLOTHING VALUE CHAIN*



Source: Kaplinsky (2005); MacDonald and Vollrath (2005).

*Value chain is an economic term, used herein to indicate the value addition in textiles and clothing products in relation to the production processes involved. The production starts from raw materials that may be either natural or man-made. The natural and man-made fibres are spun into yarn. Yarn is either woven or knitted into fabric. Fabric is then dyed, printed or otherwise finished, and finishing can be a substantial part of value addition in fabric production. Clothing is then produced from fabric that has been cut and then sewn. The term 'textiles' generally refers to yarn and fabric.

CHAPTER II

TOWARDS INTERNATIONAL ARRANGEMENTS FOR TEXTILES AND CLOTHING TRADE

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II.1. Introduction

The attempts towards regulation of textile and clothing trade had prompted serious questions of balancing the interests between different trading groups, specifically difference in the bargain and comparative advantage of the developed and developing countries. As a sector for strategic industrial advancement, textiles and clothing remained in focus with the rate of industrialization. Consequently, it triggered a series of protectionist measures from quota restrictions and discriminatory tariffs to voluntary limitations as early as in the 1930s. Even the requirements for an international trade order in the post-War period failed to sufficiently address the issues and sustain a suitable trading system in the sector. In the background of the unique features of the textiles and clothing sector and the intense national and regional interests of different trading groups as outlined in the introduction, this Chapter will attempt to trace the evolution of regulatory device in the global textile and clothing trade and analyze the legal mechanisms involved. It includes a study of the restrictions devised under short term and long term arrangements and the Multifibre Arrangements under the auspices of GATT.

II.2. Proliferation of Voluntary Restraint Arrangements

It was always considered that, in its textile protection policy, US had deliberately decided to ignore the multilateral obligations under the GATT and to seek satisfaction outside the GATT framework (Bagchi 2001: 27). As could be seen, when restrictive actions mandated by US law failed to reduce the volume of imports, certain new legal and policy options were introduced in the form of Voluntary Export Restraints (VERs) or, Orderly Marketing Arrangements (OMAs).[1] These measures

[1] Voluntary Export Restraints are arrangements under which a government, an industry association or major producers in the importing country agree with a government, an industry association or leading producers in the exporting country to limit export sales, prices and conditions of distribution of particular products. Voluntary Export Restraints embrace various forms of auto-limitations, orderly marketing arrangements, export forecasts, export restraint arrangements or price monitoring systems (Kostecki 1991: 87). In OMAs trading partners agree to restrict the growth of trade in the area of specific 'sensitive' products usually through export quotas (Harders 1995: 424). In the law of United States, the export limiting arrangements are termed as 'Orderly Marketing Arrangements' (Jackson 2000: 71).

consisted of what was described as 'new, subtle forms of non-tariff interventions on trade which had, as common traits, recourse to quantitative measures, selectivity, [bilateralness] and non-transparency' (Preusse 1991: 5). There was derogation from GATT rules when specifically imposed by government of the exporting country and different from those imposed through an industry association or some other non-government entity. (Jackson 2000: 71). But the increased reliance on VERs as 'ingenious, temporary, damage minimizing' (Bhagwati as quoted in Preusse 1991: 5) instruments of trade policy, was said to be taken so, due to the beneficial economic and political effects (Preusse 1991: 6).[2] Moreover, by this measure, the legal burden of proving injury to domestic producers in a GATT action was averted.

The consistency of VERs with the GATT rules could be examined in the light of the non discriminatory obligations so fundamental to world trading system. As a departure from MFN principle, voluntary restraints were used by nations seeking to limit imports into their country. Generally, the importing country or representatives of its industries approaching the exporting country try and seek either a formal or tacit arrangement whereby the exporters limit the amount of products they ship to the importing country (Jackson 2000: 66). The government imposed export restraints were however *prima-facie* inconsistent with the GATT (Jackson 2000: 77). But in the case of VERs, the "voluntary" nature of the arrangement presented difficulties in restricting its incidence. As per the international law on treaties, bilaterally negotiated departure from a multilateral treaty was possible where the modification in question was not itself prohibited by the treaty.[3] So also, liability for third party injury and incompatibility with the GATT rules as a whole were difficult to establish in case of VERs. The Working Party *Report on Cuban Textile* crisis of 1949 (GATT/CP.3/82, 1949) provided some insights into the problem. The Working Party was unable to

[2] As for the effects of VERs, economically, VERs were considered superior to tariffs and quotas: it allows the exporters to capture 'monopoly rents' from increase in price due to restricted supply; direct and flexible application; better address of transitory trade conflicts; incentive to domestic up-gradation process etc. The political reasons for preference to VERs include: it bypassed GATT obligations, permitted bilateral and selective discrimination; allowed secrecy and non-transparency; avoidance of possible unilateral retaliatory action, design as short term instruments with time limit and provision for re-negotiation (Preusse 1991: 6-12).

[3] Article 41 of Vienna Convention on Law of Treaties (1969): "Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if: (a) the possibility of such a modification is provided for by the treaty; or (b) the modification in question is not prohibited by the treaty and : (i) does not affect the enjoyment by the parties of their rights under the treaty or the performance of their obligations; (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole" (8 *International Legal Materials* (ILM) 697; R. P. Anand 1994: 189).

reach a definitive conclusion as to the facts of the situation and the causes of difficulties faced by the Cuban textile industry[4] to warrant an increase in the rates of specific tariff items, to be bound at a level consistent with the legitimate requirements of the domestic textile industry. The non-determination of injury rendered Working Party action impossible. Even a temporary waiver of obligations on the occasion of non-determination of the injury was unacceptable to the parties- both US and Cuba- as

> such a release of negotiated commitments [already arrived at in GATT] would establish a regrettable precedent, as it would impair the benefits derived from the General Agreement and introduce an element of insecurity which the Agreement was intended to remove from international trade relations (GATT/CP.3/82, 1949: 3).

It was also that the third country exporters, with which the original tariff concessions on the goods involved had been negotiated under the GATT, often did not have an incentive to oppose VERs which were originally helpful in restricting competitors (Hoekman and Koesteki 2001:168). These measures are therefore often referred to as "gray area" measures, suggesting that they may not always be clearly inconsistent with international rules (Jackson 2000: 71), and that their consistency with GATT rules was in doubt. Theoretically, there had been attempts to place VERs under GATT Article XIX (Hindley 1980; Jackson 2000). When there was harm to domestic industry of the importing country, Article XIX allowed Contracting Parties to take safeguard measures temporarily to restrain imports of a particular product and to protect the corresponding domestic industry for a short period of time. The remedy permitted the country to suspend obligations under the GATT if these have led to injury to the domestic industry, which could include obligations under Article XI as well, and this would permit import quotas to be used. The conceptual problem

[4] The Report of the Working Party on Cuban Textiles, Paragraph 3 reads thus: "The Working Party gave careful consideration to the statements submitted by the Cuban and United States representatives. It considered that before examining the applicability of any provision of the General Agreement on the Cuban case, it had to draw conclusion as to the facts of the situation and causes of the difficulties pointed out by the Cuban Delegation. The Chairman asked the members of the Working Party other than the United States and Cuban representatives to attempt to draw conclusions on those questions on the basis of a questionnaire drawn up by him in consultation with the two delegations principally concerned. However, these members expressed the feeling that the evidence presented by the Cuban and United States Delegations was, in part, conflicting, that it would be necessary to elucidate important points of fact in the light of adequate information, and that the matter under consideration presented certain technical aspects in which these members were not versed. In consequence, they considered that, in spite of all the information supplied, they were unable to reach a definitive conclusion" (GATT/CP.3/82, 1949: 1).

underlying Article XIX was that it allowed the importing country to suspend obligations and says nothing about the exporting country. As noted by the Director-General of Safeguards[5]

> It may be argued that this is a very legalistic way of looking at the matter and that 'voluntary export restraints' are not, in fact, export restrictions but import restrictions which are administered by the exporting country (GATT Analytical Index 1994: 532).

In a GATT Panel Report on *EEC-Restrictions on Import of Apples from Chile* (L/5047, 1980), a suspension by the EEC of import of apples from Chile, after arrangements were reached with four other Southern Hemisphere suppliers[6] for the restraint of their exports of apples to the EEC, was examined and rejected. The Panel had differentiated the suspension from the said export restraint arrangements on the parameters of transparency, administration of restrictions and scope for voluntariness and negotiation (GATT Analytical Index 1994: 532-534). In the earlier decision in *Cuban Textile Crisis* case, the possibility of using GATT dispute settlement proceedings to enforce agreements between the Contracting Parties providing for 'voluntary export restraints', the decision of the CONTRACTING PARTIES provided that

> The determination of rights and obligations between governments arising under a bilateral agreement is not a matter within the competence of the CONTACTING PARTIES... It is, however, within the competence of the CONTRACTING PARTIES to determine whether action under such a bilateral agreement would or would not conflict with the provisions of the General Agreement (GATT Analytical Index 1994: 532-534)

It could be interpreted as recognizing the legality of bilateral trade arrangements even after multilateral rules come to exist. In fact, it is estimated that when WTO came into existence in 1995, there were over 200 bilateral and plurilateral arrangements restraining exports of products ranging from agricultural products, simple merchandise to sophisticated manufactures (ITC 1999:135). Also a reasonable classification between those agreements consistent and those conflicting with GATT

[5] This note by the Director General on Safeguards was attached to the 1984 Report on Safeguards by the Chairman of the GATT Council to the Fortieth Session of the Contracting Parties (GATT Analytical Index 1994: 532).

[6] Argentina, Australia, New Zealand and South Africa were these countries (GATT L/5047, 1980).

rules could be interpreted from the decision (GATT/CP.3/82, 1949). For example, the restraint arrangements to be in conformity with the General Agreement generally had to be justified under a particular exemption to Article XI and administered in accordance with the provisions relating to the non-discriminatory administration of quantitative restrictions contained in Article XIII (GATT Analytical Index 1994: 532). So also, the difficulty in placing the VERs under any of the GATT provisions squarely reflected in the attempts to enforce their phase-out (Negotiating Group on Safeguards 1987).

It was considered that 'VERs were often forced upon the weaker members of the GATT... there was no provision in the General Agreement that provided a legal basis for discriminatory restraints, even when they were supported by an agreement of a voluntary nature' (GATT Analytical Index: 532; GATT C/M/124, 1978). But as a means for practical conveniences for the importing countries in dealing with the pressures on their domestic markets and also, for the exporting countries with advantages over the pre-existing situation or an Article XIX action (GATT MTN.GNG/NG9/W/6, 1987), VERs had served significant objectives.

II.3. Towards a Multilateral Solution

The legacy of Voluntary Export Restraints continued along with the various GATT restrictions to regulate the volume of imports in Europe as well. The balance of payments restrictions (GATT Article XII) and non-application clause against Japan (GATT Article XXXV) were the favourites for most countries. France had undertaken some import liberalization measures by expanding the list of products under import restrictions but expressly keeping out the entire range of textile and clothing products (GATT L/1164, 1960: Annex C). The products from Hong Kong were excluded from the domestic market and other French overseas territories. One of the earliest examples of cut back in existing trade levels was under the action of French colonies in West Africa which had imposed quotas in 1958 on imports from Hong Kong (Bagchi 2001: 30). Similarly, the German liberalization efforts excluded cotton textile items from Japan, India and Pakistan while a global quota covered imports from other non-OECD countries. The British informal arrangements[7] with Hong Kong, India and

[7] The industries of the three countries undertook to limit their exports of cotton products for three years beginning 1 February, 1959 for Hong Kong and 1 January, 1960 for India and Pakistan. India had the largest quota for cotton fabrics followed by Hong Kong and a smaller one for Pakistan. There was a

Pakistan cotton industries were administered through export control by Hong Kong and import control by the British government for India and Pakistan (GATT L/1164, 1960: 6). So also, the peculiar trading patterns of Western European Countries[8] led the cotton trade associations of eight countries to conclude a private agreement at Noordwijk in the Netherlands. Though concluded as a private agreement, it was to be monitored and enforced by the respective governments with provision to apply specific restraints on the imports of textiles from China, Hong Kong, India, Japan and Pakistan.[9] This agreement was illustrative of the alliance between domestic industries and governments of industrial countries in the evasion of GATT obligations (Bagchi 2001: 31).

Meanwhile, the Japanese VER on cotton textiles did not end American industry's quest for protection (McClenahan 1991: 183). Especially after 1958, their concern shifted to other unrestricted sources of low wage competition, notably Hong Kong and Pakistan. The high market demand for textile in US fuelled by the restrictions on Japan was made good by Hong Kong which increased its imports rapidly.[10] This being a recurrent feature of managed trade under textile arrangements, US were forced to negotiate for orderly marketing of Hong Kong's export expansion. So also the subsidized cotton exports of US returning as textile and clothing imports placed the domestic industries at a disadvantage, and led to consideration of a penal fee on the imports of cotton textiles manufactured from subsidized American cotton (Bagchi 2001; ITCB 2000). The penal fee action led to a wide rift in the US- Hong Kong interest and ongoing negotiations. It was felt that the failure to conclude a VER

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separate quota for made up goods from Hong Kong, while the re-exports and hand-woven fabrics from India and Pakistan were exempted from the quota. The agreed levels of quota were more than the highest level reached in trade until that time (Bagchi 2001).

[8] The bulk of fabric imported by the Western European countries was grey cloth which was processed for domestic consumption and re-export to their overseas colonies. When the re-exports came under threat of direct competition from Asian suppliers, the possibility of European countries re-exporting grey cloth to each other after processing cropped up. Hence the need to stop intra-Europe trade in imported processed fabrics so as not to undermine the existing restrictions was felt (ITCB 2000).

[9] The agreement mainly prohibited the export by European countries of Asian grey fabrics to each other for domestic consumption after reprocessing and was mainly applicable to fabrics imported free of duty on temporary admission basis.

[10] Between 1956 and 1960 the cotton textile imports from Hong Kong increased from 7 million dollars to 63.5 million dollars. Overall cotton textile imports increased from 154.3 million dollars to 248.3 million dollars during this period (McClenahan 1991: 184).

with Hong Kong perhaps led the US to drop the bilateral overtures and to seek a multilateral solution in the GATT (Bagchi 2001: 33).

There was mounting pressure on US for a shift in its general trade policy by putting an end to the 1956 Adjustment Act which permitted import quotas to be fixed.[11] It was difficult to reconcile the domestic pressure by textile lobbies for additional restrictions on textile imports with the requirement to remove the export restraints and liberalize trade in an attempt to gain international credibility. In response, the US orchestrated the creation of the *Short- Term Arrangement Regarding International Trade in Cotton Textiles* (hereinafter STA), which presented as a formal means of striking a textile deal with the exporting countries, which legitimized the restrictive actions and helped to restore the image of US as a bastion of free trade[12] (Shahin 2005: 392). The issue of textiles was brought to GATT by US in the Fifteenth Session of GATT Contracting Parties for creating an international sector (Cortes 1997: 51). This was seen to be intended avoid the open violation of GATT rules and achieving liberalization of other developed country markets alongside (Cortes 1997: 50).

In 1959, the US Undersecretary of State raised the question of export of manufactures from countries with low wages. He said that

> sharp increases in imports, over a brief period of time and in a narrow range of commodities can have serious economic, political and social repercussions in importing countries. The problem is to find the means to ameliorate the adverse effects of an abrupt invasion of established markets while continuing to provide steadily enlarged opportunities for trade (GATT Spec(59)222, 1959 and GATT L/1164, 1960; Bagchi 2001: 33-34).

Thus the problem of disruption of markets caused by sudden influx of imports was brought in at the multilateral forum. It brought out in the course of preliminary discussions that the apprehension that such situations might arise had led some countries to maintain or impose restrictions against particular imports from particular sources and suggested that "solutions can be best found through GATT since bilateral

[11] On one side there were steps taken by US to remove quotas on harsh/ rough cotton imposed under Agricultural Adjustment Act, 1956 (GATT L/ 792, 1958).

[12] Such an interim arrangement helped to reduce domestic pressure on Kennedy administration and was seen as a favour for textile industry's support during election campaign.

arrangements cannot provide complete answers to these problems" (Bagchi 2001: 34). Since there was no consensus on the extent and magnitude of the problem,[13] it called for a factual determination which was subsequently undertaken by GATT Secretariat.

In sum there was a huge wave of exports mainly from certain Asian-African countries. The developed countries specifically the US and EU could not withstand such huge imports and the surge in imports affected the US and EU markets. Inorder to meet this situation, the concept of market disruption was negotiated in the late 1950s. In this way, the foundation for a multilateral determination of textile problem was firmly laid.

II.4. Market Disruption and GATT

'Market Disruption' was regarded as the basis to control and regulate textiles as an independent sector (Cortes 1997: 51), thereby circumventing the GATT disciplines. The situation developed on account of 'sharp increases in imports over a brief period of time and in a narrow range of commodities' was mainly traced to export of manufactures from countries with low wages. The issue of disruption came to discussion at a time when the general trend was towards freeing of international trade from discriminations and restrictions. Therefore a factual assessment of the magnitude of the problem was called for. Information as to what kind of market disruption was experienced and if any specific measures to deal with such situation; whether any of the export of individual country members were subject to restrictive measures on grounds of market disruption and if action had to be taken to avoid such development was sought (GATT L/1535, 1961). It, thus, included an examination of the export and import positions of each country and assessment of the level of restrictions imposed, if any. However, the study undertaken by GATT could not pinpoint the incidence of market disruption as faced by the countries and the restrictions imposed on account of it, even after circulating a questionnaire requesting relevant information from Contracting Parties. One reason that was pointed out was that since many countries were already applying import restrictions under Articles XII

[13] India viewed the move as an attempt being made to justify these restrictions on the ground that wages in underdeveloped countries are low. According to Indian trade minister "if this argument is accepted as valid... then there is no place in the GATT for underdeveloped countries. If low cost producer is to be discriminated against merely because his cost is lower, then we might well write off the possibility of international cooperation in matters of trade." (GATT Spec(59)261, 1959). Pakistan felt it was misleading to consider the question of low wages in isolation. It pointed out that low wages did not necessarily mean that the cost of production was low (Bagchi 2001: 34).

and XXXV of GATT which made it difficult to separate the situations involving disruption from the other (GATT L/1164, 1960). Hence there remained the situation of no reliable evidence on market disruption.

Subsequently, a GATT Working Party was established to consider the problems described in the report (GATT L/1164, 1960) and to suggest multilaterally acceptable solutions consistent with the principles and objectives of the General Agreement. The CONTRACTING PARTIES recognized the Working Party's conclusion that situations occurred or threatened to occur that could be described as market disruption which normally presented a combination of elements as-

(a) A sharp and substantial increase or potential increase[14] of imports of particular products from particular sources;

(b) Products offered at prices which are substantially below[15] those prevailing for similar goods of comparable quality in the market of the importing country;

(c) Serious damage to the domestic producers or threat[16] thereof;

(d) The price differential referred to above do not arise from governmental intervention in the fixing or formation of prices or from dumping practices (GATT L/1374, 1960).

However, it was viewed that some situations presented all or some of these elements different from case to case, and sometimes there may be other elements than those listed (GATT W.17/19, 1960). Thus the attempted definition of market

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[14] The inclusion of 'potential increase in imports' was a major tool to initiate unreasonable and discriminatory restrictive measures. Thus the mere production capacity of developing country exporters would instill the fear of disruption of developed country markets due to the likelihood of a surge in imports from these countries, and thus likely to bring in market disruption (Cortes 1997). It could be considered as a developed country strategy to restrain the industrial development of the developing countries.

[15] Disruption was on the one hand a price corrective tool and an essential means for normalization of competition. The problem was considered to arise from the probability of low cost imports from developing countries. It was held that whatever be the volume, the low cost imports from developing countries exerted a considerable pull on the prices of the domestic industry and tended to have disruptive effects on the prices- this warranting the inclusion of a comparable product standard (GATT L/1535, 1960). However, the analysis of the effects of differences in costs of production upon the price and volume of textiles and clothing goods entering international trade was not possible, this was because the data on production costs could only be obtained for fairly broad sectors of the industry, while cases of market disruption generally related to quite specific commodities (GATT L/1374, 1960).

[16] According to this criterion, quantitative restrictions in subsequent arrangements could be applied to those as yet unlimited exports even when there was no real harm caused, either because a risk existed of generating market disruption (Cortes 1997: 55). It thus permitted restrictive actions without evidence of real disruption. The reason given by developed country importers was that because of the special characteristics of the textiles and clothing industry, the situation in cotton textile market constituted a special problem which had to be treated separately (GATT L/1535, 1961).

disruption was not exhaustive. So also, the problem of disruption was recognized without any evidence of the kind of market disruption faced by the countries and without distinguishing the problem of disruption as different from other kinds of competition as to justify discriminatory measures (Bagchi 2001: 33-37).

More importantly, the adequacy of the available GATT provision to safeguard against situations of "market disruption" was not determined while considering the problem (GATT L/1374, 1960). It was estimated that at that point of time the Contracting Parties were dealing with the problem outside the framework of the General Agreement or in contravention of its provisions, and sometimes by taking measures to limit or control the export giving rise to the situation (GATT W.17/19, 1960). These measures often taken unilaterally or through bilateral arrangements in some cases, tended to cause difficulties in other markets and create problems for other contracting parties. The view was that due to the political and psychological elements[17] in the problem rendered it doubtful if the available safeguards be sufficient to lead the contracting parties to abandon the exceptional methods applied. However, there was not any elaboration of the political and psychological elements involved (GATT SR.17/11, 1960). The solution devised by the Contracting Parties[18] while recognizing the problem involved establishing procedures which could facilitate consultation between all contracting parties concerned with regard to such situation (GATT L/1374, 1960: Annex II, paragraph (f)). The mechanism for multilateral consultation shall be through the hitherto Working Party on Market Disruption as

[17] The Working Party on Avoidance of Market Disruption itself held that 'there were political and psychological elements in the problem' (GATT L/1374, 1960). While commenting on a point made by Chile, the Executive Secretary of the Working Party also pointed out the possibility of serious political and psychological reactions if the GATT CONTRACTING PARTIES arrive at a solution in at least another year (GATT SR.17/11, 1960).

[18] This was done in the Seventeenth Session of GATT CONTRACTING PARTIES and had followed the report of the Working Party on Avoidance of Market Disruption (GATT L/1374, 1960) which had suggested that the CONTRACTING PARTIES should recognize the existence of the problem and should establish procedures to facilitate consultations on these problems, which could be bilateral or a broader framework of consultation between all parties concerned. The Working Party concluded that in the procedural arrangements, the Contracting Parties should take into account certain considerations: (i) they should reflect a recognition of the problem called 'market disruption;' (ii) that contracting parties should recognize the advantage of multilateral consultations in arriving at constructive solutions; (iii) the procedures should not be such as likely to lead to a restriction, but an orderly expansion of international trade and (iv) that the rights and obligations under the GATT should not be prejudiced.

maintained in being as a Permanent Committee of the CONTRACTING PARTIES.[19] Without pre-empting the scope for bilateral negotiation in dealing with the problem, it would be advantageous for contracting parties to avail themselves of the facilities for consultation (GATT L/1374, 1960: Paragraph (h):6). The solution provided had to be consistent with the basic aims of the General Agreement and the procedures not to prejudice the rights and obligations of contracting parties including those in regard to consultation (GATT L/1374, 1960).

II.4.1. Market Disruption: Problem or Policy Tool?

The issue of market disruption presented in the discussions and subsequently recognized by the GATT could be seen as a trade policy tool to further restrictive measures outside the existing multilateral framework. As indicated in the individual country positions the low-price imports from countries (especially of East Asian and Eastern European origin) which were substantially below the domestic price, threatened domestic production and sales with decline in employment and orders, leading to a considerable increase in the stocks (GATT L/1164, 1960) indicating serious disruption of markets. So also, there was a sharp rise in the imports of certain categories of textiles to developed markets in US and Western European countries, which in some cases was attributed to the capacity to offer supplies at abnormally low prices (GATT L/1164, 1960). On the whole, a combination of two factors- price and quantity- contributed to the problem. The mechanisms for regulation within GATT, namely the elements of Anti-dumping and Safeguard actions, had to be balanced in addressing the issue. Since the question of disruption expressly excluded instances of dumping,[20] the situation was comparable more to GATT safeguard action (Article XIX) cases. However, disruption clause introduced three fundamental changes in relation to safeguard clause (GATT 1984: 65).

> Firstly, it would not be necessary for allegedly injurious increase in imports to have occurred- a potential increase of imports would be sufficient to constitute market disruption; Secondly, it does not involve non-discriminatory application of safeguard action- particular products from particular sources could be singled out as a source of

[19] Interestingly, the Committee to facilitate consultation between countries affected by market disruption never met subsequently.

[20] The exports were not offered at 'a price below what is charged in the home market in the ordinary course of trade' (Hoekman and Kostecki 2001: 317) precluding the question of dumping.

problem; Thirdly, the existence of price differences between particular imports and goods of comparable quality sold on the domestic market could be use din determining the need for additional restrictions (GATT 1984: 65).

Further, as originally conceived there was no causal relationship between increased imports and damage to the domestic industry as in GATT safeguards- the separate existence of damage together with the increase or potential increase of imports could lead to a determination of market disruption (Bagchi 2001: 36) which would not be a justifiable standard for restrictive action.

The determination of the amount of disruption or damage to trigger action under the market disruption clause was not provided for. Without a conclusive definition of market disruption[21] it became difficult to determine the threshold of disruption. It could be contrasted with the standard of "serious injury" under Article XIX. As the "threat of serious injury" in a safeguard action, the "threat of market disruption" was also ambiguous;[22] the 'threat' element trying to predict the future, even greater discretion is granted by this concept to justify restrictive action (Jackson 1997: 190). The concept of disruption itself involved an element of potential increase in imports, and to provide for a 'threat of disruption' for import restrictions, could be seen to permit "probability upon probability" to operate in protecting the developing country markets even from the most remote possibility of competition (Shahin 2005). Further the procedural remedy for disruption prescribed procedures to facilitate consultation between all contracting parties concerned with regard to the situation (GATT W.17/19, 1960; GATT L/1374, 1960). This was formalized in the subsequent textile arrangements that emerged on the 'spurious concept' of market disruption (Bagchi 2001), thus warranting quantitative restriction and their discriminatory administration without providing a case for violation of GATT provisions.

To consider that the whole problem of disruption arose from the low wage export of manufactures,[23] it could be seen that this protection on account of market

[21] The definition provided for certain factors or combination of factors to constitute disruption. But it is also possible to include any other element as likely to cause disruption.

[22] In the STA a threat of disruption of domestic market could be sufficient to request any participating country to restrain exports (STA 1961: Article 1).

[23] The ILO-GATT Study on social and commercial factors underlying the problem of market disruption completed subsequently concluded that 'the problems in textile industries in advanced countries have many causes and cannot be attributed to alleged unfairness of competition from low-wage

disruption defies the fundamental theory of comparative cost and competition which sustained international trade (Cline 1987).[24] But it was argued that considering greater social, economic and political repercussion of disruption, this policy was devised to allow the developed country industries some adjustment time for shifting of resources to more productive sectors. Though solutions arrived at by way of bilateral approach was important, it was difficult to find solutions without there being something on a multilateral basis (GATT L/1535, 1961: Japan). In short, the concept of market disruption was devised as a policy tool to legitimize and accommodate the export restraints without expressly circumventing the GATT provisions.

II.5. Short-Term Arrangement Regarding International Trade in Textiles

With easier option to bypass GATT rules, in one way the recognition of disruption became 'the foundation on which subsequent edifices of textile arrangements were built' (Bagchi 2001: 36).[25] The task of facilitating consultation between countries affected by disruption entrusted to a Permanent Committee was never fulfilled. Instead, disruption was devised to negotiate a special safeguard clause relating to a single sector- cotton textile (GATT Analytical Index 1995: 535). Again, the process towards an international agreement to avoid disruption started with US.[26]

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underdeveloped countries' and that the wages of textile workers in newly industrializing countries are not low in comparison with other incomes in those countries' (Bagchi 2001: 37).

[24] One major allegation, especially from India was that there was little distinction between normal competition and what might be called real market disruption (GATT SR/17.11, 1960).

[25] In the negotiations followed, US had particularly stressed that 'the participants on the basis of their GATT rights should not challenge the proposed restrictive measures' (Bagchi 2001: 40). A comparative study of the different textiles and clothing arrangements is annexed to this Chapter as *Annex II: Textiles and Clothing Arrangements: Comparative Study* (at page 47)

[26] Fulfilling the election promise, President Kennedy had proposed a seven point programme of assistance to textile industry. This included a call for a conference of principal textile exporting and importing countries to "seek an international understanding which will provide a basis for trade that will avoid disruption of established industries" (McClenahan 1991: 186, Shahin 2005: 392, ITCB 2000: 2). Following a request by US the GATT Council of Representatives convened a meeting of high level officials of countries substantially interested in the importation and exportation of cotton textile products (GATT C/M/7, 1961). The GATT Council decision agreement that decisions could be made by the organ in an attempt to find solutions 'of a constructive and expansive character' was challenged by some contracting parties who challenged the Council's capacity to convene such a meeting with such decisive powers. Initially, Article XXV.1 and then Article XXII of GATT, was described as the legal basis to justify the creation of the council and to establish its functions (Cortes 1997: 51-52). This shift made the reliance in accordance with the consultation mechanism proposed by the Working Party Report on Market Disruption (GATT L/1374, 1960).

It was proposed that considering that the special characteristics of the textile industry, the situation in cotton textile market constituted a problem which could be considered separately. The pursuit was to meet the immediate problem through an international action with the objectives (a) to significantly increase access to markets where imports are at present subject to restrictions; (b) to maintain orderly access to markets where restrictions are not at present maintained and (c) to secure from the exporting countries a measure of restraint in their export policy so as to avoid disruptive effects in export markets (GATT L/1535, 1961). The attempt included laying down general guiding principles to be followed, establishing international machinery for keeping the situation under review and moving through co-operative action towards the achievement of these purposes (GATT L/1535, 1961).

The Agreement arrived at provided for a short term arrangement for 12 months period beginning from October 1, 1962 covering 64 categories of cotton textile products.[27] Based on the instrument of market disruption, it enabled the participating countries to request a restraint in imports from particular sources at particular levels when they caused or threatened to cause market disruption. On failure to reach agreement within 30 days, the requesting country could decline to accept imports beyond the specified levels. Restraints could be applied in order to prevent circumvention or frustration of STA by non-participants or by means like trans-shipment or substitution of directly competitive textiles. A Provisional Cotton Textile Committee was created to undertake the work towards as long term solution to the problems in cotton textiles.

II.5.1. Salient Features of STA

The salient features of STA were as under:

(i) Regulation of trade through voluntary export restraint as the principal mechanism;

(ii) Provision to impose quotas on imports from particular countries, especially through provisional measures- thus legitimizing quantitative restrictions in textile trade;

[27] Nineteen countries accepted STA: Australia, Austria, Belgium, Canada, Denmark, France, India, Italy, Japan, Luxembourg, the Netherlands, Norway, Pakistan, Portugal, Spain, Sweden, United Kingdom (including Hong Kong), United States and Germany.

(iii) Scope for negotiation of mutually acceptable bilateral arrangements on other terms;

(iv) Provision to use restrictive procedures sparingly and only to avoid disruption of domestic industry resulting from an abnormal increase in imports;

(v) Provision that the participating countries maintaining quantitative restrictions to increase access to markets significantly.

II.5.2. STA and GATT

The STA was described as 'the beginning of a series of anti-GATT agreements for textiles' (Wolf 2002: 340). The relationship and consistency of STA with GATT may be ascertained from the statement of the Chairman of the GATT Council (GATT L/1535, 1961)

> Nothing in the proposed Arrangement derogated from the rights of contracting parties under GATT. On the other hand, it was clearly within the rights of individual contracting parties to make a mutually acceptable arrangement involving some restraint on the extent to which GATT obligations were applied. This, of course, in no way changed basic rights and obligations under GATT.

On one hand, STA averted the threat of unilateral action by the countries and also by providing a formula for bilateral approach within a multilateral framework, provided maximum flexibility with minimum regulation of trade. The political situation at the time, with the Kennedy Round of Multilateral Trade Negotiations forthcoming, motivated the participants to accommodate US interests in textiles in seeking beneficial liberalization in other commodities (Bagchi 2001: 41). But the effect was that the legalization of VERs and institutionalization of protectionism emerged in the form of the Short Term Arrangement on cotton textiles (Khanna 1991: 23).

II.6. Long-Term Arrangement (LTA)

Even before STA was accepted by all the participant states, US undertook negotiations towards a long term solution by an extension of STA framework under a Long-Term Arrangement Regarding International Trade in Textiles (LTA). The

proposals by US,[28] Japan[29] and European Economic Community[30] indicated that a consensus on some issues like objectives of the Arrangement, measures for liberalization by countries restraining imports, provision relating to action taken to avoid market disruption, bilateral arrangement and the role of Cotton Textile Committee, etc. were not forthcoming (GATT L/1659, 1961). The issues were referred to a Technical Sub-Committee which arrived at the text of LTA striking a compromise between the different interests. Finally, LTA was agreed on October 1, 1962 with 19 participants and for duration of 5 years.[31]

LTA crystallized the objectives already set by the STA (GATT L/1659, 1961) to take cooperative and constructive action with a view to the development of world trade; to facilitate economic expansion and promote the development of Least Developed Countries (LDCs); to deal with situation which cause or threaten to cause disruption of market for cotton textiles; and to provide for development of textile trade in a reasonable and orderly manner so as to avoid disruptive effects in individual markets and individual lines of production in both exporting and importing countries

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[28] US demanded an "orderly" expansion of international trade in cotton textiles within the framework of multilateral agreement which avoids disruption. US proposal for LTA classified obligations as between importing and exporting countries- with countries exercising restraints to relax progressively by the end of the agreement and countries not exercising restriction not to impose except as authorized by GATT or by the agreement itself in the former category and the latter category to avoid disruptive effects in import markets by restraining exports on request. A liberalization formula according to a schedule for annual minimum relaxation of QRs and a restriction on disruptive imports at established levels starting at a base year level and increased by percentage increments for each year was proposed. It required 5 year validity for the Arrangement with provision for renewal (GATT L/1592, 1961).

[29] According to Japanese proposal orderly exports had to be achieved by voluntary restraint and in the absence safeguard provision under the Arrangement to be resorted to. Japan stressed on production of evidence of disruption, progressive elimination of all restriction on cotton textile imports in fair and equitable manner, immediate removal of QRs on imports for re-export purposes, provisional action for not more than 60 days, provision for compensation to countries under restriction and a key-country system as to entry into force of LTA, with validity of LTA only for 3 years (GATT L/1596, 1961).

[30] EEC expressed doubt if it was right to proceed with discussion on LTA before knowing the fate of STA. It suggested a progressive increase in cotton textile imports form low cost countries without relying on an end date for elimination of QRs. The UK's position was also to wait and see how the STA worked out in practice (GATT L/1659, 1961).

[31] The States were: Belgium, Canada, Denmark, Egypt, France, India, Israel, Italy, Japan, Luxembourg, the Netherlands, Norway, Pakistan, Portugal, Spain, Sweden, United Kingdom (including Hong Kong), United States and West Germany. Between 1962 and 1973 another 14 states were incorporated (Cortes 1997: 66). As for the non-participants, US held out a threat that 'not reaching an agreement in this sector would mean US will have to close its market on all imports' (Cortes 1997: 67) thereby putting serious questions of loss of markets, trade diversion, invasion of other developing country markets and re-appearance of protectionist systems in the world trade.

(GATT L/1813,1962). The operative part could be divided into (a) liberalization commitments for countries maintaining restrictions on import of cotton textiles and (b) safeguard measures for avoiding disruption where cotton textile products are not subject to restrictions (LTA 1962: Article 2 and 3). The countries maintaining restrictions[32] had to progressively liberalize and undertake to expand access to their markets to increase the quota levels of 1962 by fixed percentage (as provided in Annex A of the LTA 1962; GATT 1984) to be reached by the end of LTA (Article 2). The Arrangement also urged the importing countries to eliminate restrictions on temporary imports for re-export after processing (Bagchi 2001: 45). The safeguard provision under Article 3 of LTA was similar to the STA provision wherein any importing country could request to consult with the particular country or countries with a view to remove or avoid a threat or cause of disruption.

II.6.1.Salient Features of LTA

The main elements marking the attributes of LTA were as follows:

(i) LTA mainly classified between countries already restraining imports and those not restraining its imports.

(ii) LTA provided for a liberalization formula either through levels set for expanding access to markets or bilateral arrangements for countries already restricting imports (Article 2).

(iii) It allowed imports not subjected to restrictions but which causes or threatens to cause disruption in the markets to be restricted at specific levels (Article 3).[33] In situations where Article 3 safeguards were involved, importing countries could take measures necessary to prevent the circumvention of the provision by substitution of directly competitive textiles (LTA 1962: Article 6(b)).

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[32] The countries in the first group were the European countries- the member states of the EC, the Nordic Group (Denmark, Norway and Sweden), Austria and Britain. Britain had a particular problem as it had a relatively open market with imports constituting 40 per cent of the market, the bulk of which came from LDCs. Accordingly, UK made a reservation to the effect that it accepts no obligation to increase access to its market under the provisions of LTA (GATT L/1811, 1962; GATT L/1854, 1962; GATT L/1875, 1962 and GATT COT/W/1, 1962).

[33] The level shall not be lower than the level of actual imports or exports, or as provided for in any bilateral agreement during the 12 month period terminating 3 months preceding the month in which request is made (LTA 1962: Annex B).

(iv) The restriction level to remain in force for the next 12 months has to be increased at least by 5 per cent,[34] which could be avoided in exceptional circumstances (Article 3 and Annex B).

(v) The restrictive mechanism provided for voluntary restraints through request and consultation and, on its failure for imposition of import restrictions.

(vi) It permitted provisional application of restrictions up to 60 days in critical circumstances, and unilateral determination on restrictions when no agreement was reached on consultation within 60 days of request (LTA 1962: Article 3.3).

(vii) The temporary restrictive measures left discretion with importing countries to decide 'critical circumstances' and 'damages difficult to repair' which were not defined (Article 3.2).

(viii) In the imposition of unilateral measures where no agreement was reached, the period for retaining restrictions was not defined. So also, countries could restrict above the specified level, thereby prompting countries to reach at bilaterally acceptable solutions (Article 3.3 and Article 4).

(ix) The Arrangement stressed on the principle of equity while administering restriction remaining on imports and while resorting to measures to avoid disruption where it caused or threatened by more than one country Article 2.4 and Article 3.7).

(x) The standard of disruption was diluted to where restrictions could be required when countries "believe" to be threatened or subjected to disruption. However the requirement for factual statement of reasons and justification for request fell much short of the evidence of 'real' disruption (Article 3).

(xi) The LTA permitted participant states to arrive at mutually acceptable arrangements consistent with its objectives (Article 4).

(xii) Unlike STA, no specific categories of cotton textiles were listed.[35]

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[34] LTA provided that if restrictions remain in force for another 12 months, the level for that period shall not be lower than the previous level increased by 5 per cent. But for restrictions to remain in force for further periods, the level had to be the previous level increased by 5 per cent.

[35] 'Cotton textiles' was defined to include yarns, piece-goods, made-up articles, garments and other textile manufactured products, in which cotton represented more than 50 per cent (by weight) of the fibre content. This in fact was intended to increase the product coverage of LTA substantially (LTA

In the initial year of operation, the safeguard provision under Article 3 with greater scope for unilateral action was put to use extensively.[36] The trend shifted to bilateral arrangements subsequently, which became a preferred trade policy route (Bagchi 2001: 55). The bilateral arrangements were designed to establish required quotas- at aggregate, group and category levels- with flexibility and choice to suit individual country interest. The trend was comparable to the VERs, as export control contained in bilateral agreements offered better prospects of quota utilization than import control in unilateral action (Keough 1971; Bagchi 2001: 55, 71). The period of validity of LTA was extended twice, in 1967 and 1970 for periods of 3 years each.[37]

II.6.2. LTA and GATT

It is considered that the most significant achievement of the LTA was that it 'condoned' discrimination in international trade (Bagchi 2001: 37). As against the GATT rules for elimination of discriminatory quotas, LTA perpetuated a parallel system, but attempted certain disciplines on quantitative restrictions to bring down the protectionist trends. However, it could be seen that export restrictions and grey area measures, still searching a legal foothold within GATT came to be institutionalized under LTA. A multilateral framework with flexible bilateral avenues set the tone. But on the whole LTA was not antagonistic to GATT disciplines. It sought to progressively relax the restrictions inconsistent with the provisions of the GATT on imports of cotton textiles (LTA 1962: Article 2.1). But it permitted quantitative restrictions for avoiding market disruption wit provision to lower the level of restraint in every subsequent year (LTA 1962: Article 3, Annex B). The recognition of the problem by GATT permitted certain legitimacy for operating the quantitative restrictions avoiding the free trade and non-discrimination principles fundamental to

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1962: Article 9). Annex D suggested an illustrative list of groups or sub-groups of the SITC and BTN classifications for applying the definition.

[36] According to the provision to use the safeguard provision sparingly (LTA 1962: Article 3.7), developed countries took restrictive measures against imports from every developing country participant. For instance, US invoked Article 3 to prevent market disruption 115 times in the first year of LTA (Bagchi 2001: 54). So also Canada and EEC were seen to impose restraint on different sources to prevent disruption (Bagchi 2001: 51-54).

[37] The main amendment in the extending Protocols was to last sentence in Article 2, paragraph 3 to read that "it would, however be desirable that the overall increase should be distributed as equally as possible in the annual quotas to be applied over the period of validity of the Agreement, with a change in the percentages of quota access referred to in Annex A (GATT COT/77, 1967; GATT L/3403, 1970; GATT Instrument-124, 1970).

GATT. Further, the Cotton Textile Committee under the LTA was to review the operation of LTA and report to CONTRACTING PARTIES annually (LTA 1962: Article 8 (c)).

LTA operated within the GATT framework in relation to matters for settlement of unresolved disputes between LTA participant countries. LTA provided for reference of differences primarily to the Cotton Textiles Committee which shall discuss the matter and make such comments to the parties as it considers appropriate. Such comments were to carry weight when the matter was subsequently brought before GATT CONTRACTING PARTIES under dispute settlement procedures of Article XXIII (LTA 1962: Article 7.3). One instance of *United Kingdom Import Restrictions on Cotton Textiles* (GATT L/3812, 1973) wherein the matter was referred by Israel to GATT CONTRACTING PARTIES to investigate in accordance with Article XXIII, paragraph 2, concerning the restrictions on imports of cotton textiles maintained by the UK and to report therein. The question was whether Israel should, at that time, be considered to be a low cost, disruptive supplier of cotton textiles in the UK market for the purposes of UK global quota scheme.[38] The possibility of invoking GATT dispute settlement mechanism to determine the rights and obligations under Arrangements arrived at under the auspices of GATT illustrates the linkages between LTA and GATT. As pointed out by the Executive Secretary, 'LTA was not an important exception to the rules of GATT' (GATT SR. 19/3, 1961) and could be regarded as

> a package deal in which, exporting countries agreed to some restrictions being placed on the right of free entry under the GATT to the markets of the industrialized countries, if a so called situation of disruption arose, in relation for the relaxation of the restrictions at present maintained by these countries (GATT SR. 20/7, 1962).

As Cortes (1997: 56) points out, 'it was a question of designing a system which, parallel to the prevailing legality, could restrict this sector to a situation in

[38] UK though a participant in LTA, had a scheme not consistent with LTA mechanism. It had a global quota covering the imports of a number of countries, which was recognized as a special case and settled in a protocol annexed to LTA (GATT L/1811, 1962; GATT L/1854, 1962; GATT L/1875, 1962). Finally, as regarding the dispute referred, in the light of the consultations which took place in the meetings held by the Panel, the parties conducted bilateral discussion and reached a mutually acceptable solution.

which it would possibly go back to applying with certain guarantees, the general rule of international trade.'

II.7. Multifibre Arrangement (MFA)

The regulatory framework under LTA became obsolete shortly with a boom in trade in non-cotton and synthetic fibre products outside the limiting clauses. The reaction was similar to that in the 1950s in relation to cotton and forced the US to demand a wider regulation of textiles.[39] The US bilateral agreements with major textile giants in Asia (GATT L/3668, 1972) induced European countries to support a multilateral solution under the threat of trade diversion to their markets. So also Japan agreed to GATT initiatives after experience of intense political pressures in bilateral handling of the situation (Bagchi 2001: 76-81). The preparatory work for negotiations started with the setting up of a Working Party in 1972 (GATT L/3716, 1972) which studied the economic, technical, social and commercial aspects of textiles in order to reach a new agreement and presented a comprehensive report by the end of the year (GATT L/3797, 1972). Working Party examined the problems in international trade and suggested alternative solution consolidating the views of participants on different aspects (GATT L/3885, 1973). The Working Party was reconstituted into a Negotiating Group on Textiles (GATT COT/M/13, 1973) and by December 1973, it came up with a legal text on the *Arrangement Regarding International Trade in Textiles* or *Multifibre Arrangement* (or MFA as more commonly referred to), with a wider product coverage[40] (GATT TEX.NG/1, 1973). MFA came into effect on January 1, 1974 for a period of 4 years initially and with 44 signatories.[41]

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[39] Initially the negotiations with European and East Asian countries during 1969 were not successful. Subsequently, by threatening to impose textile quotas unilaterally under the 'Trading with the Enemy Act', US reached bilateral agreements to reduce imports in specific categories of man-made fibre products with Japan, Hong Kong, Korea and Chinese Taipei by 1971 (L/3668, 1972).

[40] MFA covered products of cotton, wool, man-made fibres and their blends in categories ranging from tops, yarns, piece-goods, made-up articles, garments and other textile manufactured products, in which all or any of those fibres in combination represent either the chief value of fibres or 50 per cent or more by weight (or 17 per cent or more by weight of wool) of the product (MFA 1974: Article 12.1). Unlike the LTA, the coverage was not identified with reference to SITC or BTN classification. MFA excluded staple fibres and filament yarns of industrial use (MFA 1974: Article 12.2), but other textile manufactured products included products which derived their characteristics from textile component (MFA 1974: Article 12.1) included non-textile products made of fabrics within the regulatory system.

[41] MFA signatories were: Argentina, Australia, Bangladesh, Brazil, Canada, China, Colombia, Costa Rica, Czech Republic, Dominican Republic, the European Community, Egypt, Fiji, Finland, Guatemala, Honduras, Hong Kong, Hungary, India, Indonesia, Jamaica, Japan, Lesotho, Macao,

The Preamble of MFA indicated an "unsatisfactory situation" existing in world trade in textile products characterized by proliferation of restrictive measures, including discriminatory measures inconsistent with GATT, detrimental to countries participating in trade (GATT TEX.NG/1, 1973). Therefore the objectives of MFA included expansion of trade, reduction of trade barriers and liberalization of world trade, at the same time ensuring orderly and equitable development of textile trade and avoidance of disruptive effects in individual markets and individual lines of production in both importing and exporting countries (MFA 1974: Article 1.2). It was regarded that MFA perpetuated the dual objectives of implementing new restraints while at the same time imposing some uniform limits on how severe the restraints could be (Cline 1987: 11). However the developed countries sought to restrict imports from developing countries and Japan, but not from each other by way of 'gentlemen's agreement'[42] not to restrict mutual trade (ITCB 2000: 4). It was viewed as both because of the perceived sources of import pressures and the implicit mutual retaliatory capacity of two large industrial areas (Cline 1987).

A remarkable development under MFA was that it established clearer criteria for the key element of market disruption. MFA established a requirement of causal link between the disrupting imports and existence of serious damage to the domestic industry as against the earlier requirement of simultaneous existence of an increase in low-priced imports and serious damage to the domestic industry, without linking the two (Bagchi 2001: 81).[43] There must be an actual threat of substantial increase in imports or an imminent increase which is measurable and not determined by allegation, conjecture or mere possibility (MFA 1974: Annex A, I). So also an account of the interests of exporting country by considering factors like its stage of development, the importance of textile sector to the economy, balance of trade in textiles, etc. had to be taken before a request for consultation on imposing restrictions on account of market disruption.

Malaysia, Mexico, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Republic of Korea, Romania, Singapore, Slovak Republic, Sri Lanka, Switzerland, Thailand, Turkey, United States and Uruguay (GATT COM.TEX/75/Rev.1, 1993).

[42] In one instance in the late 1970s of a sudden rise in US imports of certain man-made fibre products to the EC that would have been qualified for treatment under market disruption, the EC decided to deal with it by anti-dumping measures instead (Bagchi 2001: 78-79).

[43] The existence of damage had to be determined on the basis of an examination of factors like turnover, market share, profits, export performance, employment, volume of disruptive and other imports, production, utilization of capacity, productivity and investment (MFA 1974: Annex A).

The operative provisions of MFA required a notification of all existing unilateral quantitative restrictions, bilateral agreements and other quantitative measures to a Textile Surveillance Body (hereinafter, TSB) and either a termination or justification or modification according to MFA provision within a year of operation of MFA (MFA 1974: Article 2). If any importing country held that its market was disrupted by imports of textile products not subjected to restraint, it could seek to restrict imports on mutual agreement, and on a failure to reach an agreement within 60 days, it could restrict imports at specified levels for a period of one year (Article 3). In cases of serious disruption leading to damage difficult to repair, a mutually acceptable interim agreement or a temporary restraint measure was prescribed (Article 3.6). MFA authorized bilateral agreements on mutually acceptable terms, especially in order to eliminate real risks of market disruption in importing countries and disruption to the textile trade of exporting countries (Article 4.2).

II.7.1. Salient Features of MFA

MFA which prompted the most comprehensive arrangement for trade in textiles had a number of distinguishing features as under:

(i) MFA sought to achieve the broad objectives to terminate all GATT-inconsistent quantitative measures completely and to bring all restrictions subject to the principles and objectives of the Arrangement (Article 1).

(ii) MFA permitted quantitative restrictions on instances of market disruption or under mutually acceptable restraint arrangements (Articles 3 and 4).

(iii) The operative core of MFA itself was the specific limitation in bilateral agreements negotiated under the auspices of MFA with individual supplier countries (Cline 1987; MFA 1974: Article 4) thus legitimizing bilateral restraints inconsistent with GATT provisions.[44]

(iv) The provision for restraint on account of market disruption was limited in scope- it permitted only two remedies, i.e., either restrictions on mutual agreement or unilateral restraint for 12 months where there was no agreement (Article 3).

[44] MFA permitted more liberal provisions in bilateral agreements on overall terms, including base levels and quota growth rate (MFA 1974: Article 4.3).

(v) MFA incorporated liberalization measures under the provision for identification of 6 per cent annual growth as a target for imports under quotas. But lower positive growth rate was provided for in exceptional circumstances (Annex B).

(vi) MFA allowed substantial flexibilities for conduct of trade to enable imports to respond to changing market situation. For example, a small part of the quota could be transferred ("swing") to another without exceeding the aggregate of quota levels; and a part of unused quotas of previous year could be carried over ("carry forward").

(vii) An institutional structure within the GATT framework was created through Textiles Committee as a management body of MFA (Article 10).[45]

(viii) A multilateral surveillance of implementation of MFA was provided under Textile Surveillance Body (TSB). It was notified of all restrictive measures and considered the justification of measures in terms of the relevant provisions. It performed dispute settlement functions and provided annual review of all restrictions to the Textiles Committee and was to ensure the impartial and equitable implementation of the Agreement over the 4 year period (Article 11).

(ix) A special attention to the needs of developing countries to provide more favourable terms as considered appropriate and consistent with equity obligations was made.

(x) MFA stressed overall on bilateral consultation and negotiation aimed at arriving at mutually acceptable solutions. The effective operation of the Arrangement also depended on exchange of information between participating countries.

II.7.2. Impact of MFA Operation

Thus, the MFA was arrived at to allow for a comprehensive and sophisticated framework for protectionism vis-à-vis the trade in textiles (Khanna 1991: 24). It was supplemented by a host of other negotiated and unilateral arrangements to restrict

[45] Textile Committee had powers to interpret MFA provisions, prepare annual review of MFA operations, analyze current state of world production and trade in textile products, collect statistical data and other information from participants, and consider questions of extension and renewal of MFA.

imports- which manifested as bilateral accords- thereby permitting political persuasion of powerful developing countries on a one to one basis (Underhill 1998: 162). The threat of unilateral measures and GATT Article XIX actions added to the constraints on the four year period of operation of MFA. Though the US lead in concluding the agreement was prominent, by the end of first phase of MFA (1974-77), European initiatives became more prominent while negotiating the extension of MFA.[46] The EU pressure for stabilization of imports by fixing internal ceilings on all imports of sensitive products from non-industrialized countries [47] (GATT COM.TEX/10, 1978) through bilateral negotiation of MFA framework which provide "the possibility of jointly agreed reasonable departures from particular elements in particular cases" (GATT COM.TEX/10, 1978) - the departures were to be temporary and the participants were urged to return to the framework of MFA within the shortest time possible (Bagchi 2001: 117). The Protocol was seen as 'one of the most successful lobbying actions ever carried out by the protectionist lobby as a whole and the textile industry in particular' (UNCTAD document TD/B/C.2/192, 1978) and MFA itself being a departure from the General Agreement; the renewed MFA was again "a departure from the departure" (UNCTAD document TD/B/C.2/192, 1978). In effect MFA II (1978-81) was more restrictive than MFA I.[48]

The increased use of restrictive provisions and policies under MFA like 'reasonable departures,' increasing categories of sensitive products for protection, unfavourable low thresholds under 'basket exist scheme,' [49] lower growth rates detrimental to LDCs etc. under MFA II led developing countries to coordinate and

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[46] During the first phase of MFA, US was quick to negotiate and implement bilateral agreements which locked import growth across a wide range of product groups into the 6 per cent threshold. EC which had not devised a common textile policy experienced substantial increase in imports during the period (ITCB 2000: 4; Underhill 1998: 162-177).

[47] EC set internal global ceilings for eight ultra-sensitive products which were to be allowed a growth rate of only 1- 2 per cent per annum. Also, in almost every bilateral agreement negotiated by the EEC under MFA II, the reasonable departure clause was used to cut growth rates (Khanna 1991: 27).

[48] The 'reasonable departures clause' limited the expansion of LDC imports into developed countries. So also the EEC policy devise of 'basket extractor mechanism' based on the concept of cumulative market disruption wherein non- restrained imports reach a certain percentage of EEC imports in the preceding year from all sources in that category, a trigger mechanism goes off. The EEC could make consultation calls and fix a quota even for a non-quota category (Khanna 1991: 27-28; Bagchi 2001: 121)

[49] The reasonable departure and basket exit mechanism were new policy tools devised to intensify the restrictive application of MFA. Thus the possibility for furthering the restrictive standards is illustrated.

organize themselves in the preparation of a draft Protocol (GATT COM.TEX/W/120, 1981). After extensive negotiations, the Textiles Committee adopted Second Protocol in December 1981 (GATT COM.TEX/W/124, 1981) bringing the MFA III (1982-86) into existence for another four and a half years. It managed to secure cut backs from dominant suppliers in quota levels, reductions in growth and flexibility for sensitive products and an 'anti-surge provision.'[50] The course of MFA III witnessed attempts at the multilateral level to eliminate discrimination and protectionism against developing country exports, with suggestions for full application of GATT provisions to the sector with a movement towards liberalization. Even the next renewal of MFA (1986-91) in the background of a new round of multilateral trade negotiation emphasized on the phase out of MFA constraints over an agreed time period. But the new Protocol expanded product coverage to vegetable fibres and silk blends with improvements through the elimination of provision for cut backs in quotas (ITCB 2000: 6).

On the whole, MFA may be regarded as having a significant impact on protection with MFA I and MFA II cutting back import growth when the physical volume of textile imports decelerated from annual growth of 16.1 per cent in 1961-72 to -9.1 per cent in 1972-77 and -2.1 per cent in 1977-81; for apparel the corresponding decline was from 18.3 per cent before the MFA to 2.9 per cent during MFA I and 4.7 per cent during MFA II (Cline 1987: 14). In one way, it is said that 'the MFA was and remains the most spectacular and comprehensive protectionist agreement in existence and became accepted practice within the trade regime' (Underhill 1998: 3-4).

II.7.3. MFA and GATT

The relationship between MFA and GATT had remained uncertain and undefined since the beginning of MFA. A comparative analysis of the mechanisms and legal frameworks embodied in both the instruments could throw some light on the matter. The underlying rational of both the Agreements were different- the GATT as a mechanism for promoting trade liberalization and promoting consistent treatment between various goods sectors (Shahin 2005: 398) could not be compared to MFA which aimed at "orderly" expansion of markets as a pretext for "restricting" access to

[50] Anti-surge mechanism was a compromise between liberalization and protectionist demands insisting on quota levels to 1982 and 1980 base years respectively. As a compromise, the EC put forward this mechanism that allowed suspending flexibility in whole or in part to prevent a sharp and substantial increase of imports of highly sensitive products covered by under utilized quota (GATT COM.TEX/26, 1982).

developed country markets. Often, critics recognized MFA as antithetical to the GATT's core principle since it permitted import restrictions based on 'market disruption,' a standard much lower than the "serious injury" criteria under GATT Article XIX (Shahin 2005: 398). However the origin of MFA is owed to GATT- it is described a san agreement arrived at under the auspices of GATT (Cline 1987; Cortes 1997; Underhill 1998). The adoption of Working Party report on market disruption (GATT L/1374, 1960) and the Report of the Negotiating Group on Textiles (GATT L/3797, 1972) prescribing multilateral solutions like MFA were significant. But the argument that 'it was "adopted" not "approved" by the GATT and remained a separate agreement unendorsed by GATT and negotiated by some GATT members' (Bagchi 2001: 100) was prominent.

The trade analysts regard that the association between GATT and MFA may be determined on an institutional basis as well as on an obligations basis (Bagchi 2001). The highest body of MFA called the Textiles Committee was established within the framework of GATT; it was to report to GATT Council annually and to receive the review of restrictions by the TSB (MFA 1974: Article 10). So also, the MFA was 'serviced by the GATT Secretariat' (Bagchi 2001: 101) which provided administrative and secretarial support. It was GATT's Director General who was traditionally elected Chairman of the Textiles Committee and who functioned as the repository of the Arrangement (MFA: Article 13; Bagchi 2001: 101). On the rights and obligations level, the linkages were all the more uncertain. The Preamble of MFA laid down the principle of 'full regard to the principles and objectives of GATT' (GATT TEX.NG/1, 1973). MFA also specifically provided that the provisions of the Arrangement shall not affect the rights and obligations of the participating countries under the GATT (MFA 1974: Article 1.6). It was contradicted with another provision that the participating countries shall refrain from taking additional trade measures which may have the effect of nullifying the objectives of the Arrangement (MFA 1974: Article 9.1). [51] Dispute settlement is another area of reference for the interpretation of relationship between the two treaties, wherein the problems between the parties with reference to measures or arrangements under MFA which continue in

[51] It permitted that when seriously affected by an additional trade measure a party can request the country applying such measure to consult with a view to remedying the situation (MFA 1974: Article 9.2) and if not refer the matter to TSB for suitable recommendation. The apparent conflict had been the object of many arguments for the problems of interpretation it poses in relation with Article 1.6 (Cortes 1997)

spite of TSB recommendation may be referred to Textiles Committee or before the GATT Council through normal GATT procedures and, specifies the instances of reference under the procedures of Article XXIII of the GATT (MFA 1974: Articles 11.9 and 11.10). In short, MFA did not envisage a system totally outside the GATT structure.

II.8. Conclusion

This chapter attempted to trace the history of regulatory protectionism in textiles from the 1930s till 1980s when a new round Multilateral Trade Negotiations attempting liberalization of textiles and clothing trade was launched. Till then the threat of GATT induced restrictions, unilateral actions and bilaterally arrived at solutions had created a complex web of restrictions for textile traders especially from low income countries of Asia. The ambiguous trade policy measure called 'avoidance of market disruption' devised to meet the peculiarities of the sector, perpetuated unjust and discriminatory trade. Relying on this yet unascertained standard, the arrangements devised on a short term basis provided adjustment time to the developed country industries to relocate their resources. Ironically, it also professed to remove the GATT inconsistent restrictions, bring all the existing restrictive measures in conformity with the principles of the textile arrangement and to progressively liberalize the trade in this sector. But the so called 'temporary adjustment measures' remained operative for almost 35 years until a systematic phase out was finally arrived at. The impact of the Arrangement on the interest and trade patterns of developing countries cannot be overlooked, particularly with the continuing uncertainty as to the scope and extent of the multilateral framework agreements.

In short, the "World Textile Arrangement" (Taake and Weiss 1974: 627) had developed a world-wide commodity type agreement for a specific category of manufactured products (Wolf 1987: 252) with an overall plan on one hand "to deal with situations causing or threatening to cause market disruption" and on the other "to progressively achieve the reduction of trade barriers and liberalization of world trade in these products" (MFA 1974: Preamble). It could be said that in spite of the noble concepts contained in it, the legality of textile arrangements under the GATT system remained doubtful. The concept of market disruption was described as the legal key to textile arrangements-but how it was devised under the GATT provisions is not clear to this day. Logically speaking, when GATT CONTRACTING PARTIES recognized

the problem of disruption in textiles and clothing, it could be presumed that any remedial action to avoid or reduce the magnitude of the problem is warranted. Since such an effort within the framework of GATT became functionally impossible due to the inherent nature and constituent principles of GATT itself, any solution arrived at otherwise did not become GATT inconsistent. The legality of MFA- whether it is within the rules or outside- was never discussed or debated in spite of the request to determine the 'juridical status' of the Arrangements. However, the non-recognition of apparent illegality, irrespective of circumvention of specific GATT commitments, allowed its continued application for more than three decades together.

The proliferation of international textile arrangements warrants an examination of the possibilities of such legal and policy mechanisms under the present multilateral framework as well. On one hand, the MFA is described as 'an agreement of political nature, without regard to economic parameters or welfare gains' (Shahin 2005: 401). The case of GATT and textiles is that of 'a legal system mainly obeying the interests of those states which bring about such regulations and which in a given moment had sufficient strength to achieve their proposals without hardly adjusting them' (Cortes 1997: 62). It portrays the proliferation of unfair policies and practices indiscriminately where developed countries do not enjoy comparative advantage and where chances of developing countries capturing global trade were higher. The textile trends illustrate the lack of interest of states to accept GATT norms when it limits its own interests and reproducing a protectionist model instead of initiating adjustment policies in less productive sectors. The political pressure applied by developed trading partners while offering trade bargains- especially by refusing to cut back on textile tariffs unless the Arrangement is continued- coupled with threat of unilateral actions operated throughout the subsistence of MFA. With the GATT/WTO system continuing to exist under more or less similar rules and standards for decades, one cannot overlook the possibility of devising similar means to override the multilateral commitments without violating specific rules. New mechanisms and trade policy measures could be perpetuated by trade giants like EU and US to sustain their interests in respective sectors. So long as political bargain between individual trading partners remain unequal, it cannot be presumed to achieve equitable and fair standards in multilateral trading system.

ANNEX II - TEXTILES AND CLOTHING ARRANGEMENTS: COMPARATIVE STUDY

	SHORT TERM ARRANGEMENT (STA)	LONG TERM ARRANGEMENT (LTA)	MULTIFIBRE ARRANGEMENT (MFA I-IV)
Duration	1961-62; One year	1962-74; 12 years	1974-94; almost 20 years (with renewals and extensions)
Number of Participants	19 countries	19 countries initially, 14 more joined subsequently	44 countries initially
Product Categories	64 categories of cotton textile products	No specific categories listed; only a suggestion for an illustrative list of groups or sub-groups from SITC and BTN classification	No specific categories- wider coverage with all cotton and man-made fibre products included
Standard of Disruption	Restrictions when imports 'caused' or 'threatened' to cause market disruption. The existence of such situations decided by importing country alone	Restrictions when countries believed or threatened to be subject to disruption. No evidence of real disruption required.	Clearer criteria for market disruption- action only when either actual threat of substantial increase or imminent increase measurable (MFA I)
Restrictive Measures Provided for	Mainly voluntary restrictions; option for Quantitative Restrictions or bilateral arrangements	Safeguard provision for restriction at specified level for disruption. Alternatively, countries had the option of voluntary restraint or unilateral restriction or mutually acceptable arrangement. Possible to establish QRs at different levels- aggregate/ group/ category	QRs by mutual agreement or unilateral action. Alternatively, Bilateral Agreements with individual supplier countries negotiated under MFA. Additional restrictions through provisions like Jointly Agreed Departures, special provision for sensitive products, basket exit mechanism, anti-surge provision etc.
Liberalization Commitments	Countries maintaining Quantitative Restrictions to increase access to markets significantly	Countries maintaining QRs to liberalize progressively and expand access by fixed per cent.	6 per cent annual growth for liberalization commitments for imports under quotas
Institutional Mechanism	Provisional Cotton Textile Committee.	Cotton Textile Committee	Textile Committee and also a Textiles Surveillance Body for multilateral surveillance

CHAPTER III

DISMANTLING MFA:

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III.1. Introduction

The history of evolution of textile regime has been regarded as one showing that 'protection, however justifiable in the short-term, tends to extend its lease of life almost unchallenged, and acquires new forms to sustain it, supported by the special interests' (Majmudar 1988: 120) of the different stake holders. Textile protectionism based on international textile arrangements derogating from the general rules of international trade could not be thus extended endlessly.[1] The adjustment time allotted to developed country industries was running out with a persistent demand to restore a free, competitive and market conforming mechanism.[2] The coordinated cooperation of developing countries[3] and the efforts towards an institutionalized cooperative mechanism[4] underlined their demands to secure an international system more

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[1] Textile Arrangement was designed originally to provide temporary adjustment time to developed country industries against low-wage, low-cost imports from developing countries. STA remained for one year, followed by LTA for almost 12 years (though initially it was meant only for 5 years). Finally, the MFA, meant to be applied 'for next few years' (MFA 1974: Article 1) and devised for 4 years initially (MFA 1974: Article 16) continued for almost two decades. As illustrated by economists, not only that MFA became permanent, its restrictiveness or effectiveness in terms of trade subject to restrictions, quota utilization rates, share of shipments facing quotas and developments in volume and unit of value of shipments under binding quotas, etc. (Erzan et. al 1990: 752), in the last years of existence, MFA was alleged to permit importing countries to apply restrictions on products that they did not even produce domestically (UNCTAD/TDR/14, 1994: 108; Shahin 2005: 386; Tang 1989: 53).

[2] So far, the textile agreements reiterated expansion of trade particularly for the developing countries, reduction of barriers to trade and progressive liberalization of world trade only in principle. In practice, the bilateral agreements put developing countries to extremely restrictive provisions deviating from MFA disciplines (ITCB 2000). Developing countries, provoked by the restrictive changes in MFA extensions, declared at a meeting in Bogota (1980) that "perpetuation of this discriminatory and restrictive regime is unacceptable to exporting developing countries. World trade in textiles and clothing must be liberalized in real terms by means of a gradual return to free trade in conformity with normal GATT rules and practices" (Shahin 2005: 402).

[3] Starting from the Bogota Declaration (1980), there had been programmes of cooperation among developing countries to remove unreasonable MFA restrictions and achieve a better balance of rights and obligations. Their approach brought textiles and clothing into negotiating table at the 1982 GATT Ministerial Meeting in Geneva, which concluded with an undertaking "to examine ways and means of, and to pursue measures aimed at, liberalizing trade in textiles and clothing, including the eventual application of the General Agreement after the expiry of the 1981 Protocol" (GATT L/5424, 1982). Consequently, a comprehensive study (GATT Publication 1984-01, 1984) was undertaken by the GATT Secretariat and a Working Party in Textiles and Clothing as envisaged in Geneva Ministerial submitted report on broad options for the sector (GATT L/5892, 1985; ITCB 2000: 5).

[4] The programme of cooperation between developing countries formalized as an institution managed exclusively by textile exporting developing countries and was called International Bureau of Textiles

responsive to their needs (ITCB 2000). In these circumstances, the question of justification for continuation of protection to textile industries and of discriminatory rules against developing countries were considered at the multilateral levels and liberalization of trade in the sector including the application of GATT rules proposed. Generally, the GATT regulations for conduct of trade was expected to provide a legal basis for the multilateral implementation of trade concessions, reducing the reliance of developing countries in particular on the bilateral altruism of the major industrialized countries (Milner and Read 2002: 5-6).

At the time Uruguay Round of Multilateral Trade Negotiations started, the dismantling of Multifibre Arrangement (MFA), which was held to be 'ironically brought under the umbrella of GATT' (Glismann and Spinanger 1988: 520), was the priority for developing countries.[5] It was finally arrived at that, the interests of developing countries were best served by strengthening the GATT, not undermining it. Therefore, the undue influence of powerful country trade policies on trading systems and 'the host of illegal, barely legal and legal exceptions' had to be removed (Abreu 1989: 41). This Chapter traces the developments leading to the dismantling of MFA, the different interests and considerations involved in the Uruguay Round negotiations towards an Agreement on Textiles and Clothing (hereinafter, ATC), the dismantling process and provisions devised under ATC and its implementation over the ten-year period, the legal issues involved and interpretation problems confronted.

III.2. Negotiating Textile Agreement: Uruguay Round Developments

The inclusion of textiles and clothing in the Uruguay Round negotiation agenda was the combined result of the developing country efforts through ITCB and the increasing pressure especially from developing countries, to strengthen GATT as

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and Clothing (ITCB) in 1985. It was established in Geneva as an independent inter-governmental organization with the aim of strengthening the process of cooperation and coordination among developing countries in the field of textiles and clothing. The present members are Argentina, Bangladesh, Brazil, China, Columbia, Costa Rica, Egypt, El Salvador, Guatemala, Honduras, Hong Kong, India, Indonesia, Democratic People's Republic of Korea, Republic of Korea, Macao, Maldives, Pakistan, Paraguay, Peru, Sri Lanka, Thailand, Uruguay and Vietnam. For details see, www.itcb.org.

[5] At that time, at least 31 out of almost 39 country members of MFA were developing exporting countries. Members like US, Canada, EU 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 (ITC 1999: 164-165).

an institution and as a system. Unlike the earlier Rounds,[6] the textile agenda was expected to offer some changes in the hitherto textiles arrangements after due consideration of the options for liberalization already made.[7] The negotiating mandate for textiles and clothing sector as set in the Ministerial Declaration of Uruguay Round at Punta del Este stated that

> "Negotiations in the area of textiles and clothing shall aim to formulate the modalities that would permit the eventual integration of this sector into GATT on the basis of strengthened GATT rules and discipline, thereby also contributing to the objective of further liberalization of trade" (GATT MIN.DEC, 1986).

The Negotiating Group on Textiles,[8] with a mandate to negotiate modalities which would permit integration of textiles sector into GATT by the end of the Uruguay Round negotiations and to contribute to the further liberalization of trade in the sector, had received communications from different groups of contracting parties. Some of the proposals on the negotiating table illustrated the diverse interests and concerns of the countries in arriving at a multilateral textile agreement. One of the first proposals on textiles in the Round tabled by Pakistan[9] sought to address the

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[6] The comprehensive Multilateral Trade Negotiation in the Uruguay Round had a unique approach to textiles and clothing. It began with the mandate of integrating textile trade into GATT as considered in the 1982 Ministerial (Bagchi 2005: 219). There was no expressed agreement to consider the US textile lobby interest beforehand. This was in contrast to the earlier Rounds where textiles and clothing sector was dealt with either before the negotiations began or parallel to the multilateral round (Tang 1989: 58).

[7] The Working Party on Textiles and Clothing had identified three broad options namely (a) full application of GATT provisions with a movement towards liberalization; (b) full application of GATT provisions as in option (a), combined with liberalization of trade measures irrespective of their GATT conformity; (c) liberalization under existing frameworks (GATT L/5892, 1985; Wolf 2002).

[8] Contracting Parties had established a negotiating structure that included a Trade Negotiations Committee (TNC) as an overseeing body as well as a Group of Negotiation on Goods (GNG) and a Group of Negotiation on Services (GNS). In addition, 14 Negotiating Groups were established in the area of trade in goods, including those dealing with natural resource based products, textiles and clothing, agriculture and tropical products. These groups subsumed into Negotiating Group on Market Access. The negotiating structure was agreed in Annex 2 of the decision of 28 January, 1987 (GATT/1405, 1987; WTO TN/MA/S/13, 2005).

[9] Pakistan's proposal intended to promote structured discussions in the Group, required to integrate and liberalize textiles and clothing trade through modalities structured in four phases namely, (i) diluting MFA restrictions in the first phase through removal of 'low price criteria' in market disruption and integration of non-apparel products; (ii) limiting restrictions on apparel products to cases of actual disruption; (iii) applying restrictions on apparels only with TSB approval; and (iv) finally, eliminating restrictions of apparel products (GATT MTN.GNG/NG4/W/10, 1988).

erosion of 'non-discrimination' principle in the area of textiles and clothing by removing 'low price' factor in market disruption. According to them, this move was critical as the 'lower price' itself was the very basis of international trade. A gradual elimination of restrictions unilaterally in the non-apparel group and then in the apparel products was suggested (GATT MTN.GNG/NG4/W/10, 1988). It could also be observed that the proposal stressed on product coverage of the agreement arrived at, with liberalization to be started from less sensitive groups. Another proposal on behalf of developing countries, submitted by ITCB, put forth elimination of the exceptional treatment given to the sector on a date agreed in the Uruguay Round itself. It included 'multiple processes'[10] of liberalization of trade within the framework of MFA and integration of textile sector in GATT and suggested strategies involving elimination of concepts and practices in MFA incompatible with GATT.

As against this, the proposals from countries like US and EU emphasized on the final integration of the sector to be found in the strengthening of GATT rules and disciplines. The feasibility of the objective of eventual integration of the sector had to be determined on the basis of progress in other negotiating groups. They particularly stressed on the liberalization efforts to be made by all participants, including the exporting countries according to their level of development and economic situations (GATT MTN.GNG/NG4/W/12, 1988). In subsequent submissions, EC and Switzerland stressed on a framework for progressive liberalization of existing restrictions and implementation of strengthened GATT rules and disciplines. A transitional arrangement which would be progressive and gradual and a transitional safeguard mechanism to avoid disruption during the period of integration were put forward (GATT MTN.GNG/NG4/W/24, 1988; GATT MTN.GNG/NG4/W/25, 1988). US also supported this view (GATT MTN.GNG/NG4/W/26, 1988). Nordic countries' proposal[11] on similar lines expressed hesitation on freezing of restriction and removal

[10] The multiple process proposed by ITCB included- (i) removal of restrictive measures like (a) freeze on further restrictions, (b) reductions of product coverage of restrictions and (c) relaxation and elimination of restrictions; (ii) elimination of concepts and practices incompatible with GATT; (iii) effective application of differential and more favourable treatment; (iv) termination of MFA and bilateral agreements based on it (GATT MTN.GNG/NG4/W/11, 1988).

[11] The modalities by Nordic countries included a uniform phase out method for elimination of MFA and other restrictions according to a time-table and within a span of 8 years. The process had to be monitored by a specifically established surveillance body which could also deal with dispute settlement cases arising from integration process. A schedule for progressive increase in growth rate and flexibility of existing restrictions was drafted. Phase out of restrictions against developing

of 'price criteria' of disruption and suggested further studies on economic and trade consequences of dismantling MFA before any further action (GATT MTN.GNG/NG4/W/14, 1988). Canada submitted a range of options for modalities to integrate textiles and clothing into GATT, including one pertaining exclusively to an option for phasing out of MFA on an agreed time period and another for phasing out of MFA in the context of provisions necessary to permit integration of the sector into GATT[12] (GATT MTN.GNG/NG4/W/21, 1988). In one way, it had two techniques- one to freeze, reduce or phase out existing restrictions and another to convert existing restraints to another form prior to reduction or phase out (Tang 1989: 63).

The US formula for integration subsequently made, included three options in which a transition arrangement could be formulated on the basis of existing systems of restraint; or by converting existing restraints, both MFA and other types into other forms like- multilaterally agreed system, tariff rate quotas or 'global type quotas or by agreeing that different participants could use different systems according to a multilaterally agreed set of rules (GATT MTN.GNG/NG4/W/33, 1989). The Japanese proposal (GATT MTN.GNG/NG4/W/35, 1990) alternatively suggested elimination of MFA restrictions over a nine-year transitional period to facilitate smooth integration of the sector into GATT with the aid of transitional mechanism based on objectivity and equity.[13]

The developing country position in the negotiations was mainly put forward by ITCB and their consistent position was that liberalization cannot be achieved by increasing the level of restrictiveness; that the restricting countries should allow domestic industries to face market forces and competition in a progressively increasing manner and that any change from the present restrictive system to another

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countries and small suppliers was to be undertaken within a shorter period of 4 years (GATT MTN.GNG/NG4/W/30, 1989)

[12] The modalities for MFA phase out included- liberalization of MFA elements by larger growth rates and flexibility provisions; introducing minimum price rate criterion for restraints or phase out in specific industry sectors starting from yarn, then fibres, made- ups etc.; or phase out according to a multilaterally agreed time-table or converting MFA quotas into global quotas by individual countries to be removed in accordance with a safeguard criteria or converting quotas to their tariff equivalents to be phased out in an agreed span of time. The integration modalities were to include- commitments not to use more restrictive GATT provisions; to reduce all GATT inconsistent measures; to eliminate all tariffs and non-tariff measures; or an agreement to permit safeguards as agreed multilaterally or agreement for provision for limited and controlled use of voluntary restraints and the like (GATT MTN.GNG/NG4/W/21, 1988).

[13] It mentioned a certain formula for specific restraint levels and for automatic phase out of transitional restrictions (GATT MTN.GNG/NG4/W/35, 1990).

would lead to dislocation of trade (GATT MTN.GNG/NG4/W/44, 1990). Generally, the view of the major developing countries and ASEAN countries (GATT MTN.GNG/NG4/W/17, 1988) supported the ITCB proposal for eventual integration into GATT. India proposed a transitional arrangement for phase out of all remaining quotas over a five year period, with 20 per cent of the number of quotas in importing country eliminated every year. A specific schedule for growth rate of restriction and flexibility in operation of quota level was prescribed. The transitional arrangement to be included in a multilateral instrument had to be supervised by a Surveillance body and any import increase causing injury had to be dealt with under normal safeguard provisions of GATT (GATT MTN.GNG/NG4/W/28, 1989).

The Least Developing Country (hereinafter, LDC) position as put forth by Bangladesh, demanded accelerated phase out of all existing restraints on textile and clothing products and a complete ban on restraint on imports from LDCs pending integration of textiles and clothing sector into the GATT. It proposed a non-application of transitional mechanism for LDCs and complete exemption to LDCs from safeguard measures negotiated (GATT MTN.GNG/NG4/W/29, 1989). Countries like Peru (GATT MTN.GNG/NG4/W/66, 1990) demanded preferential treatment generally recognized by the multilateral rules to be included in the agreement for liberalization of trade and its progressive integration into the GATT. Nicaragua proposed progressive elimination of existing restrictions and transitional safeguards considering the interests of developing countries in particular the level of development, employment situation and balance of payment situation GATT MTN.GNG/NG4/W/67, 1990).

By 1990, ITCB tabled a detailed draft framework for negotiation (GATT MTN.GNG/NG4/W/56, 1990) supported by all developing countries. It proposed that all MFA quotas should be carried over into the transition period followed by immediate removal of some and progressive removal of others with enhanced growth rate (Draft Article 2). The immediate removal was applicable to quotas not strictly in conformity with GATT[14] (Draft Article 3). The proposed product coverage was same as the MFA and its Protocol of Extension (Draft Annex I). The integration programme was to spread over stages covering 6 and half years (Draft Article 10) and was to

[14] This included restrictions like aggregate and group limits, EC's regional quotas, restrictions on small suppliers, handloom products, outward processing trade and others.

begin with tops and yarns, and progressively move to fabrics, made-up articles and clothing (Draft Annex III). Transitional safeguards proposed by the ITCB refined market disruption concept, by indicating a 'serious injury' requirement, removal of low price factor as a criteria of serious injury and safeguard action limited to one year (Draft Article 6). All integrated products could be subjected to GATT Article XIX action after a period of 2 years (Draft Article 5). It completely discarded provisions for bilateral agreements. Finally, it is said that 'many provisions of the proposal found their way through the lengthy battles of the final negotiations in the ATC, although some others were substantially damaged or even lost in the process' (Bagchi 2005: 226-227).

In short, the dilemma in negotiating ATC was narrowed down to a few issues in the 'economic package' consisting of (i) product coverage; (ii) percentage of products for integration in stages; (iii) growth per cent for quotas on products not yet integrated and (iv) duration of the agreement (GATT MTN.GNG/NG4/W/89, 1991). Subsequently, the GATT Director-General at that time, Arthur Dunkel, in his capacity of the Chairman of Textile Group came with a final Act with figures on all the unsettled issues and stipulated that it could be changed only by a consensus of all parties[15] (ITCB 2000:7). Thus ATC materialized.

The Textiles and Clothing Negotiating Group was the last of the Uruguay Round Negotiating Groups to come to agreement after seven years of talks, but it did sign an agreement which was annexed to the accords establishing the World Trade Organization (WTO) signed at Marrakesh in April 1994 (Underhill 1998: 243-244). It could be seen that throughout the period of negotiating ATC, there were attempts to undermine the developing country advantages in the sector. Throughout the negotiations, firstly the integration of the sector 'on the basis of strengthened GATT rules and disciplines,' and secondly as an integral part of the negotiating mandate for the group to provide a cover to 'incorporate negotiations in other aspects of work on various GATT rules and disciplines going on in other negotiating groups into the

[15] Arthur Dunkel is said to have filled in the missing numbers in his own responsibility and using his best judgment on what would be acceptable across the board to all participants. He accepted a very broad product coverage, prescribed integration to be completed in 3 stages within a period of 10 years; stipulated 51 per cent of textile import in 1990 to be integrated by the third stage; determined prevailing growth rate of quotas to be enhanced in every stage and the like. Except for the figures everything else was negotiated already. Both the developed and developing countries were dissatisfied with the draft, but no serious attempts to challenge were made. Thus in effect the draft was to be carried with very little changes into the Final Act embodying the Results of Uruguay Round of Multilateral Trade Negotiations (Bagchi 2005: 229)..

negotiating process in textiles and clothing group' (GATT MTN.GNG/NG4/W/33, 1989) were stressed upon. To some participants, strengthened GATT rules and disciplines should ensure an opening of markets, creation of fair competitive conditions as well as an improved safeguard discipline, etc. much to the detriment of developing countries (GATT MTN.GNG/NG4/W/30, 1989). The elements like the 'demand for reciprocity or contribution from developing countries for integration of the sector' (Tang 1989: 68), a time span of 10 years before final integration, and the option of transitional safeguards during the period which allowed the elements of market disruption to continue, had all seriously undermined the phase out consideration. In one way, the ATC was considered as a bargain to developing countries in return for agreements in Trade-Related Aspects of Intellectual Property Rights (TRIPS) and services.[16] But the 'package deal' at Uruguay Round included ATC, which was in another way the result of a coordinated approach of the developing countries.

III.3. Agreement on Textiles and Clothing (ATC): A Critique

As a multilateral sectoral agreement designed within the WTO framework, Agreement on Textiles and Clothing (hereinafter, ATC or the Agreement) took over from MFA on 1 January, 1995. It was intended to permit a smooth and progressive transition from an initial situation of extensive trade restrictions to one in which the normal GATT rules will apply (Croome 1999: 65). It was defined as setting out the provisions to be applied by Members during a transitional period for the integration of textiles and clothing sector into the GATT (ATC 1994: Article 1). In this way, ATC was a temporary instrument with a 'specific and final task' (Croome 1999: 66) extending for a transition period of 120 months (Article 2.8(c) and Article 9). The Agreement provided that in order to facilitate integration, Members should allow for continuous industrial adjustment and increased competition in the market.

[16] It was considered that the 'Grand Bargain' of the Uruguay Round for US, EU and other developing countries was the better market access for services and improved Intellectual Property protection in exchange for more open agricultural markets and an end to global textile and apparel quotas (Bhala 2005: 262).

The main features of ATC were as under:

1. The product coverage of ATC provided in an Annex to the Agreement included virtually all traded textiles[17] (Dillon 2002: 231; ATC 1994: Annex to the Agreement).
2. ATC provided for integration through removal of existing quotas to be carried out in 3 stages. At each stage, a certain percentage of volume of the country's imports in 1990 were to be included in integration process- 16 per cent on the entry into force of the Agreement, another 17 per cent at the end of the third year, further 18 per cent at the end of seven years and the balance at the end of tenth year (Articles 6 and 8).
3. The integration involved two groups of countries- (a) those which maintained quotas under the MFA- they had to notify the restrictions within 60 days of entry into force of the WTO Agreement (Articles 2.1 and 2.7(a)); and (b) those members which had chosen to retain the right to use special safeguard provisions under Article 6 of the Agreement.
4. ATC provided that all restrictions including unilateral actions were to be removed within one year of entry into force of ATC, and that all other non-MFA restrictions, whether consistent with GATT or not, had to be notified and either brought into conformity with GATT within one year or phased out over the transition period according to an agreed programme (Articles 3.1 and 3.2).
5. No new restrictions could be introduced except under the provisions of ATC or GATT 1994 (Article 2.4).
6. ATC provided for accelerated expansion of the remaining non-integrated quotas. The quotas for products remaining under restrictions had to be annually increased above the agreed growth rates in MFA- by an additional 16 per cent in the first stage, by 27 percent in the second stage and another 27 per cent in the third[18] (Article 2.13 and Article 2.14).

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[17] ATC covered all of Section 11 of the six-digit level of the Harmonised Commodity Description and Coding System (HS Code) and certain lines from other chapters of the HS that include textile material such as luggage, umbrellas, watch straps and parachutes. It included all products which were subject to MFA or MFA-type quotas in at least one importing country (ATC 1994).

[18] The small suppliers whose restrictions represented 1.2 per cent of total restrictions as on 31 December, 1991 were to be accorded additional growth rate of 25, 27 and 27 per cent in three stages successively (Article 2.18). So also, LDCs are eligible to receive this additional treatment, by only "to the extent possible" (Article 1.2 footnote). This process of increasing the negotiated growth rate

7. ATC provided for a transitional safeguard mechanism to deal with new cases of serious damage or threat of serious damage to domestic producers in like or directly competitive products not currently under restraint and not yet integrated into GATT (Article 6). The right to use transitional safeguard was conditional on the obligation to apply integration programmes (Croome 1999: 69).
8. ATC provided for Textiles Monitoring Body (TMB)[19], 'a unique institution within WTO framework' (WTO 2005) for supervising the implementation of the Agreement, to examine all the measures taken under it and to ensure that they are in conformity with the rules (Article 8). It has a dispute settlement role within the ATC framework.[20]
9. ATC linked the integration process under the Agreement with commitments elsewhere in the Uruguay Round[21] (Croome 1999: 70; ATC 1994: Article 7).
10. ATC was the only multilateral agreement in the Uruguay Round which provided for its own termination (Article 9). It terminated on 1 January, 2005 on which date the textiles and clothing sector shall be fully integrated into GATT 1994.

was called 'growth on growth' provision and was a significant liberalization element in ATC (Kheir-el-Din 2002: 188).

[19] As a standing body with conciliatory and semi-judicial roles, TMB consisted of a Chairman and 10 TMB members; discharged their functions on an *ad personam* basis and took all decisions by consensus. The ten members were appointed by Members according to an agreed grouping of WTO members into consistuencies, and there can be rotation within the consistuencies (WTO 2005a).

[20] TMB was distinguished from a WTO Dispute Settlement Panel as follows: (i) TMB was not limited to specific terms of reference; (ii) Unlike the Panel, TMB's general function was to supervise the implementation of ATC; (iii) TMB's membership was composed of consituencies; (iv) During review process, TMB was not limited to initial information submitted by Members (Palmeter and Mavroidis 2004: 196). But overall, it was held that the ATC and Dispute Settlement Understanding (DSU) providing respectively for the jurisdiction of TMB and Dispute Settlement Panels respectively, was to apply together (*Turkey- Restrictions on Imports of Textile and Clothing Products* 1999: Paragraph 9.82).

[21] It refered specifically to the obligations with regard to textiles and clothing sector under GATT 1994 in the areas of market access commitments, fair and equitable trading conditions in areas such as dumping and anti-dumping rules and procedures, subsidies and countervailing measures and protection of Intellectual Property Rights (IPRs) and non-discrimination (Croome 1999: 70; ATC 1994: Article 7.1).

Table 1: ATC Phase out Programme
(As available in WTO website)

STAGES	Percentage of products to be brought under GATT (including removal of any quotas)	Percentage of products to be brought under GATT (including removal of any quotas)
Stage 1: 1 Jan 1995 (to 31 Dec 1997)	**16%** (minimum, taking 1990 imports as base)	**6.96%** per year
Stage 2: 1 Jan 1998 (to 31 Dec 2001)	**17%**	**8.7%** per year
Stage 3: 1 Jan 2002 (to 31 Dec 2004)	**18%**	**11.05%** per year
Stage 4: 1 Jan 2005	**49%** (maximum)	**No quotas left**

Source: WTO (2005) available at www.wto.org.

Though significantly different from the MFA[22] on different counts, the inherent defects of ATC delayed the liberalization commitments undertaken at the multilateral level. It could be observed that 'the compromises were between the exporting countries that desired a steady progressive dismantling of the MFA, and the restraining countries which wanted to retain the MFA restrictions as long as they could. The compromises have tilted the ATC in favour of the latter and it has acquired a number of inconsistencies and paradoxes' (Bagchi 2005: 234) as could be examined below.

Firstly, to consider the product coverage of ATC, it involved the 'whole textile universe' (Bagchi 2005: 231) with both previously restrained and unrestrained

[22] It was said that 'though ATC prima facie resembles its immediate predecessor, there were significant differences that will strengthen its credibility and enhance its discipline during the transition period' (Bagchi 2005: 237). A comparison between ATC and MFA indicated that while the MFA involved separate agreements between GATT contracting parties to waive GATT rights and obligations by applying selective restrictions, whereas ATC was a multilateral agreement administered by WTO and binding on all Members. Also while MFA contained provision for accession of non-GATT members such as China, non-WTO members were not covered by ATC.

products[23] though there were negotiations to include only products subjected to restraints in one or more countries (Bagchi 2005: 231). This was done for two reasons- first, it broadened the negotiations to include all discriminatory arrangements in textile and clothing trade, including by implication, those imposed by developing countries; second and more importantly, the text was thereby packed with products that were either of little significance to importing developed countries or which few of them had ever restrained in the first place (Underhill 1998: 241). Effectively, a large percentage of the list could theoretically be liberalized without affecting much in the way of the actual restraints (Underhill 1998: 241). Also, the choice of products to be integrated was left with importing countries. Only condition was that the products to be integrated shall encompass products from each of the four groups namely: tops and yarns, fabrics, made-up articles and clothing (ATC 1994: Article 2.6 and 2.8). As had been the practice, it permitted marginal integration in sectors like clothing where the developing countries are likely to have comparative advantage.

Secondly, the scheme of integration envisaged under ATC was 'back loaded.'[24] It would come to 49 per cent of the remaining restrictions to be integrated by the end of 2004. Thus in effect, "leaving nearly one half of all imports to be integrated at the end of the transition period (does not ensure) a smooth and painless process of integration and thereby (contradicts) one of the purposes of a transition period" (Kheir-el-Din 2002: 187). This ATC formula for bulk integration at the last day of the Agreement was regarded as a paradox since "the integration of such a large volume of restrictions at one stroke did not justify the transition period, particularly in view of the 'breathing space' of more than 30 years obtained earlier by the developed countries for structural adjustment" (Bagchi 2005: 235).

Finally and more importantly, the provision for selective restrictions by way of transitional safeguards (Article 6) continued the perpetuation of elements of market disruption in the ATC period. As against market disruption, the standard of transitional safeguard is 'serious damage' or 'threat of serious damage' attributable to

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[23] According to ITCB estimates quoted, imports of HS lines that were not restrained under MFA accounted for 33.6 per cent of total imports in 1990. The proportion of HS lines not covered by Quantitative Restrictions in the US itself was 36.8 per cent (Kheir-el-Din 2002: 187) and EU about 37 per cent (ITC 1999: 165).

[24] While integrating 16, 17 and 18 per cent in the three stages consecutively, it carefully worded that on the first day of the 121st month, 'the textiles and clothing sector shall stand integrated into GATT 1994, all restrictions under this Agreement having been eliminated' (ATC 1994: Article 2.8 (c)).

a specified country on the basis of sharp and substantial increase in imports of that country.[25] Moreover, those products already integrated into GATT rules could be subjected to regular safeguard action (GATT Article XIX). Also, the right to use safeguard measure is available to all WTO members- even members not applying MFA restrictions could retain the right to transitional safeguard provisions, but had to notify it within a specified period (Article 6.1).[26]

The persistent demand to 'establish link between textile trade and other matters negotiated in other groups in order to condition the terms of the transitory agreement' was broadly outlined in Article 7 of ATC[27] (Cortes 1997: 280). Thus the disputed 'balance of rights and obligations' negotiated in the Uruguay Round was settled, with undertones of 'reciprocity' from developing countries. Further, ATC differentiates between developing countries in reference to small suppliers and new entrants (Article 1.2), cotton producing exporting members (Article 1.4), small suppliers (Article 2.18) and in transitional safeguard against LDCs, small suppliers, wool producers and exports of processed imports (Article 6.6 (a)-(d); Shahin 2005: 405; Kheir-el-Din 2002: 188). Overall, there was a view that ATC appears

> "to be partly an extension of the arrangement for protection rather than only a transitional arrangement designed to meet realistic demands to 'prepare' trade in textiles for normal trade rules" (Blockker and Deelstra 1994: 117).

III.4. Implementation of ATC

From the Uruguay Round onwards, the regulation of trade in textiles and clothing moved under the liberalization and integration programme of the ATC as it had laid out an elaborate plan for the phase out of all restrictions in the sector in three stages. A major review of the implementation of ATC in each stage was carried out

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[25] Between MFA and ATC safeguard mechanism there were several differences- (i) In MFA the standard of restrictive action included 'risk' of market disruption; (ii) Under MFA the finding of market disruption could be limited to consideration of increased imports from a particular source while under ATC, the level of total imports are considered; (iii) MFA considered the element of 'price' of imports in determining the disruption while ATC discarded it; (iv) ATC Safeguards needed to be fully justified and further supervised by the TMB and subjected to WTO Dispute resolution (Bagchi 2005, ITC (undated)., Shahin 2005).

[26] In accordance with these provisions 55 countries notified their wish to retain the right; while 9 countries notified that they did not want to retain it (ITC 1999: 167).

[27] It mentions "achieving" market access guaranteeing the application of policies related to fair and equal trade and avoiding discrimination when adopting trade policies (ATC 1994: Article 7.1).

by the Council for Trade in Goods on the basis of a comprehensive report transmitted by the TMB (ATC 1994: Article 8.11).[28] A comprehensive study of the processes initiated by countries in the transition period was to determine the effectiveness of the Agreement arrived at in the Uruguay Round and hence the analysis of the implementation of the ATC significant.

Though many of the industrial countries[29] had imposed restrictions on developing country imports, by 1995 only the US, the EU, Canada and Norway continued to use quotas to restrict their imports.[30] But these economies held almost half of the share of the global markets (Kheir-el-Din 2002: 189). The spirit of implementation of ATC during the first stage beginning with the entry into force of ATC and continuing till the end of 1997 is contained in the Declaration of the First Ministerial Meeting of the WTO at Singapore, as under:

> "We confirm our commitment to full and faithful implementation of the provisions of the Agreement on Textiles and Clothing (ATC). We stress the importance of the integration of textile products, as provided for in the ATC, into GATT 1994 under its strengthened rules and disciplines because of its systemic significance for the rule-based, non-discriminatory trading system and its contribution to the increase in export earnings of developing countries. We attach importance to the implementation of this Agreement so as to ensure an effective transition to GATT 1994 by way of integration which is progressive in character. The use of safeguard measures in accordance with ATC provisions should be as sparing as possible. We note concerns regarding the use of other trade-distortive measures and circumvention. We reiterate the importance of fully implementing the provisions of the ATC relating to small suppliers, new entrants and least-developing country Members, as well as those relating to cotton-producing exporting Members. We recognize the importance of wool products for some developing country Members. We reaffirm that as part of the

[28] According to Article 8.11, the TMB shall consider in particular the matters with regard to the integration process, the application of the transitional safeguard mechanism, and relating to the application of GATT 1994 rules and disciplines as defined in Articles 2.3, 6 and 7 respectively. The report may include any recommendation as deemed appropriate by the TMB to the Council for Trade in Goods.

[29] This included US, UK, Canada, Australia, Sweden, Finland and Norway.

[30] Austria and Finland joined European Union when ATC came into force; Sweden had removed quotas in 1991 during the fourth phase of MFA. In 1995, the total number of quotas as noted by Canada, EU, Norway and US were about 295, 219, 54 and 750 for Canada, EU, Norway and US respectively (ITCB document IC/W/219 of 21 July, 2000 as quoted in Kheir-el-Din 2002: 190), with several group quotas and other restrictions against non-WTO members additionally (WTO G/L/179, 1997).

integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all Members shall take such action as may be necessary to abide by GATT 1994 rules and disciplines so as to achieve improved market access for textiles and clothing products. We agree that, keeping in view its quasi-judicial nature, the Textiles Monitoring Body (TMB) should achieve transparency in providing rationale for its findings and recommendations. We expect that the TMB shall make findings and recommendations whenever called upon to do so under the Agreement. We emphasize the responsibility of the Goods Council in overseeing, in accordance with Article IV: 5 of the WTO Agreement and Article 8 of the ATC, the functioning of the ATC, whose implementation is being supervised by the TMB" (WTO G/L/179, 1997).

This summarized the objectives of the ATC adequately.

III.4.1. First Stage: 1995-1998

In the first stage, Canada, EU, Norway and the US had notified an integration of about 16 per cent of their respective volumes of imports at 1990 level falling under the four broad categories.[31] However, TMB notified that the products selected were concentrated in less-value added products such as tops and yarns and fabrics, with only small shares of made-up textile products and clothing[32] (WTO G/L/224, 1998). Further the share of integrated products were substantially lower in terms of value than in volume of trade while more of the integrated trade was being accounted for by imports from developed countries than from developing countries[33] (WTO G/L/224, 1998). In short, according to the Council for Trade in Goods, only the legal

[31] Canada notified 16.36 per cent, EU 16.4 percent, Norway 16.26 per cent and US 16.21 per cent of imports of 1990 level as integrated (WTO G/L/179, 1997).

[32] The total integration of the countries in the four groups tops and yarn, fabrics, made-up articles and clothing products respectively were as follows: Out of 16.36 per cent Canada integrated 59, 26, 8 and 7 percentages respectively; EC's total of 16.14 per cent included 27, 49, 22 and 2 percentages respectively; Norway's 16.26 per cent consisting 22, 73, 4 and 1 percentages respectively and US integrated 16.21 per cent including 52, 15 20 and 13 percentages in the four groups respectively (WTO G/L/179, 1997).

[33] The proportion of the integrated trade in respect of products that were under restraint was in the range of only 0-3 per cent of 1990 imports of products covered by ATC (WTO G/L/224, 1998).US list of integrated products in the first stage were not covered by any Quantitative Restrictions. So also though the EU list included several MFA categories, none of those were subject to any bilateral quota (Trela 1998: 322). Further the ten-digit classification by US and Canada giving more leverage to increase the number of items within the range of products under ATC and the EC integration of some ex-items from certain chapters in the ATC list wherein the ex items are only a fraction of the full HS items at the six-digit level, yet EU added up the full HS six-digit volume when computing the amount of imports integrated (Trela 1998: 323).

requirement for integration of textile and clothing products were fulfilled. Moreover, the exceptional high rates of transitional safeguards in the period[34] were disruption of trade as it led to 'unwanted harassment of legitimate export trade' (WTO G/L/224, 1998).

The first stage witnessed 'the first formal dispute settlement case to address issues arising from the intended liberalization of trade in textiles as embodied in the ATC' (Breckenrigde 2005) in the dispute between Costa Rica and US[35] wherein US argued that 'the new regime under ATC is in essence a safeguards regime, just as the regime under Article XIX and the Agreement of Safeguards were safeguards regime' and 'permitted a member to restrict trade in fairly traded goods on the basis of a determination made by that Member subject to certain limitations (WTO W/DS24/AB/R, 1997: Paragraph 5.44).[36] In another 'significant case of a developing country seizing upon ATC to challenge developed world protectionism in the textile sector' (Dillon 2002: 238), between India and US,[37] it was asserted once again that the decision to impose a safeguard measure must be based upon a demonstration, before action is taken, that the increased quantities of imports are causing serious damage or actual threat of damage (WTO WT/DS33/R, 1997: Paragraph 7.24). Further, this stage had witnessed allegations of measures like change in rules of origin, export visa requirements, antidumping, and other issues related to circumvention, customs formalities and market access from developing countries as against the developed country allegations of little efforts to permit increased access conditions and tariff reductions (WTO G/L/224, 1998).

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[34] US had initiated 34 safeguard actions in the first 6 months of ATC in force (WTO G/L/224, 1998).

[35] In the *US- Restrictions on Imports of Cotton and Man-Made Fibre Underwear* (1997), Costa Rica initiated dispute settlement process in 1995 by a request for consultation on unilateral restrictions imposed on imports of cotton and man made fibre underwear from Costa Rica without demonstrating serious damage as per Articles 6.2 and 6.4 of ATC.

[36] However, applying a strict requirement for adherence to Article 6 in contrast to Article XIX, Panel required the complainant to show exactly how another member's exports are causing the damage (WTO W/DS24/AB/R, 1997: Paragraph 7.22). But, the US restrictions which had been the subject of the dispute had expired, effectively meaning that the US had complied with DSB recommendations.

[37] In the *US- Measures affecting Imports of Woven Woolen Shirts and Blouses from India* (1997), US sought to impose transitional safeguard measures on woven woolen shirts and blouses originating in India. Though the US withdrew the measure in November 1996, India proceeded for a ruling on the legality of the US action, which was ultimately found in the violation of the provisions of ATC.

III.4.2. Second Stage: 1999-2001

The second stage of ATC implementation was from 1 January, 1998 to 31 December 2001. As for integration commitments, the general view that the hope to gain significantly in the area of textiles and clothing at the Uruguay Round, inspite of the concessions in other areas, did not materialize. In this context, the second stage of ATC came at the critical time just before full integration was due, and a stock-taking the experiences and the achievements so far made became more relevant (WTO G/L/556, 2002). As in the first stage, Council for Trade in Goods reiterated that the integration programmes concentrated on low value added yarns, fabrics, textile made-up products with very few clothing items included and the bulk of quotas remaining in place (WTO G/L/ 556, 2002).[38] Even regarding the growth rate increases envisaged by ATC, it was not significant to improve market access.[39]

Regarding the restrictions imposed in the periods there was a declining trend with respect to the application of the transitional safeguard mechanism during the second stage. The dispute settlement cases emerged during the period include the noted *Turkey- Restrictions on Imports of Textile and Clothing Products* case[40] wherein imposition of new restrictions on imports of textiles and clothing products against a number of countries in the context of implementing a customs union, was challenged by India. It was often described as 'perhaps the most interesting of textile cases to date' (Dillon 2002: 240). The chief issue involved in the dispute was whether the internal requirement of the customs union itself, a regional arrangement countenanced by the Article XXIV of GATT, could justify new restrictions in

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[38] Even after the third stage of integration the number of quotas that would remain in place were as high as 701 out of 757 in the case of US; 164 out of 219 in the case of EU and 241 out of 295 in the case of Canada. Norway had abolished all of its remaining quota restrictions by 1 January 2001 (WTO G/L/556, 2002). As on 31 December, 2001 US had integrated 33.24 per cent; EU about 33.31 per cent; Canada 34.97 per cent and Norway 43.34 per cent of volume of 1990 imports (ITCB document IC/W/219 of 21 July, 2000 as quoted in Kheir-el-Din 2002: 189).

[39] According to the review by Council for Trade in Goods, the average addition in access during the first two stages of ATC implementation had amounted only to 0.73 per cent per year in the EC, 1.03 per cent in the US and 1.22 per cent in Canada (WTO G/L/556, 2002). Starting with a pre-ATC growth rate of 6 per cent, ATC growth on growth provisions were expected to lead to a 19 per cent increase in the quota levels by 2002.

[40] Early in 1994, in its endeavour to complete Decision 1/95 requirements for the completion of the customs union, Turkey sent proposals to the relevant countries (whose imports of textiles and clothing were under restraint in the EC market), including India to reach agreements for the management and distribution of quotas under a double checking system. A standard formula was proposed for calculating the levels of Quantitative Restrictions on textile and clothing products to be introduced by Turkey vis-à-vis all third countries concerned (WT/DS34/R, 1999: Paragraph 2.34).

violation of Article XI of GATT and 2.4 of ATC (WT/DS34/R, 1999: Paragraph 3.3). It was held that the ATC allowed new restrictions only pursuant to Articles 6, 2.14 and 7 of ATC, and there was no provision for general exceptions or security exceptions, nor any other provisions on regional trade agreements (WT/DS34/R, 1999: Paragraph 9.73).

In another significant 'victory in principle' (Hussain 2005) for a developing country member illustrated in *US- Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan* (2001),[41] the Panel and Appellate Body recommended immediate removal of quota restrictions. But as regarding the case it was pointed out:

> At the end of the day both the parties won, Pakistan because it got a decision in its favour and the United States because it was able to keep the quota restraints for almost the entire three year period, thanks to the duration of the case (Hussain 2005).

So also, in Argentina- *Measures affecting Imports of Footwear, Textiles, Apparel and Other Items* (WT/DS56/R, 1997) case,[42] there was an alleged violation of 'an affirmative obligation to eliminate improper methods of protection' as per Article 7 of the ATC.[43] All these trends indicated the evolving jurisprudence against textile protectionism thereby giving momentum to the second stage of ATC implementation. Throughout this stage, the significant difference in the positions of developing countries under ITCB and the restraining developed countries was illustrated (WTO G/L/556, 2002). So also, the administrative measures, anti-dumping investigations,[44] and other measures on restrained products continued to be of serious adverse impact on the interests of developing country members (WTO G/L/556, 2002).

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[41] In this case, the unilateral action imposed by US on the import of combed cotton yarn from Pakistan in 1999 was found inconsistent with ATC provisions as US could not demonstrate that the subject imports caused 'an actual threat' of serious injury to the domestic industry (WT/ DS192/R, 2001).

[42] In this case, US challenged the imposition of specific duties on certain items in excess of the bound rate and other measures by Argentina in violation of among other GATT provisions (GATT Articles II, VII, VIII, XI and X), Article 2 of Agreement on Technical Barriers to Trade (TBT), Article 7 of the ATC.

[43] However, applying the principle of 'judicial economy,' the Panel did not address the US claim related to ATC on the ground that it was considered neither necessary nor useful for the dispute (WT/DS56/R, 1997: Paragraph 6.87).

[44] See, the decision in *EC- Bed Linen* case (WT/DS141/RW and WT/DS141/AB/RW, 2002) discussed under Chapter IV.

III.4.3. Third Stage: 2002-2004

The third and final stage of ATC implementation covered the period from 1 January, 2002 to 31 December, 2004. The review of the period by Council of Trade in Goods (WTO G/L/725, 2004) made a significant note of backloading of ATC by postponing elimination of the bulk of quota restrictions[45] and not giving meaningful effect to ATC provisions for special and differential treatment of small suppliers, LDCs etc.

Table 2: Pace of Quota Abolition
(As contained in the communication from ITCB members)

	US	EU	Canada	Norway
Total number of quotas at start of ATC[a]	**937**	**303**	**368**	**54**
Of which phased out:[b]				
(i) Stage 1 (from 1995):				
By integration under Article 2.6	0	0	8	0
By early elimination under Article 2.15				46
(ii) Stage 2 (from 1998):				
By integration under Article 2.8(a)	3	21	26	0
By Article 2.8(a) and Article 4	2			
By early elimination under Article 2.15	10[c]			8
(iii) Stage 3 (from 2002):				
By integration under Article 2.8(b)	69	57	42	0
By Article 2.8(b) and Article 4	2			
Under bilateral agreements		13		
Under AGOA	17			
Total number of quotas abolished as of March 2004	103	91	76	54

[45] Of total 937 quotas of US on imports of textiles and clothing products from WTO members, it had phased out only 103 (or less than 11 per cent of restricted quota); EU only 91 out of total 303 (about 30 per cent) and Canada about 76 out of 368 quotas (about 21 per cent) (WTO G/L/725, 2004). For details see Table 2 below.

	US	EU	Canada	Norway
Quotas to be abolished on 1 January 2005	**834**	**212**	**292**	**0**

a. Including specific limits and sub-limits notified under Article 2 of the ATC.
b. Numbers do not include product categories on which quotas have been eliminated onlypartially.
c. Eliminated only for Romania, not for any other restrained Member.

Source: WTO Document G/L/683 (2004): 198-199.

There were concerns about using other means to delay the integration and liberalization commitments undertaken. In the light of reaffirmation of the full and faithful implementation of ATC commitments in the Doha Ministerial Conference (WT/MIN(01)/DEC/1, 2001: Paragraph 4), the stress on "exercising particular consideration before initiating investigations in the context of antidumping remedies on textiles and clothing imports from developing countries previously subject to quantitative restrictions under the Agreement for a period of 2 years following the full integration of the Agreement into the WTO" reflected apprehensions of Anti-Dumping action replacing the erstwhile Quantitative Restrictions.[46] Another area of concern was the change in US Rules of Origin criteria (WTO G/L/725, 2004) triggering the threat of Rules of Origin as the new restrictive instrument. In a dispute involving US Rules of Origin,[47] challenged by India, wherein the change in Rules of Origin Criteria from 'last substantive transformation' to 'specific processing operations' was alleged to protect US textile and clothing industry.[48]

In the final stage of the ATC, the developed country members had repeatedly asserted their full and faithful commitment to comply with the ATC provisions. For them, the major argument for comparative slow liberalization in this sector was that their domestic industry was entitled to the predictable pace of liberalization contained

[46] The illustrative *EC-Bed Linen* Case as discussed in Chapter IV may be considered in this regard. So also, the *South Africa- Definitive Anti-Dumping Measures on Blanketing from Turkey* (WT/DS288/1, 2003) presented similar situation of anti dumping action taken by South Africa on imports of blanketing in roll forms from Turkey.

[47] *US- Rules of Origin for Textiles and Apparels* (WT/DS243/R1, 2003). See further discussions in Chapter IV.

[48] India failed to establish the relevant provisions and customs regulations of US as violating the WTO Agreement on Rules of Origin.

in the ATC (WTO G/L/725, 2004) and that in any case, the quotas would end by 1 January, 2004. Thus, it could be seen that during the ten year period for integration of textiles and clothing sector into GATT 1994, the members have had very divergent interests regarding the quality of ATC implementation, a continuous source of real or potential problems and very often, hardly veiled frustration (WTO G/L/683, 2004: Paragraph 663).

III.5. Conclusion

As pointed out by Jackson, the textile trade arrangement has been, 'one of the most profound anomalies of our liberal trade period since World War II' with 'an elaborate system of voluntary agreements which perpetrates a quota system for international trade in textiles and clothing' (Jackson 1997: 206). It had remained the most adverse and long standing market constraining and discriminatory device of the twenty first century. With deliberate policies to discourage competition and efficiency, the increasingly restrictive web of multilateral restraints operated mainly towards the detriment of textiles and clothing trade of developing countries. Under a spurious concept of 'market disruption,' the MFA had led to an institutionalized derogation of the fundamental principles of the GATT, thus creating an 'imbalance of rights and obligations in the multilateral system' (Tang 1989). As an instrument negotiated under the General Agreement, the MFA perpetuated gross injustice and imbalance in the sector.

Therefore, attempts to dismantle MFA and to bring textiles and clothing trade 'under strengthened GATT rules and disciplines' was undertaken in the Punta del Este Declaration (1986) launching the Uruguay Round of Multilateral Trade Negotiations. The negotiations in textiles for about 8 years till the conclusion of an Agreement within the WTO framework indicated a clear division of interests between developed and developing countries. It is said that 'the Uruguay Round Agreement on Textiles and Clothing provided greater benefit to the developing world than any other innovation of GATT/WTO law' (Dillon 2002: 230). In fact, agriculture and textiles were regarded as the major bargain for developing countries for trade off in Intellectual Property and Services. The ATC provided a transitional arrangement for integration of textiles and clothing into GATT according to a multilateral timetable spread across 10 years. It was negotiated as a 'self-destructive' arrangement without

leaving any scope for further extension. However the apparently liberal and equitable arrangement designed under ATC did not prove to be one in the long run.

The technicalities of ATC had efficiently hid the inherent drawbacks. The pattern of liberalization commitments under ATC was mainly shifted to the last and final phase at the end of the ten year period. So also, there were several flexibilities like: wider product coverage in ATC including previously unrestricted items which could be 'integrated' under ATC according to the choice of the restricting countries; provision to impose restrictions under the transitional safeguard clause which was in fact 'the focus of friction in the years leading up to the end of managed trade in textiles;' a commitment for improved market access for textile trade aimed at developing country markets; a multilateral review mechanism at the end of every phase without any effective remedy often forcing developing countries to resort to the expensive Dispute Settlement mechanism of the WTO. So also, the differential treatment with respect to a large number of small suppliers, new entrants, LDCs, wool producing exporters, cotton producers and the like were not shown to be resorted to adequately.

Throughout the ATC period, the attempts have been to remove the injustice done by MFA and its predecessors to the developing countries in textiles and clothing trade. With the application of multilateral rules to the system which was till then regulated outside the GATT 1947 rules, a tilt in favour of the textile exporters was presumed. However, being the transitional period, nothing much could be realized. The removal of existing restrictions was systematically undertaken, but the agenda of the restraining exporters was to delay the process as much as possible. The ATC implementation illustrated the developed-developing country anomalies in the balance of rights and obligations under ATC. The application of transitional safeguards against developing country members had set the laborious dispute settlement process in run. So also, the provisions for anti-dumping, safeguards, administrative restrictions, visa requirements and other trade arrangements had placed considerable difficulties and challenges before the WTO members in the process of liberalization. In spite of all these shortfalls, the ATC attempts towards reiteration of WTO rules in textiles and clothing trade was looked upon as a process that would only add to strengthen the multilateral rule based system.

CHAPTER IV

TEXTILES AND CLOTHING TRADE IN POST ATC

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IV.1. Introduction

The textiles and clothing trade had moved under decades of protectionism outside the purview of a world trade order. The restriction on exports of textiles and clothing products, especially from the developing countries, was the main motive. The Multifibre Arrangement (MFA), along with the short and long term arrangements preceding it, systematically drew up a regime 'aimed at orderly opening of restricted markets in order to avoid the possible threat of market disruption' but effectively permitted discriminatory restrictions to be applied on trade in these products. The constant pressure for liberalization of these sectors in subsequent trade negotiations, yielded fewer results until 1986 when the agenda for the Uruguay Round negotiations included textiles and clothing, as a result of a number of developments including institutionalized pressure from the developing countries and the significant bargain attained by way of inclusion of new subjects in the trade debates.

The Uruguay Round developments in textiles and clothing brought the sector under GATT/WTO discipline, thereby seeking to strengthen the multilateral trading system by rewriting the long history of derogation from the multilateral trade rules. The Agreement on Textiles and Clothing (ATC) was viewed as one of great significance 'both in terms of potential short and longer term economic benefits and also in terms of systemic importance' (Shahin 2005). ATC had provided that the sector shall stand integrated into GATT 1994 on 1 January 2005 and that the restrictions thereunder shall stand terminated on that date (ATC 1994: Article 9). In spite of the back-loaded progress of integration over the ten year period, the MFA/ATC phase out[1] thus removed the bulk of MFA quotas and brought the trade in this sector at par with that of other goods.[2] In this sense, the ATC has kept its promise

[1] In 1994, ATC had brought in textiles and clothing as a subject under WTO consideration and provided a ten year transition period to phase out all restrictions under the MFA as on the date ATC came into force. Thus ATC effectively replaced MFA, by retaining its framework but in the form of an agreed phase out of MFA quotas. Therefore, the available literature on the subject interchangeably use 'MFA/ATC phase out.'

[2] During the ten year transition period there were different assessments on the quality of ATC implementation, which itself was a source of real or potential problems (See WTO G/L/683, 2004).

of liberalization and integration of textiles and clothing sector by 2005. It has led to a host of new issues in this sector.

It becomes implausible to assume that the institutionalized restrictions in textiles and clothing which had remained for almost five decades have been removed overnight.[3] There is always the threat of devising new legal and policy measures within the present GATT/WTO framework to continue the history of restrictive measures over the next couple of years at least. The crucial question therefore is, whether the trade in textiles and clothing is fully liberalized and integrated into GATT with the scope for free and fair trade rules to be applied in the sector. This Chapter attempts to look at the trade scenario after January 2005 and estimate how the legal and policy processes are devised in the successive periods to suit the interests of the so far protected markets and how effective this could be established. It tests the hypothesis of the study as to whether the regulation of international trade in Textiles and Clothing in the post-Agreement on Textiles and Clothing era will inevitably move under alternative regimes within GATT/ WTO framework, imposing restrictive measures in one form of trade remedies or the other.

IV.2. Impact of MFA/ATC phase out

IV.2.1. Some Predictions and Projections

The MFA/ATC phase out brought textiles and clothing trade under GATT/WTO and effected, in economic terms, liberalization of the sector by removing the quota system through which textiles and clothing products from developing countries previously entered the developed country markets[4] (Iyer 2005: 151). The overall effect would be that the textiles and clothing trade would now be determined by market forces and subject to increased competition- the major concerns in this regard being how quickly the countries would be willing to open up markets to competition, especially from developing countries and what trade policies and legal devices would be followed by developed countries with comparatively lesser trade

[3] According to the time table, about 49 per cent of the volume was to be integrated only in the last phase ending on 31 December, 2004.

[4] Under the MFA, each developing country was assigned a quota maximum of textiles and clothing that it could export to a participating developed country. The textile arrangement thus on the one hand repressed the exports of highly competitive countries that had the capacity to supply textile and clothing products in large quantities, and on the other provided guaranteed access to textiles and clothing exports of a large number of small and poorer countries especially in Asia.

advantage, in the new scenario. The lesson on costs and benefits of trade liberalization in other manufacturing sectors[5] (Free Labour Association 2005) can guide the likely adjustments costs in textiles and clothing. The full integration of the sector[6] into GATT is yet a significant development for global trade as most of the exporting countries have a high stake in textiles, due to its contribution to Gross Domestic Product (GDP), export revenues and employment (Chatterjee 2005). Therefore, the impact of implementing ATC had several dimensions (Nordas 2004: 24)- firstly, there is the political gain of strengthening the credibility of multilateral trading system; secondly, efficiency gains from elimination of trade distorting quotas which caused an inefficient allocation of textiles and clothing production;[7] thirdly, there is loss of quota rents[8] on the part of exporters under the ATC and finally, there is a gain to consumers[9] by access to cheaper and diverse products (Cattaneo 2005: 2).

It is considered that a large part of the total estimated gains of the Uruguay Round- ranging form 20 per cent to 50 per cent of the total- stem from elimination of quotas on industrial goods, of which ATC is the most important component (Reinart 2000). The welfare gains from the elimination of quotas are estimated to account for between 42 to 65 per cent of the Uruguay Round liberalization under different

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[5] For example, it is estimated that in the US, about 45,000 steel workers lost jobs since 1997 and 30 per cent of steel industry went bankrupt since 1998 when the steel imports to the country started rising on account of liberalization in the sector. It is estimated that in Mozambique, liberalization of trade in cashew nuts cost the jobs for 8500 out of 10,000 cashew processing workers. So also, the cost of US-Canada Free Trade Agreement (FTA) was estimated to a loss of 3, 90,600 jobs in the tradable sector for Canada (Bacchetta and Jansen 2003: 15-18).

[6] As on 2002 (end of second stage of ATC), only about 165 out of 1271 MFA quotas were integrated, which comes to less than 15 per cent of total quotas to be removed under ATC (WTO G/L/556, 2002; Spinanger 2005: 2). More than 80 per cent of the most traded textiles and clothing products were integrated in 2005. Also, in terms of major destinations, US is estimated to integrate 89 per cent, EU 70 per cent and Canada 79 per cent of MFA quotas on the last day of ATC (Chatterjee 2005).

[7] Indeed, economists predict that trade liberalization will induce adjustments which correspond to a reallocation of resources to more productive uses. Adjustment thus represents a sine qua non of efficiency gains from trade and hence unavoidable (Bacchetta and Jansen 2003).

[8] In theory, a quota is equivalent to tariff and as such it increases the local price of the product in the importing country, and reduces local demand for the product. But unlike tariffs which bring revenue to the government, the increased price due to quotas partly accrued to exporters as quota rents (Nordas 2004: 24).

[9] The removal of quotas will make textiles and clothing products available at competitive prices, thereby benefiting the consumers in the exporting countries. In this case, it is estimated that welfare cost of roughly 250 euros per family of four can be traced to textiles and clothing restrictions. So also, in the US almost 90 per cent of the cost to the economy stemming from such measures are attributable to restrictions of textiles and clothing imports (Spinanger 2005: 33).

economic models[10] (Nordas 2004, ITCB Analysis 2004: 5). Other estimates of global welfare as a result of the phasing out of the ATC quotas (Ananthakrishnan and Jain-Chandra 2005) indicate increase in welfare for the European Union (EU) around 25 billion euros while the welfare impact on United States (US) is estimated at 7.3 billion dollars, whereas the overall welfare gain range from 23 billion to 324 billion dollars. However due to lack of data on the real burden imposed by the distorting but non-transparent policies that existed under the quota regime restrict the analysis of welfare gains (Kathuria and Bhardwaj 1998).

Some of the 'pre-expiration predictions' (Hate et. al 2005) suggested that MFA expiration would bring about a reallocation of textile and apparel production among developing countries.[11] The study by US Department of Agriculture (MacDonald and Vollrath 2005) also predicted that the MFA phase out would set in motion changes in global textile production and consumption.[12] A comparatively less discussed aspect of post-ATC environment is the potential emergence of new investors and the significant expansion of firms that are competitive, which were previously constrained by quotas, leading to the creation of new capacity and net growth in employment even in some of the developed countries (Saxena and Wiebe 2005). In post 2005 period with the trade scenario with the elimination of global textile quotas, the buyers are free to source any amount of textiles and apparel from any country (Tewari 2005a: 2). In another estimate, textile and clothing buyers will reduce by half the number of countries they source from, bringing in the challenge for countries and companies to remain an important source for the buyers (Knappe 2003).

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[10] The welfare gains are however concentrated in the importing countries while a welfare loss along with a certain income gain in exporting countries is predicted. The welfare loss arises on account of the fact that the rise in exports is not sufficient to compensate for the loss of quota rents (Nordas 2004: 25).

[11] As suggested by a simple Ricardian Analysis, a country will produce and export goods in which it haas comparative advantage. Comparative advantage in producing is in goods if the opportunity cost of producing it relative to other goods is lower in that country than in other countries. It depends generally on factor endowments and factor requirements characteristics. As for the textiles and clothing industry, which is labour intensive and dependent on natural resources like cotton, the developing countries with abundant labour and resources should be benefited on MFA expiration.

[12] According to the study, the removal of quotas is likely to affect the geography of textile production more than the level of world wide consumption. The operation of market forces of supply and demand in the absence of MFA quotas relocate production from developed countries to comparatively more advantageous developing countries (MacDonald and Vollrath 2005; Mayer 2005).

The impact of the elimination of quotas on export of textiles is an increase in the export volume ranging from 17.5 per cent to 72.5 per cent and in the clothing from about 70 per cent to 190 per cent (Nordas 2004: 25). The dominant assumption is that with the removal of quotas, large low-wage countries in Asia like India and China with their stable supply network and large production capacities will benefit from the 'reorganization of global trade rules,' while many smaller countries that benefited form quota protection and assured market access under MFA will lose out[13] (Tewari 2005a: 2). Nordas (2004: 34) also predicted changes including a substantial increase in market access for China and India, while previously unrestricted countries will lose market shares as will also local producers in North America and the EU. Overall, the benefits of quota removal were expected to be distributed unequally across individual countries[14] and exporters in countries with internationally most competitive textiles and clothing industries will gain, while producers in countries that maintained quotas until the end of 2004 and exporters in countries that have enjoyed quota protected access to developed countries were set to lose (Mayer 2005: 393-394). Thus, there could be possible 'winners' and 'losers' (Maquila Solidarity Network 2005) with higher expectations for large low wage countries like India and China;[15] countries which have been highly restricted by quotas will survive only if they are competitive;[16] countries highly dependent on apparel exports[17] would feel the impact of shifting patterns most deeply.

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[13] Often there is an argument that the simulations based on economic models over-estimate the rise of China's market in world export of textiles and clothing following the removal of quantitative restrictions (Mayer 2005: 394).

[14] As quotas are bilateral, the extent of their restrictiveness varied across countries.

[15] It was considered that Taiwan and Republic of Korea would have benefited if the liberalization had been in 1980s; Thailand and Hong Kong if in 1990s. In view of the high wages in these countries at present, India and China have come to be on the beneficial side of liberalization at this time.

[16] There were 14 counties that faced quotas in more than 25 categories and use up more that 50 per cent of their limit of exports to the US- Bangladesh, Cambodia, China, Hong Kong, India, Indonesia, Malaysia, Pakistan, Philippines, South Korea, Sri Lanka, Taiwan, Thailand and United Arab Emirates- of which only the more competitive are expected to prevail (Maquila Solidarity Network 2005).

[17] Countries like Bangladesh, Cambodia, Macao, El Salvador, Mauritius, Dominican Republic, Sri Lanka and Honduras which have their apparel exports which are more than 40 per cent of their total merchandise exports (Maquila Solidarity Network 2005). Countries such as Cambodia, Bangladesh and Nepal having a share of garment exports in total merchandise exports of 85, 75 and 40 percentages respectively are compelled to keep at least a part of their present market to avoid higher unemployment and deeper poverty (Knappe 2003). This brings the question of adjustment costs in terms of employment and livelihood concerns.

IV.2.2. Some Realities

Predictions apart, not much is known about the actual position of textiles and clothing trade in the post ATC period. The latest *Trade and Development Report* (UNCTAD 2006) reiterates the widespread agreement that improved export opportunities can contribute significantly to economic development and alleviation of poverty.[18] The projection of benefits to Asian exporters is confirmed by a substantial rise in the Asian share of US and EU imports in the first nine months of the post-ATC regime with about 42 per cent of total US and EU imports coming from 12 of the Asian countries[19] as indicated in the *Tracking Report of one year evidence from Asia after the phase-out of textiles and clothing quotas* by UNDP (Adhikari and Yamamoto 2005: 9).[20] However the report states that the progress towards improving market access for developing countries' exports has been modest (UNCTAD 2006: 75). A more realistic picture from the *World Trade Report* (2006) indicates that in spite of the favourable conditions for expansion of world trade in textiles and clothing, the actual expansion of trade is not impressive.[21]

Though the import of textiles and clothing products into US is found to be at the same rate of 6 per cent as earlier (World Trade Report 2006: 14), there is considerable variation in the composition of suppliers and their respective growth rates.[22] The overall increase for EU was nearly 7 per cent in the first ten months of

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[18] According to the World Bank study on the overall benefits of trade liberalization by 2015, of the 37 per cent estimated global increase in export of about 78 million dollars, 19 per cent of the increase will be in textiles and clothing sector. The textiles and clothing would represent 32 per cent of export expansion for developing countries while other manufacturing would amount for only 15 per cent. However, the estimated rise in the total developing country exports is concentrated in a few countries- China for manufactures and Brazil for agricultural products (UNCTAD 2006: 79-80). Several Asian and the Latin American and Caribbean countries are locations for the efficiency seeking kind of Foreign Direct Investment (FDI), especially in textiles and clothing.

[19] The 12 Asian countries are Bangladesh, Cambodia, China, India, Indonesia, Lao PDR, Nepal, Pakistan, Philippines, Sri Lanka, Thailand and Vietnam.

[20] During the first three quarters of 2005, the share of US imports from the 12 Asian exporters increased form 41.5 per cent (2004) to 50.3 per cent (2005) in value terms and from 41.9 per cent (2004) to 50.5 per cent in volume terms. The share is larger in EU import of textiles and clothing products with an increase from 45.2 per cent (2004) to 52 per cent in value terms and 48.5 per cent to 54.1 per cent in volume terms was noted (Adhikari and Yamamoto 2006: 9).

[21] The trade in textiles and clothing products is estimated to have expanded in value terms by 5 per cent in 2005 compared to 12 per cent in 2004. The slowdown in 2005 is linked to deceleration of economic growth in developed countries and partly due to lower dollar prices as a result of exchange rate development (World Trade Report 2006: 14).

[22] China gained maximum with an increase of 43 per cent; other countries like India (25 per cent), Indonesia (18 per cent), Pakistan (13 per cent), Bangladesh (18 per cent), Cambodia (19 per cent),

2005 (World Trade Report 2006: 15). As for the EU market, the Asian exports in clothing except for India and China are seen to be declined,[23] along with imports from East Asian and Sub-Saharan economies.[24] The most severe fall in EU imports from Asian countries was for imports from South Korea falling about by 50 per cent in both value and volume terms and also for Philippines by about 40 per cent (Adhikari and Yamamoto 2005: 10). Another significant feature of post ATC textiles and clothing trade noticed is the loss of import shares from trade agreements[25] in the US market.. As for the EU, imports from proximate major preferential partners recorded a mixed performance.[26]

The analysis of the available trade patterns in the post ATC period however does not indicate very impressive results. China is far ahead,[27] yet there is indication of a slow down by the end of 2005.[28] While India and other developing countries from Asia have moderate gains, severe loss for East Asian and Sub Saharan countries is

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Jordan (13 per cent) and Peru (18 per cent) expanded, while high income developing countries like Hong Kong, Republic of Korea (24 per cent), Macao and Chinese Taipei showed an overall decrease of 17 percent in their imports to US. So also US imports from Sub-Saharan Africa reduced by 17 per cent. The percentage changes of import markets indicate a sharp fall for Lao PDR and Nepal in both value and volume shares which is as high as 40 per cent (Adhikari and Yamamoto 2005: 10).

[23] The EU imports of textiles from India declined by 15 million euros in cotton textiles (HS 55) and 30 million euros in man made staple fibres (HS 52).

[24] East Asia indicated a 29 per cent decrease, Pakistan 10 percent, Indonesia 13 per cent, Thailand 9 per cent, Sub-Saharan Africa 11 per cent and Sri Lanka 2 per cent respectively.

[25] The share of Caribbean Basin Initiative (CBI) and Mexico together in the US market declined from 21.5 per cent to 19.2 per cent in value terms and from 22.2 per cent to 20 per cent in volume terms. So also the share of African countries under the preferential terms of Africa Growth and Opportunity Act (AGOA) declined from 2.0 per cent to 1.6 per cent in value terms and from 1.6 per cent to 1.3 per cent in volume terms (Adhikari and Yamamoto 2005: 9). The share of NAFTA member states in US imports is estimated to have reduced by 6 per cent and from CAFTA and Dominican Republic declined by 4 per cent in value (World Trade Report 2006).

[26] There is a moderate import increase from Turkey (6 per cent) and Bulgaria (4 per cent) in the first ten months of 2005. However Romania (4 per cent), Tunisia (3 per cent) and Morocco (6 per cent) indicated lower supplies during the period (World Trade Report 2006).

[27] China which had only about 15 per cent of US imports in 2003 has captured more than a quarter of all US textiles and clothing imports by the end of 2005. Similarly, Chinese imports to EU rose from 21 per cent in 2004 to almost 30 per cent in the third quarter of 2005 (Adhikari and Yamamoto 2005: 10) with almost 60 per cent of the total share of the 12 major Asian exporters to EU.

[28] China's overall expansion of textiles and clothing exports is 21 per cent in 2005, faster than in 2004, but not as fast as in 2003 (World Trade Report 2006: 14). After reaching a highest of 26 per cent in 2005, the expansion of textiles and clothing exports slowed down markedly to 12 per cent in the fourth quarter of 2005 (World Trade Report 2006: 16). China's share of EU imports expanded in the third quarter of 2005 by nearly 50 per cent, but its share in US textiles and clothing stabilized at 27 per cent during the same period and decreased thereafter (World Trade Report 2006: 16).

reported. A review of textiles and clothing developments in 2005 in the US and EU shows that 'there was no acceleration in the overall import growth but that major shifts occurred in the supplies in each market' (World Trade Report 2006). This leads to the question whether the actual welfare gains of liberalization in the sector have been realized and propels the fear that 'dismantling the quota barriers to trade in textiles and clothing finally serves the interests of very few countries' (Cattaneo 2005). In such a case, one may be prompted to consider where and by what means the projected benefits of textiles and clothing liberalization have been taken away- it has to be seen under what alternate regime the textiles and clothing trade is moving in the post ATC period.

IV.3. Regulation of Textiles and Clothing Trade: Post ATC Regime

As discussed above, there were several economic predictions and projections for the post ATC period. But nothing could be ascertained with finality regarding the post 2005 regime to regulate textiles and clothing. Even the available limited data on trade patterns after ATC phase out do not provide much clarity. When the sector is integrated into GATT 1994, it means that the trade will be free and non-discriminatory in principle, only subject to tariffs and safeguards discipline under GATT/WTO (Acharya and Daly 2004: 5, Mayer 2005: 397, Knappe 2003). However, there has always remained the apprehension that the developed country importers would resort to trade defence measures available within the GATT/WTO once ATC is implemented (Acharya and Daly 2004: 18). The question of 'trade liberalization within the GATT/WTO framework' implies a rapid dismantling of trade barriers, but cannot be perceived as 'preventing the world economy from relapsing into protectionism (Wolter 1996: 540). Therefore, the post liberalization period needs to be carefully examined to determine the regulatory device to which the textiles and clothing trade may be subjected. Some of the main indicative elements of the forthcoming regime[29] may be examined as follows:

[29] Refer to diagrammatic representation of the various factors affecting textiles and clothing in the post ATC period annexed to this chapter as *Annex III- Post ATC: Factors Affecting Textiles and Clothing Trade* (at page 98).

IV.3.1. Tariff Protection in Textiles and Clothing

In the ten year period of ATC phase out projected the complex interaction between tariff reduction and quota liberalization on the one hand and changes in the trade flows and key economic indicators on the other (Spinanger 2005), while in the post ATC period 'only tariffs should remain the market entry mechanism' (Knappe 2003). It is considered that the complete integration of the sector into GATT by eliminating all quantitative restrictions by 2005 will bring tariffs[30] to the forefront (Bacchetta and Bora 2004: 177). The ATC does not however, provide any obligations to reduce tariffs. Therefore, the reduction of tariffs in textiles has to be added as part of the ongoing Doha Work Programme on industrial tariffs (Mayer 2005: 398), indicating that the removal of quantitative restrictions does not imply unconstrained trade in textiles and clothing. As specified in the Major Review of ATC Implementation (WTO G/L/725, 2004), any question of market access while abiding by the GATT rules and disciplines unfinished under the ATC would have to be addressed within the Non Agricultural Market Access (NAMA) negotiations.

The tariff patterns in the labour intensive manufactures like textiles and clothing produced by developing countries indicate a high level of protection continued to be applied against them.[31] The tariffs for textiles and especially clothing[32] products continue to be much higher than the average for other manufactured exports[33] from developing countries (UNCTAD 2006). It is among the

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[30] Tariffs are taxes levied on products when passing a customs border. GATT/WTO rules provide for non-discriminatory tariffs, the main exemptions being regional integration agreements and tariff preferences in favour of developing countries. Members cannot raise tariffs for products (or tariff lines) above the levels they have bound in their tariff schedule, which is an integral part of the GATT. However, it is seen that the tariffs are bound at levels much above the applied rates and hence a reduction in average tariffs does not necessarily imply a reduction in applied tariffs. As against agricultural goods, there are no rules concerning product coverage of tariff schedules for non-agricultural goods like textiles. For studies on tariffs see generally, Jackson (1969), Hoekman and Kostecki (2001), and for GATT rules and practices in tariffs, see Finger and Olechowski ed. (1987), *The Uruguay Round: A Handbook*, Washington DC: World Bank.

[31] The post-Uruguay Round tariff structure between 1994 and 2005, as indicated in the latest Trade and Development Report (UNCTAD 2006: 76) shows that the products of export interest to developing countries face the highest tariff barriers in developing country markets. The labour intensive manufactures in developed country markets indicate a maximum reduction of only 27.2 per cent from 1994 to 2005 for developing countries as against 47 per cent for developed countries.

[32] Clothing products are more labour intensive than textiles and of greater comparative advantage for developing countries. See the distinction made between textiles and clothing in Chapter I.

[33] Generally, the tariffs for textiles and clothing are substantially higher than the 4 per cent global average for manufactured products. Also, the average of applied tariffs on manufactured goods taken as a group is on average only about half that applied on textiles and about one third to one fourth that

categories with the highest tariff peaks[34] and tariff escalation.[35] The relatively high level of tariffs and large number of tariff peaks in textiles and clothing sector[36] imply that the level of protection in the main importing countries will remain sizeable even after the quota removal (Mayer 2005: 400). So also the tariff escalation in these products[37] is likely to bias exporting countries pattern of production towards low-value added products thereby obstructing technological upgrading (Mayer 2005: 403, WTO (2001):3). In this context, addressing tariff protection in industrial products especially in textiles and clothing undertaken in the Doha Round negotiations become significant.[38] Earlier, the Uruguay Round negotiations reduced the overall import weighted tariffs average on industrial goods to less than 4 per cent (Acharya and Daly 2004: 5), except for textiles.[39] The regulate series of tariff negotiation rounds to liberalize trade in goods under the GATT functionally meant binding of tariffs and seeking multilateral reductions from it. The GATT Article XXVIII *bis*[40] mandated

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applied on Clothing (Mayer 2005: 399). The applied tariffs range from 10 to 20 per cent for textiles and 20 to 30 per cent for clothing (MacDonald and Vollrath 2005: 6).

[34] Tariff peak for developing countries generally refers to a tariff of more than 15 per cent. Across countries, it is commonly understood as a tariff that is more than 3 times the country's average tariffs.

[35] Tariff escalation means higher import duties on semi processed products than on raw materials, and higher still on finished products. This practice protects domestic processing industries and discourages the development of processing activity in countries where raw materials originate (Centad 2005).

[36] As per a 2003 UNCTAD and World Bank estimate, tariff peaks in textiles and especially clothing is higher in most of the developed countries. For example in US out of the total 4.2 per cent of tariff lines above 15 per cent tariffs in manufactures, 4.4 per cent and 20 per cent are the respective shares of textiles and clothing sectors. For Canada, out of the total 7.8 per cent tariff lines in manufactures accounting tariff peaks, the share of textiles and clothing products are 7.8 and 65 percentages respectively (Estimates from UNCTAD and World Bank as quoted by Mayer 2005: 399).

[37] The fact that tariffs on clothing are higher than tariffs on textile products offers sufficient evidence of the presence of tariff escalation. For an illustration of this point, refer to WTO (2001) study.

[38] Tariffs when compared to quotas were regarded as lesser evils, however with the MFA/ATC phase out, it is likely that it may become a major barrier for developing country exports and hence all the more relevant.

[39] The tariff cuts on textiles in the post Uruguay Round was estimated at 22 per cent as against 40 per cent on industrial items of all developed countries. The average tariffs on textiles and clothing sector was 12 per cent while in the US it was 14.6 per cent still above the rate for developed countries as a whole (Ahmed 1997).

[40] GATT Article XXVIII *bis* generally provides that: negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and in particular to the reduction of such high tariffs as discourage the importation of even the minimum quantities, and conducted with due regard to the objectives of this Agreement and the varying needs of individual contracting parties, are of great importance to the

such negotiations for substantial reduction in tariff rates. However the present attempt to reduce industrial tariffs worldwide with significant implications for textiles and clothing sector was undertaken at the Doha Ministerial Conference in 2001. The objective as illustrated in Paragraph 16 of the Declaration is as under:

> We agree to negotiations which shall aim, by modalities, to be agreed to reduce or as appropriate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation as well as non-tariff barriers, in particular on products of export interest to developing countries (WTO WT/MIN(01)/DEC/1, 2001).

In this task, comprehensive product coverage and a full account of special needs and interests of developing and least developed participants were kept in view. The market access to manufactures or industrial goods, especially in employment intensive sectors like textiles and clothing would aid both economic development and social welfare of developing countries.[41] One major concern of tariff reduction exercise is to attempt a balance between cutting the high tariff on products of export interest to developing countries without any drastic reduction in the tariffs of developing countries to avoid possible adjustment costs.[42]

In the most recent Hong Kong Ministerial Conference of December 2005, the NAMA negotiations affirmed commitments to the Doha mandate through a reduction or elimination in tariff peaks, tariff escalation, high tariffs and non tariff barriers, especially for products of export interest to developing countries, and to take into account the special needs and interests of developing countries including through Less Than Full Reciprocity (LTFR) in reduction commitments (Paragraph 14); made sectoral initiatives non-mandatory (Paragraph 16) and a tariff reduction formula[43]

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expansion of international trade. The CONTRACTING PARTIES may therefore sponsor such negotiations from time to time.

[41] One often cited example is that of Indian textiles and garment sector. Indian textiles and clothing has increased export of textiles by 143 per cent and employment by 113 per cent during 1995-96 to 1999-2000 period (Centad 2005: 31).

[42] Tariffs are important policy tools to foster industrialization or other development policies of countries. The trade history reveals that developed countries like the US developed their infant industries behind high tariff walls especially between 1820 and 1945. so also, East Asian countries developed their industries behind high tariff walls (Ranjan, 2006).

[43] The formula approach for reduction of tariffs was first adopted in the Kennedy Round of Multilateral Trade Negotiations (1963-67) involving an identical percentage reduction in barriers across al sectors. Again in Tokyo Round (1973-79), a harmonization formula approach called Swiss formula was used which aimed at moving the tariff structure of members towards greater uniformity, cutting

with coefficients (WTO WT/MIN(05)/DEC, 2005), with details to be worked out by July 2006.[44] however the modalities on sectoral initiatives considered aimed to reduce, harmonize or as appropriate eliminate tariffs including reduction or elimination of tariff peaks, high tariffs and tariff escalations and over and above that of formula modality, in particular products of export interests to developing countries (WTO JOB(06)/200/Rev.1, 2006). Accordingly, a harmonization proposal[45] on textiles and clothing sector by Turkey acknowledged the initiative as different from the other sectoral initiatives, proposes mandatory participation by all competent producers and leaves open the possibility of an outcome that is not over and above that which could be achieved by the formula[46] (WTO JOB(06)/200/Rev.1, 2006), that is, liberalization of textiles and clothing products on a line by line basis, outside the scope of formula approach. However with the abrupt suspension[47] of Doha Development Agenda negotiations in July 2006, the future of the proposal is uncertain.

IV.3.2. Trade Agreements, Preferential Treatment and Origin Requirements

The question of high level of tariffs in textiles and clothing is offset to a considerable extent by the preferential rates available, which provide 'considerable variation in the level of applied tariffs that exporters to the main developed country markets actually face' (Mayer 2005: 400). As derogation from the fundamental MFN

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tariff peaks proportionately more than lower tariffs. In the Hong Kong Ministerial (December 2005) negotiations a Swiss formula with multiple coefficients was agreed, with the number of coefficients yet to be decided. It is proposed on the one hand that different coefficients be applied for developed and developing countries; another proposal by ABI (Argentina, Brazil and India) seeks to include average tariff level of countries as one coefficient in the formula so that the level of tariff cuts correspond with the existing levels; yet another proposal by Caribbean countries required a coefficient based on credit given to the developing country requirements (Ranjan 2005). It is understood that the Doha Agenda is temporarily held up due to disagreement in the NAMA negotiations.

[44] As per WTO website, this date is unofficially extended to December 2006.

[45] The Hong Kong Ministerial Declaration recognizing the pursuit of sectoral initiatives by members, had instructed the Negotiating Group to review proposals with a view to identifying those which could garner sufficient participation to be realized (WTO WT/MIN(05)/DEC 2005: Paragraph 16).

[46] This is firmly opposed by other Members who argue that it does not satisfy the requirements of the negotiating mandate.

[47] It is reported that there is a threat of total failure of Doha Development Agenda if the US Congress does not extent Trade Promotion Authority to Bush Administration when it expires in June 2007 (Centad Tradenews, 2006).

rule, the trade preferences and regional integration efforts[48] in the form of Regional Trading Arrangements (RTAs), Preferential Trading Arrangement (PTAs) and Free Trade Agreements (FTAs) perpetuated[49] outside the GATT/WTO discipline. Another form of preferential access through non-reciprocal preferential arrangements such as Generalized System of Preferences (GSP)[50] provided by the developed industrialized countries to developing countries and the regional integration arrangements- Asia Pacific Economic Cooperation (APEC), European Union (EU), North American Free Trade Agreement (NAFTA), Association of South East Asian Nations (ASEAN), Central American Free Trade Agreement (CAFTA), Common Market of the South (MERCOSUR) and Andean Community exert considerable influence in the world trade. Together with individual country agreements,[51] it provide for a complex web of trade agreements, which exist parallel to GATT/WTO system and regulate the bulk of international trade carried under it.

The proliferation of preferential/regional trade agreements indicate the multiple benefits arising out of such arrangements- firstly, the trade agreements are more liberal than the multilaterally negotiated arrangements. For example, they often provide deeper tariff cuts. It is considered that since textiles and clothing sectors are one of the most heavily protected sectors in industrialized countries, with the average tariff as high as 32 per cent on clothing, an FTA with a country like US or EU make

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[48] For more on regional integration see generally, Viner (1953), *The Customs Union Issue*, New York: Carnegie Endowment for World Peace; Anderson and Blackhurst ed. (1993), *Regional Integration and Global Trading System*, London: Harvester-Wheatsheaf; Bhagwati (1991), *World Trading System at Risk*, UK: Harvester-Wheatsheaf; Bhagwati and Panagariya (1996), *The Economics of Preferential Trade Agreements*, Washington DC: American Enterprise Institute.

[49] As on 30 September 2005, there were 330 RTAs notified to the WTO. These agreements draw legality from Article XXIV of GATT, Article V of the General Agreements on Trade in Services (GATS) and Enabling Clause of the WTO.

[50] Under the GSP, several industrialized countries including Australia, Canada, EU, Japan, Switzerland and US have provided preferential treatment to products originating in developing countries and least developing countries (LDCs). The most prominent are (a) duty-free and quota free market access provided by the European Union to all LDCs under the 'Everything But Arms' (EBA) initiative; (b) preferential market access provided by the EU to African, Caribbean and Pacific (ACP) countries under Cotonou Agreement; (c) Preference provided to the African countries by the US under Africa Growth and Opportunity Act (AGOA); (d) preferential access provided by the US, Caribbean Basin Trade Partnership Agreement (CBPTA) to Caribbean countries; (e) Canadian GSP (Adhikari and Yamamoto 2005: 24); (f) EU preference under GSP to Bangladesh, China, India, Vietnam and ASEAN-4 (Mayer 2005: 400).

[51] It includes agreements like US- Jordan Free Trade Agreement, US- Chile Free Trade Agreement, US- Bahrain Free Trade Agreement, etc. other than FTAs and RTAs, trade agreements come in different names and nomenclatures like Comprehensive Economic Cooperation Agreement.

sense for developing countries eyeing the ever growing US or EU markets (Adhikari and Yamamoto: 23). Secondly it is more acceptable for the developed industrialized countries because the preference margin for beneficiary countries may be suitably modified to suit their individual interests. There is scope of flexibility in determining the terms of trade and origin criteria within the trade agreements thereby making them more forthcoming in sectors like textiles and clothing.[52] So also the benefits accorded need not be extended on a non-discriminatory basis (Mayer 2005: 400). It is noted that the beneficiary countries gain considerable advantage over non-members and higher market shares would prevail under fully non-discriminatory conditions.[53]

As for textiles and clothing regime post ATC, the analysis of the textiles and apparel provisions in the US trade agreements[54] indicate important developments in the sector during the period. The North American Free Trade Agreement (NAFTA) between US, Canada and Mexico provided the most comprehensive provisions[55] to regulate textiles and clothing trade by categorizing the major Rules of Origin, tariffs, quotas and tariff preference levels in the four groups- yarn, fabrics, made-up articles

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[52] The calculations based on UNCTAD and World Bank's World Integrated Trade Solution (WITS) database indicate that the 'import weighted effectively applied tariffs' by the EU and US on textiles and clothing imported from their respective partners in regional Preferential Trade Agreements (PTAs) are lower than they are for those imported from non-member developing countries, and that they are significantly lower than MFN tariffs (Mayer 2005).

[53] To illustrate, Mexico's share of textiles and clothing exports to US increased by more than 12 fold between 1990 and 2001. Jordan- US FTA brought Jordan's exports to 699 million dollars, an increase of 1477 per cent in 2001. US-Dominican Republic Central American Free Trade Agreement (DR-CAFTA) of 2004 is supported by textiles and clothing lobby for preferential access given to Central American countries over growing competition from China (Adhikari and Yamamoto 2005: 23-25). In another case, Turkey having a growing share of textiles and clothing imports to EU, managed to increase its trade by 9.1 per cent in value terms and 3.2 per cent in volume terms (Adhikari and Yamamoto 2005: 23) as against less impressive performance in US market where it do not benefit from any preferential treatment (Mayer 2005: 402).

[54] This paragraph draws mostly form the information provided in the Office of the US Trade Representative website www.ustr.gov and the Office of the Textile and Apparel Commissioner website www.otexa.ita.gov/tradeagreements.

[55] Firstly, tariffs will be phased out in a maximum of 10 years for products manufactured in North America that meets NAFTA Rules of Origin with immediate removal of tariffs on 20 per cent of exports; secondly, other barriers covering 80 per cent of textile and apparel trade especially between US and Mexico will be eliminated in 6 years or less; thirdly, special rules established to provide for temporary relief for producers seriously damaged by increased imports of textiles and apparel; fourthly, regarding Rules of Origin, 'yarn forward' is the basic rule. It means textiles and apparel goods must be produced from yarn made in a NAFTA country in order to have full benefit to the Agreement. Otherwise Tariff Preference Level exemptions are given under which yarn, fabric and apparel made in North America does not match the stricter content requirement can be eligible for preferential duty treatment upto agreed annual levels. The details are available at www.otexa.ita.doc.gov/nafta.

and apparel separately. The overall emphasis is on the removal of tariff and non-tariff barriers to trade, but provisions for safeguard actions to provide temporary relief for producers seriously damaged by increased imports of textiles and apparel resemble the MFA Safeguard provision against market disruption. The Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) provision for textiles, specifically exclude any Tariff Preference Level (TPL)[56] and provide for tougher customs enforcement procedures[57] and textile specific safeguards (DR-CAFTA Policy Brief 2005). Limited allowances for Tariff Preference Levels (TPL) is provided under US- Morocco Free Trade Agreement[58] as in NAFTA, US-Singapore and US- Chile FTAs whereas for Bahrain[59] Temporary TPL is given. Agreements with Australia and Chile provide for Bilateral Emergency Action in the event of serious damage or actual threat to domestic action, following investigation by competent authorities.

An objective assessment indicates the wide variation in preference levels guaranteed under different agreements. The stringent origin requirements, customs administration and certification requirements make market access costly. Also, the textile specific safeguards carry the elements of market disruption to protect domestic industry from competition- however it does not initiate restrictive action, but applies MFN tariffs thereby eroding the preferential access. Thus the emerging regime of regional/preferential trade agreements taking over the GATT/WTO trading system has arrived at highly unfavourable terms of textiles and clothing trade in the post ATC period.

Another trend in the trade agreements is the use of bilateral quotas in the individual agreements arrived at after 2005. The US- China and EU- China Textile

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[56] About 94 per cent of Central America's apparel supply is form El Salvador, Costa Rica, Honduras and Guatemala. By concluding a trade agreement, the first time the US concluded without TPL with any country is indicative of an intention to circumvent any benefits to these countries (CAFTA Policy Brief 2005).

[57] CAFTA customs procedures are stricter than NAFTA. Among the provisions, US customs authorities can even conduct surprise site visits to Central American producers and the US can undertake a variety of enforcement actions upto and including a bar of entry of suspect goods. (CAFTA Policy Brief 2005).

[58] US- Morocco FTA allows for use of yarn and fabrics from a non-party under Tariff Preference Level which is set at an initial level of 30,000,000 square metre equivalents for first 4 years, to be reduced over next 6 years and eliminated entirely by 10 years after which yarn forward Rules of Origin criteria will apply (Textile Fact Sheet 2004).

[59] TPL in US- Bahrain FTA is temporary and is set at a level of 65 square metre equivalents for the first 10 years of the FTA (Bahrain Fact Sheet 2005).

Agreements[60] impose quotas on Chinese textile exports to the US and EU respectively, in certain specific and critical product categories with provision for textile specific safeguards action (Crook 2006: 472-473; Husisian 2005). So also, during the negotiations for South Africa- China FTA in July 2006, there was an agreement on voluntarily restraining Chinese exports to South Africa.[61] Earlier, a bilateral textile arrangement between Vietnam and US also provided for quotas on Vietnam's shipments of textiles and apparel to the US[62] (Mayer 2005: 415). At present, with the Vietnamese accession to the WTO pending by the end of December 2006, Vietnam will no longer be subject to the textiles quotas.[63]

V.3.2.i. Rules of Origin

'Rules of Origin'[64] is the critical determinant of the preferential treatment granted within PTAs and RTAs. The impact of the Arrangement on trade flows is regulated by the rules laid out to determine the access to the preferences.[65] Generally,

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[60] For details see the discussion under Section IV.3.3.a. Safeguard action.

[61] It is reported that the South African Revenue Services (SARS) and China's Customs Authority arrived at a Memorandum of Cooperation in July 2006 which provided for a textile quota agreement to impose quotas on Chinese textiles w.e.f. 1 January 2007. This is in the background of a study by the South African Trade Law Centre (Tralac) on the negative impacts of the trade agreement in South Africa. The agreement also sets the basis to combat illicit trade in counterfeit goods and smuggling. For details see www.sabcnews.com/politics/government as accessed on 18 October, 2006.

[62] The Vietnam's share of US imports has increased sharply by the mid-2004, which followed the entry into force of US- Vietnam Bilateral Trade Agreement in December 2001. This was followed by the bilateral agreement in 2003 (Mayer 2005: 415). So also an agreement between US and Indonesia was arrived at in 2000 to stop illegal textile trade to US, which was intended to stop clothing from China, Vietnam and other potential suppliers form illegal entry into the US market (Reuters 2006). For details see, http://today.reuters.com/news/articlenews as accessed on 27 September, 2006.

[63] However, while importing to the US, the US Association of Importers of Textiles and Clothing (USA-ITC) has indicated the import quotas to remain in place until February 2007 to guide during the transitional period towards quota free regime for Vietnam.

[64] Rules of Origin are those rules which aim at determining the geographical origin of goods imported on the territory of a state. It is essential for determining the 'economic nationality of goods.' For more on Rules of Origin see generally, Hirsh, Moshe (2002), "International Trade Law, Political Economy and Rules of Origin: a Plea for Reform of the WTO Regime on Rules of Origin", *Journal of World Trade*, 36(2): 171-188; Asakura, Hironori (1995), "The Harmonized System and Rules of Origin", *Journal of World Trade*, 29(2): 5-21; Ministry of Industry, Government of India (2005), *Rules of Origin: A Road Map for India*, Study commissioned by the Department of Industrial Policy and Promotion, New Delhi: Institute of Applied Manpower Research.

[65] Rules of Origin are important in the context of RTAs and FTAs as the Rules of Origin determines the scope and application of the arrangement by deciding the products which are entitled to preferential or duty free treatment if it comes from a developing country or a partner country in world trade (Croome 1999: 118). Rules of Origin are described as the 'gatekeepers' in discriminatory trade

they set the requirements for the origin of imported materials and minimum domestic value content of exports. The greater the restrictiveness of the rules of origin, the greater will be the incentive to use local materials.[66] With the aid of this major policy tool, the developed countries which provide preferential access on one hand, take away the benefit by imposing rigid Rules of Origin requirements.

As for the textiles and clothing sector, the Rules of Origin were considered as 'the new weapon against free trade in textiles' (Satpathy 1998). The inherent nature of textiles and clothing industry with various stages in production and processing[67] itself makes determination of origin a serious concern. Even determining origin on the basis of last substantial transformation becomes difficult as there is no uniform criterion as to what constitutes substantial transformation (Satpathy 1998: 2336). Moreover, the Rules of Origin criteria for textiles often undertaken in FTAs and RTAs are quite complex.[68] The US change in the Rules of Origin criteria[69] in 1996 made market access more difficult for exporters thereby making a negative contribution to the progressive liberalization under ATC during the period (WTO G/L/224, 1998) and

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regime (Hirsch 2002: 176) as they determine the extent to which the preference accorded can be utilized, by differentiating between products from beneficiary and non-beneficiary countries.

[66] Thus, the sourcing of low-cost intermediate goods from the rest of the world becomes improbable in the preferential trading arrangements. This reduces the choice of products leading them to use inputs of less efficient producers or constraining their methods of production through technical requirements or both. Beyond administrative costs, producers who wish to satisfy Rules of Origin may thus incur the cost of using sub-optimal mix of inputs (Mayer 2005: 401-403; Adhikari and Yamamoto 2005: 26).

[67] The manufacturing of textiles and clothing products is a complex process- it involves spinning, weaving, dyeing and printing, cutting and assembling operations. The textile processing further involves bleaching, texturing, mercerization, dyeing, printing, coating, embroidery and the like. Another process of converting into made-up articles like bed linen, curtains, draperies, etc. are also applied. Since the processes are carried out at countries according to comparative advantage, the origin has to be determined on the basis of last substantial transformation (MacDonald and Vollrath 2005; Satapathy 1998: 2337).

[68] Rules of Origin specific for textiles and clothing sector includes Fibre Forward Rule, Yarn Forward Rule, Fabric Forward Rule and Cut and Sewn Rule which respectively requires the respective components of the products to originate at the specified destinations (Ministry of Industry, Government of India, 2005).

[69] US Rules of Origin applicable to textiles and apparel products as set out in section 334 of the Uruguay Round Agreement Act of 1994, section 405 of Trade and Development Act of 2000 and customs regulations implementing these provisions were changed in 1996. Accordingly, processes like bleaching, dyeing, printing, or conversions into made-up articles did not constitute substantial transformation. According to the 'Fabric Forward' rule, the country of origin of a fabric is where its constituent fibres, filaments or yarns are woven, knitted, needled, tufted, fitted or transformed by any other fabric making process (WT/DS243/R 2003: 34). This rule brought the previously unrestricted trade subject to strict quotas of developing countries.

was challenged by both EU and India.[70] The Panel rejection of India's argument against the suitability of 'fabric formation rule' is regarded as 'an instance of how protectionism could take new forms when measures such as antidumping duties or transitional safeguards would not be available' (Ravindra Pratap 2005).

Some of the origin criteria in illustrated US trade agreements throw more light on the restrictive application of Rules of Origin especially in textiles and clothing trade. The NAFTA Rules of Origin follows a basic 'yarn forward' rule with specific variations and exceptions in different product categories of yarn, fabric, made up articles and apparel. The Rules of Origin criteria in DR-CAFTA also provides 'yarn forward' rule whereby only apparel using US fabric or yarn qualifies for duty free benefits but provided for a certain limited cumulation of inputs from Mexico and Canada. Since deviations from yarn forward rule under the agreement is estimated to be lesser than 10 per cent, DR-CAFTA is regarded as the tightest textile agreement ever negotiated (CAFTA Policy Brief 2005). Also under the many US agreements there is a limited provision for tariff protection level for certain quantities of imports to US for a temporary period, but yarn forward rule would be applied in the long term.[71] As for the European Arrangement, the Rules of Origin requirements for the Everything But Arms (EBA) initiative is the most onerous- with the requirements for at least two finishing operations- double transformation- occur in the exporting country for duty free access (Adhikari and Yamamoto 2005: 26). As per the latest UNDP study, the Rules of Origin requirements for many preferential arrangements are therefore cumbersome, inefficient and resource demanding.[72]

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[70] The US-EU dispute was settled by a mutually accepted solution wherein US agreed to introduce legislation amending section 334 (WT/DS85/1, 2000). In the subsequent case brought by India (WT/DS243, 2003), it pointed out the changes introduced in amending legislation section 405 as aimed at taking account of particular import interests of EU. However India could not establish the factual assertions and its claims were defeated (WT/DS243, 2003: Paragraph 6.23).

[71] US agreements with Bahrain and Morocco applied Tariff Preference Level (TPL) in lieu of Rules fo Origin for a limited period, while US agreement with Peru and Colombia applied a 'short supply' determination process wherein exceptions to Rules of Origin will be handled through certain listed 'short supply' items which may be extended after or before the entry into force. Also a 'de-minimis' provision was allowed for limited amount of specified third country imports to go into US in certain agreements (Peru Policy Brief 2005).

[72] For example, the administration cost of certifying origin in European Free Trade Agreement (EFTA) range from 3 to 5 per cent value of export transaction as per the Inter-American Development Bank estimate of 2005. So also, as estimated by the World Bank, the administration cost of providing documentary evidence to support the certificate of origin under NAFTA are about 1.8 per cent of the value of exports (Adhikari and Yamamoto 2005: 26).

IV.3.3. Increasing Recourse to Trade Remedies

In the period following ATC, the most pertinent fear was regarding the application of trade remedies to direct the trade flows in textiles and clothing. It may be examined how these legitimate tools available within the GATT/WTO system is being applied in a restrictive manner.

IV.3.3.a. Safeguard Measures

Safeguards[73] are the most significant trade remedy to be applied once the textile products are integrated into GATT 1994. The rules under Article XIX of GATT and the Agreement on Safeguards would be the only multilateral disciplines restraining trade in textiles and clothing in the post ATC period. Even ATC had provided that Article XIX safeguard action could be taken in respect of integrated products[74] within one year of integration (ATC 1994: Article 2), but safeguard measure will have to be compatible with WTO rules- they will have to be non-discriminatory and confirm to the requirements of the WTO (Hoekman and Kostecki 2001:230).

Over the ATC period (1994-2004) not many cases of Article XIX action were reported. During the first phase (1995-1998) of ATC implementation, there was an instance of Argentina invoking an investigation with a view to imposing provisional safeguards measures under Article 12 of Agreement on Safeguards on import of footwear products, some of which fall within the coverage of ATC (WTO G/L/179, 1998: Paragraph 1). In the other two stages no cases of GATT safeguard action were reported.[75] So also in the post ATC period there resort to safeguard is not reported, the

[73] For more on safeguards see generally Finger, J. Michael (1996), "Legalized Backsliding: Safeguard Provisions in the GATT" in Will Martin and L. Alan Winters (ed.), *The Uruguay Round and Developing Countries*, Cambridge: Cambridge University Press; Smith, G. Murray (1999), "Import Relief Laws: The Role of Safeguards" in Miguel Rodriquez Mendoza, Patrick Low, and Barbara Kotschwar (ed.), *Trade Rules in the Making: Challenges in Regional and Multilateral Negotiations*, Washington DC: Brookings.

[74] As different from this, non-integrated products could be subjected to transitional safeguard action which may be discriminatory, subject to less stringent injury criterion and did not require compensation of affected exporters.

[75] The statistics on safeguard actions indicate only one safeguard action taken by Chile in 2000, without specifying if it is for textiles sector. For details, see WTO website. Alternatively there were 34 transitional safeguard actions under Article 6 of ATC in the first phase, with considerable reduction in the subsequent years (WTO, G/L/459, 2001).

reason for downfall in the rate of safeguard action could be the stringent criteria[76] for initiating action under the Agreement on Safeguards. It is indicated that in the post ATC period, there were requests for safeguard action on imports from China in the US and EU[77] and quotas limiting imports were unilaterally imposed under the textile specific safeguard clause under the China's Protocol of Accession (WTO WT/L/432, 2001) to the WTO.[78] There were reports of provisional safeguard measures by Turkey and Colombia on imports of textile products originating in China (World Trade Report, 2006).

Subsequently in November 2005, a Memorandum of Understanding between US and China concerning trade in textile and apparel products under Paragraph 432 of the Report of the Working Party for the Accession of China to the WTO (WTO WT/ACC/CHN, 2001) after long negotiations. The agreement on textile quotas for Chinese imports to US for the period 2006-2008 in lieu of unilateral safeguard measures by the US has the following features

(i) Agreement has a product coverage of 34 categories;

(ii) It will allow increases of Chinese textiles of 10 per cent in 2000, another 12.5 per cent in 2007 and further 15-16 per cent in 2008;

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[76] Article 2 of the Agreement on Safeguards (1994) sets forth the conditions under which safeguard measures may be applied- (i) it requires strict determination of serious injury or a threat of serious injury to domestic industry; (ii) safeguard measures should be applied on Most Favoured Nation (MFN) basis; (iii) also, the Agreement provides that it may be applied to the extent necessary to remedy or prevent serious injury and to facilitate adjustment, within certain limits; (iv) duration of safeguard measure is four years, plus an extension which cannot exceed 8 years; (v) safeguard measure in place for more than one year, must be progressively liberalized at regular intervals during the period of application; (vi) repeated application of safeguards with respect to a given product is limited by the Agreement.

[77] In April 2005, US Committee on Implementation of Textiles Agreement (CITA) agreed to consider requests for safeguard action for imports of seven categories of textiles and apparel products and quotas limiting imports were started in May 2005 under specific textile safeguard of the Chinese accession agreement to WTO, which was more or less a unilateral action. So also, in April European Commission started investigation for evidence on market disruption caused by imports from nine textile categories and engaged in formal consultation with the Government of China according to Paragraph 16 of China's Accession Agreement to WTO (World Trade Report 2006).

[78] China's Protocol of Accession to the WTO (WTO WT/L/432, 2001) included special safeguard provisions for 12 years after accession to allow much greater freedom for WTO members to intervene against a surge of imports from China- there are rules for both general and selective safeguards. WTO members can restrict imports of China's textiles and clothing products should it cause serious market disruption- this measure can be imposed for 12 months and valid till 31 December 2008 (WTO WT/ACC/CHN, 2001: Paragraph 242); it is possible for WTO members to impose "selective" safeguard measures against Chinese imports until 2013 (WTO WT/L/432, 2001: Paragraph 16). Measures could not be applied under both the provisions.

(iii) To administer the agreement, US and China agreed on an Electronic Visa Information System (ELVIS)[79] for certain textile and apparel products;

(iv) The agreement is expected to provide greater predictability and certainty to the trade environment in the post quota period.

Earlier, in June 2005, a similar agreement had been reached between EU and China (ITCB 2005b) on export of certain categories of textile and clothing products into the EU, this also under Paragraph 242 of the Working Party Report on the Accession of China to the WTO (WTO WT/ACC/CHN, 2001).[80] It limited China's textile export growth to the EU for 10 categories for the years 2005-2007. The annual growth rates for most categories ranged from 10 to 12.5 per cent from import levels of a base year ranging from April 2004 to March 2005. The EU promise in return was to restrict its right to safeguard action until 2008. In contrast to US-China agreement, no quantitative limits were set for imports in 2008 (ITCB 2005b). In February 2006, Brazil also signed an export restraint arrangement with China covering 8 categories of about 70 products to be in effect until the end of 2008 (World Trade Report 2006: 19).

Thus, it could be seen that though safeguard action under the Agreement on Safeguards has come to a minimum, the textile specific safeguard clause has been operative as against major competitors like China. In the post ATC period, the trend has changed from a unilateral safeguard action to application of bilaterally arrived at quota limits under the Safeguard clause in Chinese Accession Protocol. This has resulted in short term bilateral restraint arrangements in order to avoid disruption of market in developed countries like US and EU. Interestingly, there is no a criterion or threshold to determine and trigger market disruption actions. Further, most of the bilateral and preferential trading arrangements also carry a textile specific safeguard mechanism which is a new device to regulate the trade in textiles and clothing. In

[79] This followed a long tussle between the US textile industry associations demanding safeguard restrictions on one side and the US importers of textiles and apparel on the other side. On a petition filed by the US Association of Importers of Textiles and Apparel (USA-ITA) challenging the validity of CITA's consideration of cases on the basis of threat of market disruption, the US Court of International Trade issued an injunction prohibiting the administration i.e. CITA, from considering these requests until it ruled on the issues raised in the petition (ITCB 2005a). Meanwhile, the EU-China agreement (ITCB 2005b) on textile trade prompted US administration to also pressure China for a comprehensive agreement instead of unilateral restrictions.

[80] According to the Electronic Visa Information System (ELVIS) , the Chinese Ministry of Commerce sends a transmission message to the US Bureau of Customs and Border Protection (CBP) describing a shipment which shall contain visa number, date of issuance, category code, quantity, unit of quantity, Manufacturer Identification Code before the entry of US shipment into US. This transmission certifies the origin of products and authorizes US to charge the shipments against any agreed levels within the memorandum (Memorandum of Understanding 2005).

sum, presently, the safeguard measures have come to play a significant role in controlling the trade flows in the sector.

IV.3.3.b. Antidumping and Countervailing Duty Actions

Towards the end of ATC period, antidumping was considered the most pernicious of all trade measures as it had emerged as the most widespread impediment to international trade over the years.[81] This is mainly on account of two reasons: first, the application of antidumping measures is comparatively easier; second, it can be applied to targeted firms in targeted countries[82] with absolute impunity (Adhikari and Yamamoto 2005). Hence the increasing recourse to antidumping measures is believed to 'erode the predictability and non-discriminatory application of trade policies achieved by successive rounds of multilateral trade negotiations' (UNCTAD 2006). Therefore, the caution as to antidumping as a trade defence likely to be resorted to in the post ATC regime was reflected in the Doha Ministerial Decision that 'members will exercise particular consideration before initiating investigations in the context of antidumping remedies on textiles and clothing exports from developing countries previously subject to quantitative restrictions under the ATC for a period of 2 years following full integration of the textiles and clothing sector into the WTO' (WTO WT/MIN(01)/DEC, 2001 and WTO G/L/725, 2004).

As per WTO estimates, the number of antidumping actions per year almost doubled during late 1980 and late 1990s reaching a peak of 364 initiations in 2001, but falling subsequently to 191 in 2005 (UNCTAD 2006: 81). There is also a marked change in the users of antidumping remedy.[83] So also, the Asian countries have been

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[81] Antidumping action is taken against low cost imports of products on an export market when the price is less than what is charged in the home market for the same products or below its cost of production. The WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or the Antidumping Agreement (1994) governs the antidumping actions in GATT/WTO. For more on antidumping actions see generally, Finger, J. Micheal ed. (1993), *Antidumping: How it Works and Who Gets Hurt*, Ann Arbour: University of Michigan Press; Hoekman and Mavroidis (1996), 'Dumping, Antidumping and Antitrust', *Journal of World Trade*, 30(1): 27-52.

[82] For example, the illustrated Eurocoton (a textiles and clothing industry association in EU) initiated antidumping action on imports from Asian countries (WTO TN/RL/W/48/Rev.1, 2003).

[83] Developing countries like Argentina, Brazil, India, Mexico, South Africa and Turkey are the group of new users initiating a large number of investigations, their share increasing between 50 to 60 per cent from virtually none in 1980 (UNCTAD 2006: 81; Hoekman and Kostecki 2001: 305).

increasingly targeted,[84] with the share of antidumping action against them rising from 30 per cent in later 1980s to over 70 per cent in 2005 (UNCTAD 2006: 82). In the list of preliminary and definitive antidumping measure applied on textiles and clothing products in the period from 2002 to June 2004 (G/L/683, 2004: Table 11), about 9 actions by EU, 4 by US and 2 by Turkey, the most affected countries being India and China. Even in the first half of 2005, 14 antidumping actions are reported to be notified to the WTO in textiles and clothing sector (World Trade Report 2006). This can be correlated to a trend to surpass the comparative edge of Asian exporters in textiles and clothing during and after the integration of textiles and clothing into GATT.

The growing vulnerability of textiles exporters to antidumping action by industrial countries is best illustrated in the *EC-Bed Linen case* (2003) - wherein India successfully challenged the European Council Regulation EC No. 2398/97 on import of cotton type bed linen from India.[85] It is considered that at both the Panel and the Appellate level India won the case under a technical but important claim[86] (Bhala 2005: 740) by which the antidumping duty imposed on the category of textile product was finally removed. This raises the question whether the developing country textile and clothing exporters would be competent to contest similar technical nuances of antidumping action and overcome market access restrictions in the long run. This remains the major concern in the backdrop of expected cut in the prices following the removal of quotas (WTO G/L/725, 2004).

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[84] There are about 175 antidumping cases related to textiles products initiated by all countries during 1999-2004. Textiles and textile articles account for 13 per cent of all antidumping cases against India during the same period (Beena P.L. 2006).

[85] India argued that the determination of standing, the initiation, determination of injury as well as the explanations of the EC authorities findings are all inconsistent with WTO law; that the EC authorities establishment of the facts was not proper and that the EC's evaluation of facts was not unbiased and objective, that the EC had not taken into account the special situation of India as a developing country and that there were violations of different provisions of Antidumping Agreement and Articles I and IV of GATT 1994.

[86] India had successfully claimed a violation of Article 2.4.2 of the Antidumping Agreement (1994) by the EC application of zeroing methodology in calculating the dumping margin (EC Bed Linen Panel Report: Paragraphs 6.114 to 6.119) wherein it had distorted the preference margin as the method was creating new prices, and not taking into account the existing prices. Also, a finding of violation of Article 3.4 of the Antidumping Agreement (1994) by not taking into account all factors mentioned therein for the assessment of material injury to domestic industry. EU was also held to violate Article 15 of Antidumping Agreement by overlooking the possibilities of constructive remedies before imposing a full antidumping duty.

The experiences and concerns of developing countries regarding antidumping action in textiles and clothing as communicated to the WTO General Council (WTO TN/RL/W/48/Rev.1, 2003) illustrate the following points:

(i) The lifting of quotas in textiles and clothing have shifted the attention of textiles and clothing lobbies to contingent trade protection;

(ii) Textiles and clothing sector has seen large numbers of initiation of antidumping actions, especially against developing country imports;

(iii) Generally, action is initiated against exporting firms in developing countries which are usually small or medium sized, with small export volumes, creating a legitimate strong doubt about the very capacity of dumping on their part;

(iv) In certain categories of products the length of time during which the duties have been in effect varies from 10 to 20 years (WTO TN/RL/W/48/Rev.1, 2003).

Another significant threat to textiles and clothing trade is that of levying countervailing measures.[87] This applied as against a country that subsidizes its exports in contravention of the Subsidies Agreement in the WTO. It is expected that the countervailing measures would increase in the post ATC period, which emphasizes on competition, as subsidization operates against the element of market disruption. The last phase of ATC indicates the application of preliminary and final actions on countervailing duties applied on the textiles and clothing products (WTO G/L/683, 2004).

The countervailing measures are significant tools against imports from developing and least developed country members where textiles and clothing industry survives on any financial contribution of a government. For example, in India, certain industrial subsidies that operate in textiles and clothing sectors[88] come within the

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[87] For more on Countervailing Duty Measures see generally, Snape, Richard (1991), 'international Regulation of Subsidies', *World Economy*, 14: 139-164; Hoekman and Mavroidis (1996), 'Policy Externalities and High-Tech Rivalry', *Leiden Journal of International Law*, 9: 273-318.

[88] The relevant scheme is the Technology Upgradation Fund Scheme (TUFS) set up for modernizing textiles and clothing industry. Under this scheme, manufacturing units are eligible for long and medium term loans form the Industrial Development Bank of India (IDBI), Small Industries Development Bank of India (SIDBI) and Industrial Finance Corporation of India (IFCI) etc at interest rates that are 5 per cent lower than the normal lending rates of banks. The Fund is used to reimburse the interest subsidy to the lending institutions. The scheme is actionable under Article 5(a) and 5(b) of the Agreement on Subsidies and Countervailing Measures (Hoda and Ahuja 2004: 29).

purview of actionable subsidies. In this situation, any support measure for domestic industries are likely to trigger countervailing measures, however it is seen to be comparatively less frequently resorted to than antidumping action.[89] The trade remedies have significant impact on trade between countries as a potential threat of remedial action itself can be detrimental to the interests of countries. Therefore greater caution as to the emerging regime with recourse to such measures is called for.

IV.3.4. Other Barriers to Trade

It is expected that some of the other barriers to trade will operate to restrict the trade in the sector following the quota phase out. Hence some of the elements like Non Tariff Measures, Policy measures and Supply Chain requirements in the sector are examined to understand the possibilities of restrictive actions in trade during the post liberalization period.

IV.3.4.i. Non Tariff Measures

The textiles and clothing is one main sector where non tariff measures are aplenty. From the cumbersome customs procedures, visa requirements, stringent labelling requirements, environmental and labour standards, origin rules, quota restrictions and antidumping measures, the trade in this sector has witnessed a number of emerging barriers to determine the post ATC regime (MacDonald and Vollrath 2005). Ten years since the Uruguay Round developments, there has been a seven fold increase in technical barriers to trade including government mandated testing and certification requirements (UNCTAD 2006). Often, the textile and garment manufactures from developing countries are increasingly confronted with the need to adapt eco-labelling requirement, which can become a new market access barrier. The fibre and yarn exports to US[90] especially have an adverse conversion factor with the standard of measurement still not harmonized (Kulkarni 2005: 7). Another barrier is in terms of customs procedures and valuation rules which are subjective, especially

[89] As against some 2416 antidumping investigations notified by WTO members between 1995 and 2003, there are only 161 initiations of countervailing duty measures since 1995, out of which US alone has initiated about 65 measures (Acharya and Daly 2004: 20).

[90] The US measurement (especially when quotas where in place) is in square metre equivalents (SME), while it is generally exported in kilograms. When there are quotas, the standard conversion factor from kilograms to SME for yarns created hurdles in exports of yarn since the quota utilization is more in such cases (Kulkarni 2005).

when textiles are converted into garments and made-up articles- while duties are calculated on Cut, Make and Trim (CTM) for domestic producers, customs duty is levied on full cost of product, resulting in discrimination. So also, the origin conferring requirements in manufacturing practices (Satapathy 1998) are significant barriers in trade in this sector.

The developed countries pushing for linkages between environmental and labour standards with trade (Bagchi 2001: 263) is common in the sector. The 'ethical standards' requirement calling for 'sweat-shop' free sourcing (Knappe 2003) and compliance with specific labour standards calling for a 'work place code of conduct' (Bagchi 2001: 263) especially to all developing country manufactures is common.[91] So also environmental standards, like prohibition of Azo-dyes by Germany and Netherlands (Beena P. L. 2006) further accelerate the level of protection. The plethora of restrictions can take different forms[92] like customs valuation procedures, pre-shipment inspection, rules of origin and trade related investment measures (WTO 2001: 18).

IV.3.4.ii. Policy Measures

The other trade policy measures imposed by countries include export restrictions in the form of export taxes, export bans, regulations, and supervision of export measures. Export taxes have come to be the accepted policy of developing countries' and Least Developed Countries' policy to voluntarily restrict the volume of imports. Recently, in January 2005, Chinese Ministry of Finance unilaterally introduced export duty on 148 textiles and clothing products and increased duty for another 74 categories (World Trade Report 2006). The welfare gains of export tax are negative.[93] The Pakistan experience of re-imposing export tax on cotton to

[91] The coir products and carpets from India and Pakistan have faced the charges of employing child labour.

[92] In an informal discussion with some apparel exporters from Delhi, it was revealed that some EU export requirements include sending a video recording of the entire packaging processes etc. along with the consignment exported.

[93] In terms of efficiency and terms of trade effects, an export tax by a large supplier country creates efficiency loss in both exporting and importing country and some improvement in terms of trade for exporting country. So also, welfare effects are lesser in case of a smaller supplier and negative efficiency and terms of trade for importing country. In this sense, it is considered as a 'beggar thy neighbour' policy (Pieremartini 2004: 3-4). Further, it affects taxed commodity as well as substitutable and complementary goods market.

supplement domestic yarn production in the short run, did not benefit in the long run as the yarn industry is price inelastic (that is, not responsive to price change in cotton). The application of export tax as an indirect subsidy was at best marginal (Pieremartini 2004).

IV.3.4.iii. Sourcing Requirements

The textiles and clothing are sectors with supply chains consisting of a number of discrete activities- from sourcing raw materials, designing, production, distribution and marketing are organized as an integrated production network- each component is carried out at a place where it has comparative advantage (Nordas 2004, Satpathy 2004). The flow of goods and information at efficient level are critical in this regard.[94] The modern day "lean retailing" (Abernathy 1999 as quoted in Nordas 2004: 5) is built on technological development, like bar codes, uniform product codes, Electronic Data Interchange (EDI), data processing and the like. With the development of bar codes, EDI is used by retailers to better coordinate production and shipment process. This is illustrated by China which through the extension of EDI to overseas firms has increased its competitiveness and efficiency thereby becoming a preferred sourcing option (MacDonald and Vollrath 2005: 12). The Electronic Visa Information System (ELVIS) under the US- China Textile Agreement 2005 is a comparable development (Memorandum of Understanding, 2005). In the post quota period, when trade in textiles and clothing is subject to increased competition, lack of infrastructure and technological development are likely to emerge as significant barriers to developing country access to markets.

IV.4. Conclusion

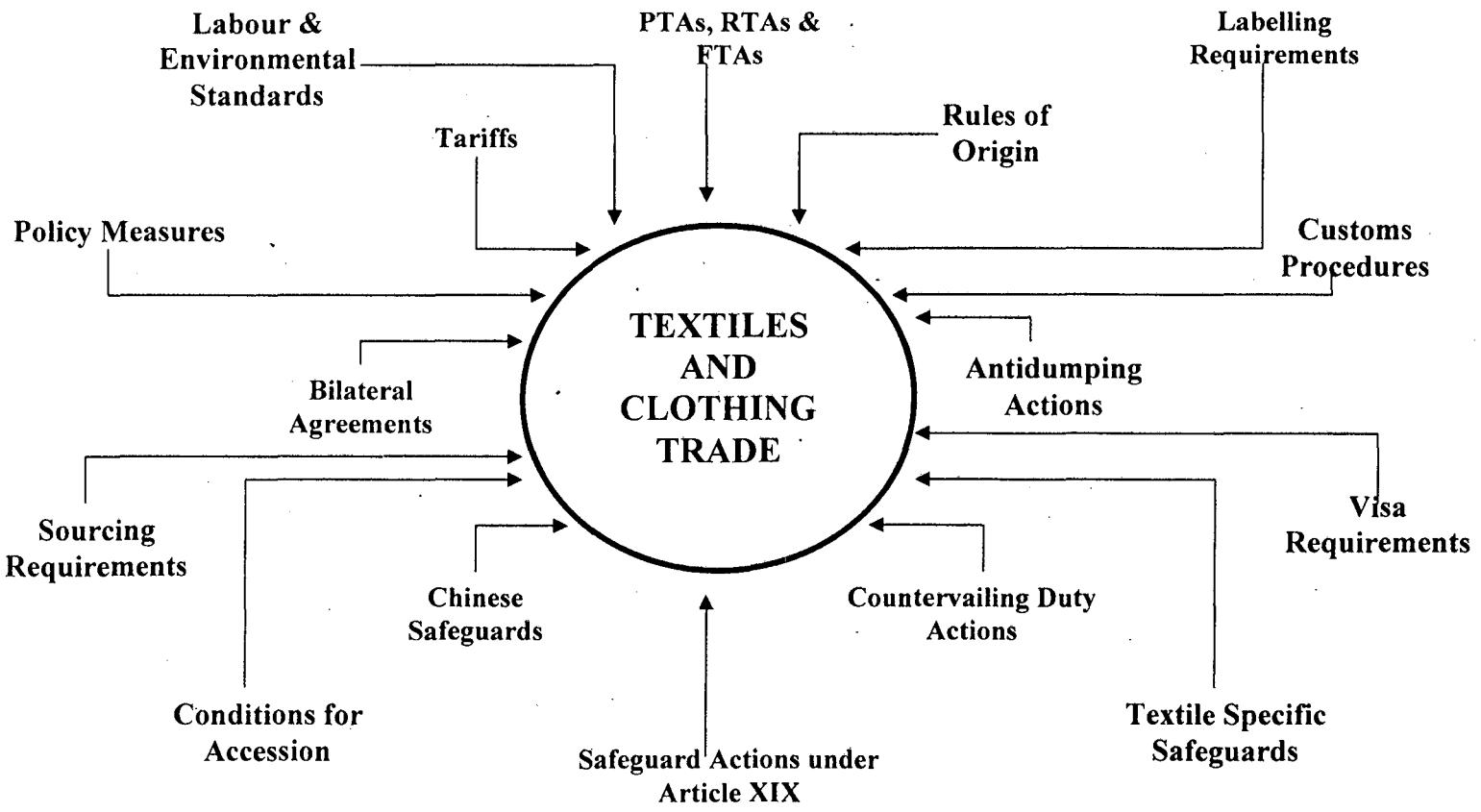
The developments in the post ATC period indicate a few aspects- first, that the high levels of tariffs in textiles and clothing are detrimental to liberalization efforts; second, the ever widening regime of regional/ preferential arrangements can perpetuate discriminatory practices in textiles and clothing trade; third, the critical trade remedies under GATT/WTO can be applied as trade restrictive practices; fourth

[94] The process operates through lean retailers who replenish stores and place orders with manufacturers to replenish; manufacturer fills the replenishment order from inventory and the required order is placed with the manufacturing plant. In the whole process, the demand fluctuations, varieties required, economic conditions, buyer's preferences are all significant (Nordas 2004, Kelegama and Foley 1999).

quantitative and voluntary restraint arrangements outside GATT/WTO framework is highly probable and lastly, non tariff measures, policy constraints and infrastructure deficiencies can be significant elements to restrict trade in the post quota period.

All the efforts of the developed countries in North America and European countries are directed against the increasing competition from developing country members from Asia. The unprecedented growth for Chinese exports has been restrained through short term textile agreements with major import powers. So also it is argued that the unilateral safeguard actions drawing legitimacy from Chinese Protocol of Accession is a major weapon in the hands of EU and US to bring China to the table. For the overall benefits of the WTO membership, China has effectively sacrificed its advantage in textiles and clothing sector. Another significant issue is that the considerable momentum gained by developing countries in the post ATC period could make other LDCs like Bangladesh and Cambodia worse off, whose considerable export share is from textiles and clothing sectors. This has triggered serious livelihood and employment issues in these countries and prompts the question whether the new textile regime is rendering benefits only to powerful developing countries like India, China and Brazil, and redundant to a large number of developing and least developing country members engaged in textiles and clothing trade. The sector has sustained focus on the adjustment cost in developed countries' textiles and clothing industries for almost 50 years, but the developing countries and LDCs do not receive a reciprocal treatment in the new bargain. Thus, it could be rightly said that the new developments in the sector since 2005 has put both an opportunity as well as a challenge before the global trading partners.

ANNEX III - POST ATC: FACTORS AFFECTING TEXTILES AND CLOTHING TRADE



CHAPTER V

INDIA IN THE POST ATC REGIME

CHAPTER V

INDIA AND THE GLOBAL TRADE REGIME ON TEXTILES AND CLOTHING

V.1. Introduction

Textiles and Clothing industry in India is considered as one having a rich and ancient tradition. It has a recorded history since the 7th century (Katti and Sen 1999: 102). The comparative advantage in both apparel and textile categories is considered to be based on India's strength basically in natural resources and factor endowments (Kathuria and Bhardwaj 1998: 24) – attributable to availability of natural fibres and cheap labour inputs,[1] and also accumulated knowledge in cloth making.[2] The huge demand for Indian textile and clothing products in domestic and export markets have been regarded as complementary.[3] As one sector satisfying the basic needs and providing better quality of life, it has enjoyed sustained growth (Economy Watch 2006).

As for the industrial advancement in India, Textiles and Clothing is a critical sector and has a unique place in the industrial manufactures. As a more integrated and self sufficient industry compared to other developing countries,' it has resources to deliver in all stages from production of raw materials to the finished products, with value addition at each stage (Economy Watch 2006). The sector is a major contributor

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1 It is indicated that the land under cotton cultivation in India is around one-fourth of the total land under cotton cultivation in the world. It has ready access to domestic cotton in abundant measure and generally at prices which are extremely competitive (Katti and Sen 1999: 102). Besides, natural fibres cotton, jute and silk, synthetic raw material products such as polyester, staple fibre, polyester filament yarn, acrylic fibre and viscose fibre are produced in India (Ministry of External Affairs 2006). The country is considered to have a large pool of skilled low-cost textile workers, experience in technology skills (Ministry of External Affairs 2006; USITC 2001). The cost of labour in India is also the lowest, that is, only 3 per cent of the total production (Katti and Sen 1999: 103).

2 The country has a great tradition of exquisite designs and patterns found nowhere else in the world. For example, as indicated in the latest Annual report of the Textiles Ministry website, there are textile clusters like 'Pochampally' which have known for its exquisite designs for centuries but could only very recently obtain Intellectual Property Right (IPR) protection under Geographical Indications (GI).

3 As estimated, India's cotton textiles industry has a huge export potential. Cost competitiveness of Indian basic yarns and grey fabrics in international commodity markets are an added advantage. Small and flexible apparel units in India supply a large quantity of casual wear and leisure garments at significantly lower costs (Ministry of External Affairs 2006). In fact India is estimated to be a world leader in casual wear and low-end cotton fashion wear like shirts, skirts or T-shirts, but this comes only to 30 per cent of world trade in the sector. The need is to penetrate the remaining 70 per cent which is in the area of regular wear garments and winter wear (Vishwanath 2005: 100).

to the country's economy - it contributes almost 4 per cent[4] of Gross Domestic Product and accounts for almost 14 per cent of total industrial production (Economy Watch 2006; Ministry of Textiles 2006); holds a share of 16.63 per cent in India exports during 2005-06 and earns a substantial amount of national foreign exchange (Verma: 2001); and also generates the largest share of employment next only to agriculture. [5] It is considered that in terms of production capacity in the sector also, India is at an advanced stage.[6] In India, the Ministry of Textiles is responsible for the policy formation, planning, export promotion and trade regulation in the textiles sector.[7]

As per the 2006 Central Budget, the textiles and clothing sector in India is having a share of Rupees 1185 Crores for 2005-06 in the Central Plan outlay (Ministry of Finance 2006). It is one industry which is extremely varied, with the handspun and handwoven sector at one end of the spectrum and the capital intensive sophisticated mill sector at the other (Ministry of Textiles 2006). The important sectors include the organized Cotton/Man-Made Fibre Textile Mill Industry,[8] Man-Made Fibre/Filament Yarn Industry,[9] the Decentralised Powerloom Sector,[10] Woolen

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4 There is another view that though the standard figure 4 per cent, working backwards from actual export figures to GDP Shares, an estimation of the share of textiles and apparel in GDP is estimated closer to 7 per cent than 4 per cent (Tewari 2005a).

5 It is said that the sector provides direct employment to about 35 million persons including substantial segments of disadvantaged sections of the society and women. Another 50 million people are engaged in allied activities (Ministry of Textiles 2006a).

6 The textile sector comprises mills, powerlooms and handlooms. As on 1999, the organized textiles mills sector in India consisted of spinning sector having approximately 28.8 million spindles and 1.5 lakh rotors. Its capacity to produce spun/blended yarn was about 2700 million kilograms. India has the largest yarn spinning capacity in the world only next to China, with about 20 per cent of the world spindle capacity (USITC 2001). In terms of fabric production capacity also, India had 3.6 million handlooms, 1.5 million powerlooms and over 170, 000 looms in the organized sector. About 30, 000 ultra-modern looms like airjet, waterjet and projectile existed in the organized sector (Katti and Sen 1999). India is considered to have the largest number of looms to weave fabrics accounting for about 64 per cent of the world's installed looms (USITC 2001).

7 For details, see the Ministry of Textiles website at http://www.texmin.nic.in.

8 It is the largest organized industry in the country with one million workers employed and a large number of units. A large number of subsidiary industries such as those manufacturing machineries, accessories, stores, ancillaries, dyes and chemicals are dependent on this sector. As on January 2006, there were 1779 cotton/man-made fibre textile mills in the country with an installed capacity of 34.10 million spindles and 34, 5000 rotors. The sector mainly undertakes mainly spinning and weaving tasks (Ministry of Textiles 2006).

9 This industry consists of fibre and filament yarn manufacturing units of cellulostic and non-cellulosic origin. While the cellulosic fibre/yarn industry is under the administrative control of the Ministry of

Textiles Industry,[11] Silk Industry,[12] Handloom and Handicraft Industry,[13] Jute Industry[14] and Textile Exports[15] (Ministry of Textiles 2006). The main operations include raw material collection and spinning, weaving/knitting, processing and garment retailing. However the predominance of decentralized sector in Indian textiles and clothing industry is regarded as a drawback (Verma 2005), especially with the shorter lead times and preference for single-point shopping etc., the Vertical Integration is a must (Chatterjee 2005). More recently, the *N. K. Singh Committee Report on Investment and Growth in Textiles and Clothing Sector*[16] (2003) to review

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Textiles, the non-cellulosic industry is under the control of Ministry of Chemicals and Fertilizers, Department of Chemicals and Petrochemicals (Ministry of Textiles 2006).

10 This sector meets the clothing needs of the country with production of a wide variety of cloth, both grey and processed (Ministry of Textiles 2006).

11 Woolen textile industry is rural based and export oriented industry in which the organized sector, the decentralized sector and the rural sector complement each other (Ministry of Textiles 2006).

12 Sericulture (silk) industry is the second largest in the world contributing about 18 per cent of the total raw silk production. It is mostly a cottage industry which is labour intensive and combines both agriculture and industry (Ministry of Textiles 2006).

13 India is the largest Handloom industry in the world and mainly a decentralized sector. Handlooms form about 13 per cent of the cloth production with a large share of export contribution. It has initiated a cluster development approach to production and manufacturing of handloom products under the Integrated Handloom Cluster Development Scheme. Handicrafts have cultural importance pertaining to preservation of heritage, traditional skills and talent as well as economic relevance due to high employment potential, low capital investment, high value addition and potential for foreign exchange earnings (Ministry of Textiles 2006).

14 Jute industry is significant for employment generation and contribution to exchequer through exports, taxes and levies. It also has significance in food procurement, through supply of Twill Bags, especially in India (Ministry of Textiles 2006).

15 Textile exports are a major area contributing substantially to export earnings. The export basket includes a wide range of items like cotton yarn and fabrics, man-made yarn and fabrics, wool and silk fabrics, made up and a variety of garments (Ministry of Textiles 2006).

16 The main recommendations of the *N. K. Singh Committee on Investment and Growth in Textiles and Clothing* (2003) are domestic measures like (i) extend Central Value Added Tax (CENVAT) chain to the entire textile sector; (ii) discontinue CENVAT credit on deemed basis; (iii) apply 8 per cent CENVAT for the entire textile sector starting at the yarn stage for a period of 3 years for enabling modernization of the sector; (iv) reduce excise rates on synthetic filament yarns; (v) continue the present excise exemptions to the genuinely disadvantaged sectors and retaining SSI excise exemption/ CENVAT exemption to sectors like fabrics woven on handlooms, khadi, silk yarn, hand processing without power etc; (vi) retain CENVAT at 16 per cent on all man-made/ synthetic fibres; (vii) reduce customs duty from 25 per cent to 5 per cent on capital goods of man-made/ synthetic fibre/ yarn industry and similarly on certain garment sector machinery; (viii) domestic production of such machinery be exempted from CENVAT whose import is exempted from CVD. Weaving preparatory and critical garment machineries to be exempted from CVD/ CENVAT; (ix) reduce customs duty on intermediaries of synthetic fibres and yarns from 20 per cent to 15 per cent; (x) reduce customs duty on apparel grade wool and flax fibre from 15 per cent to 5 per cent; (xi) in view of India's comfortable foreign exchange position permit the Textile Industry to access External Commercial Borrowing for purchase of indigenous machinery by a suitable modification in the

and monitor the policies and programmes outlined in the National Textile Policy 2001,[17] indicated that the fiscal and tax incentives given in the past to the Small Scale Industries (SSI) sector led to the fragmentation of the textiles sector and adversely affected modernization and setting up of large scale capacity so as to achieve economies of scale (D'Souza 2005: 24). So also the other challenges before the Indian industry includes- low productivity level, weak supply chains, high reliance on cotton, low value export basket, infrastructural bottlenecks like power costs and transaction costs, likelihood of new trade restrictions and Non Tariff Barriers, emergence of preferential trade and trade blocks (Chatterjee 2005). In the post quota period ruled by market forces, competitiveness of textiles and clothing industries is a key concern. Though the sector is regarded as a 'sunshine sector' (Ministry of Textiles 2006b) due to the expected gains and developments in the post quota period, there is a major debate[18] on the probable benefits to the Indian industry from the quota phase out. In this context, an analysis of the linkages between trade protectionism and Indian industry is attempted.

V.2. India's Role in the GATT Negotiations: Critical Concerns

The trade pattern in India suggests a significant reliance by the economy on the exports of simple manufactures like cotton and jute textiles produced by the utilization of indigenous raw materials since the post-War period. The production and

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Foreign Exchange Maintenance Act for implementation of projects under the Textile Upgradation Fund Scheme; (xii) announce the constitution of a Textile industry Reconstruction Fund with a corpus of Rupees 3000 crores for financial restructuring of the Textile Industry.

17 Under the Textile Policy 2001, the government sought to develop a strong and vibrant industry that can produce cloth of good quality at acceptable price to meet the increasing needs of the people; increasingly contribute to the sustainable employment and economic growth of the nation and to compete with confidence for an increasing share of the global market. The strategic thrust will be on Technological upgradation, enhancement of productivity, quality consciousness, strengthening raw material base, product diversification, increase in exports and innovative marketing strategies, financing arrangements, maximizing employment opportunities and integrated human resource development (National Textile Policy 2001).

18 This could be attributed to the perceived twin impact of the previous MFA quota system. One view is that the quota system artificially repressed the exports of highly competitive countries that had the capacity to supply textiles and clothing in large quantities. The effect is that for countries like India, the quantitative limit on all significant export items limited Indian exports, through impediments by way of cost of quotas and shortage of quotas in more competitive categories. On the other hand, there is a view that the smaller and poorer developing countries in Asia could build up their textiles and clothing export-oriented sectors relying on the guaranteed exports provided under the MFA. For India, this was regarded as a 'major driver of remarkable growth in exports to western markets' as it had also restricted more competitive exporting countries and by party insulating Indian exports from competition (Iyer 2005: 151-152; Nair 2006: 235-237).

export of these simple manufactures were regarded as 'in the natural line of India's economic development and essential for maintaining minimum standards for maintaining standards of living for a large section of population' (GATT L/1164/Add.1, 1960). Since protectionism in textiles trade at the international level was parallel to the development of textiles and clothing as an indispensable stage of industrial development in developing countries, the development of Indian industry at this period had triggered restrictions from less competitive developed country importers. One of the earliest instances of protectionism was through the industry to industry consultation between Lancashire Cotton Textile industry with Hong Kong, India and Pakistan in 1959, leading to agreement for voluntary export restraint of cotton fabrics from these countries entering the UK (GATT 1984: 64). Accordingly, it was agreed to limit the export of cotton goods for retention in the UK for a period of three years starting from 1 January 1960.[19] But this arrangement was not regarded as by India as 'one taken to limit exports of particular products to particular markets in order to avoid the development of a situation resulting in disruption of markets caused by a sudden influx of imports,' but one entered into with a view to give Lancashire cotton industry an opportunity to rationalize and reorganize production on a more efficient and economic basis (GATT L/1164/Add.1, 1960).

However there were other restrictions on imports of cotton textiles by Germany and France in 1959, wherein India and Japan were asked to exercise 'self control' on their imports to Germany in accordance with an agreed arrangement. This was however held to be without any justification and was considered to have a discriminatory impact on exports from India (GATT L/1164/Add.1, 1960). The other restrictive measures maintained by countries included (i) quantitative restrictions on imports for protective purposes; (ii) application of differential rates of duty according to the degree of processing to which the material has been subjected; (iii) mixing regulations and licensing of imports on the basis of purchase of local compatible products, etc. which were held to have serious discriminatory impact on imports from India (GATT L/1164/Add.1, 1960). The trends in the period indicated an express aversion to the concept of restrictive measure to avert 'disruption' whereas mutually acceptable voluntary export restrictions inorder to facilitate reorganization and

19 The agreed annual level of retained imports for India was 175 metre square yards covering both cloth and made up goods. However handloom manufactures from India were outside the scope of the agreement (GATT L/1164, 1960).

adjustment of industries in other countries were preferable. The industry to industry arrangements were preferred to country initiated actions.

While considering the problem of market disruption as discussed by the GATT Working Party in 1960 (GATT L/1374, 1960), India did not hold that a problem of such gravity existed. It viewed that any short term impact arising out of the situation envisaged under disruption could be dealt with under the ordinary provisions of the GATT. It has consistently demanded a distinction between conditions of normal competition and what might be called 'real' market disruption (GATT SR.17/11, 1960). In the subsequent discussion to arrive at an agreement for the orderly development of the trade in cotton textile products, it could be noted that India strongly condemned the practice of unilateral discriminatory or non-discriminatory action by contracting parties. It held that since cotton textiles were not different from other commodities entering into international trade, they did not call for any special treatment. The long term concern in cotton textiles was to balance the needs of Least Developing Countries (LDCs) on the one hand and to avoid disruptive effects on the markets of industrial countries adjusting their operations in simple manufactures on the other. Therefore, it considered a temporary arrangement as a first step to the problem and the solution would allow industrialized countries a smooth transition to the levels of production and export which accorded better, in particular, with the needs of less developed countries to earn foreign exchange through directing investment into channels appropriate to their resources and in which they would be economically efficient producers. To this effect, India recommended any arrangement which would follow the pattern of its earlier voluntary agreement with UK (GATT L/1535, 1961). However, in accordance with the conviction that orderly progression on world trade is possible by multi national cooperation India had entered into both Short Term (STA) and Long Term (LTA) arrangements regarding trade in cotton textiles (GATT COT/W/19, 1963).

But contrary to this belief in multinational cooperation with which India took part in the negotiations, there were several difficulties awaiting Indian cotton textile trade like- (i) a narrow and legalistic interpretation of 'market disruption' clause by the unilateral judgment of the importing country;[20] (ii) non tariff barriers including

20 For example, the exports of cotton textiles from less developing countries were only about 2 per cent of world textile production and exports from India to the industrially advanced countries represented only 0.0042 per cent of the total production of the domestic textile industry in these

administrative difficulties;[21] (iii) certain undertakings by industries operating in some industrially advanced countries and (iv) antidumping and other measures (GATT COT/W/19, 1963). Throughout the term of LTA, India and other developing countries continued to encounter difficulties involving large scale invocation of disruption clause leading to considerably low level of developing country imports during the period,[22] restrictions and other stringent certification and verification requirements for handmade and handicraft products, rigid quota administration leading to difficulties in utilization of the allocated quotas, and similar other restrictions (GATT COT/W/33, 1964). It was another major concern of India that the Arrangement was based on the structural readjustment of the cotton textiles industries in the developed countries. However, massive investment and exporting taking place in the cotton textile industries of the developed countries, resulting in a substantial increase in the quantum of production would threaten the export interest of Least Developing Countries. Therefore, positive contributions on the part of the developed importing countries could pave way for exports by LDCs and hence the imperative to preceded the review of the Arrangement (GATT COT/W/33, 1964 and GATT COT/M/6, 1966).

By the 1970s, the share of India in the total exports of textiles and clothing products from developing countries was 12.8 per cent next only to Hong Kong which was 23.4 per cent (GATT L/3797, 1972); and the share of textiles was about 47 per cent in the total exports of manufactures.[23] It was a major source of employment to the industrial labour of the country; earned a foreign exchange worth of 615 million dollars forming 29.4 per cent of the total exports of the country- all these indicators pointing at the special position of textiles in the country's international trade sector and had special impact in generating additional efforts for expansion of the country's trade. In the run up to Multifibre Arrangement (MFA), India had consistently held

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countries- therefore it was incomprehensible that there could be any significant effect on production in these countries even if imports from India increased substantially (GATT COT/W/19, 1963).

21 India's view was that unlike the SITC categorization under the LTA, developed countries are prescribing certain other categories and sub categories in the product list which has rendered exporting, particularly by less developed countries very difficult (GATT COT/W/19, 1963).

22 During the period, the complex interplay of bilateral quota agreements led to considerable reduction in Indian exports of cotton textiles of about 37 per cent (Bagchi 2001: 66).

23 But by that time, the impact of restrictive arrangements had caused a reduction in India's share of textiles in the total export of manufactures had reduced from 78 per cent in 1960s to 47 per cent in 1970.

that unlike the provisions contained in the existing arrangement, there was an increasing incidence of new obstacles placed its trade in the past few years. It pointed out that firstly, that its experience with the quota system was not beneficial as excessive categorization in the levels of quotas prevented their full utilization and secondly, the operation of quotas had not been sufficiently flexible and thirdly, that there was no legal justification for the continued maintenance of tariff barriers of importing countries in addition to the protection afforded to their domestic industries by quantitative restrictions (GATT L/3797, 1972).

India was sufficiently opposed to the barriers placed on its trade in handloom products which do not compete with the domestic production or disrupt markets of importing countries. Overall, India was dissatisfied with the arrangement as the developed countries had not pursued vigourously the adjustment measures necessary to reorganize the production structure in their countries during the interregnum provided by the LTA and also since many of the importing countries in the administration of restrictions had not paid due regard to the special needs and situations of the developing countries. Therefore it had urged for a more liberal regime for the importation of clothing and made up products in the markets of the developed countries and did not favour any new restrictions on its export of textile products made from man-made fibres (GATT L/3797, 1972).

The MFA period had proved to be the most restrictive in terms of elaborate procedures for introduction of quotas and scope for bilateral restraint arrangements. The negotiations on respective extensions of MFA did not consider the interests of developing countries, and instead brought in more policy measures to restrict trade, thus permitting a highly potential sector of the economy to stagnate at marginal growth rates.

V.3. India in the Post ATC Regime

The Indian textiles and clothing industry is said to have followed a different path of integration into the world market. Its significant growth is recorded during the second half of 1980s,[24] even before liberalization efforts were undertaken at the Industry

24 The stagnated growth of the textiles and clothing industry in India from late 1960s till 1980s is mainly attributed to the use of a variety of regulatory mechanisms and policies to orient the textiles and apparel industry towards the export market, and shape the Industry in key areas. The government control in the sector was seen to manifest in three ways- (i) a strict licensing regime that required firms to take permission from the government before establishing new operations and expanding

level in the 1990. This development was attributed to the domestic deregulation of textile industry following the implementation of a New Textile Policy in 1985.[25] Meanwhile, at the international level also negotiations were going on for inclusion of textiles and clothing in the Uruguay Round. The Indian submission at the Uruguay Round negotiations (GATT MTN.GNG/NG4/W/28, 1989) stressed on the objectives of the Punta Del Este Declaration to halt and reverse protectionism, to remove distortions to trade and to preserve the basic principles and further the objectives of the GATT and to develop a more open, viable and durable Multilateral Trading system. India viewed that protectionism in textiles and clothing has progressively increased in intensity and coverage. Further that trade distortion in textiles and clothing has been continuously created and built into a multilaterally agreed derogation of GATT principles and rules. It held that unless textiles and clothing sector is integrated into GATT without further loss of time, credibility as a whole will be in jeopardy. Therefore it made the following recommendations regarding the Agreement on Textiles and Clothing being negotiated:

(i) Freeze on any new restrictions beyond the "standstill" commitments;

(ii) Termination of the MFA quotas within a period of 5 years, that is by 31 July 1996;

(iii) Provision for quota growth rates during the phase out period of 15, 20, 25, 30 and 35 percentages respectively each year;

(iv) Provision for due exemption of exports from LDCs, products made from new fibres introduced in the 1986 MFA Extension Protocol;

(v) Surveillance body specifically set for supervising the transitional arrangement;

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capacity; (ii) reservation policies- that reserved the apparels, a key segment in the value chain for production in the small scale sector; and (iii) labour laws which had restricted exit and retrenchment in textile industry. As for exports, government controlled the volume and content of imports of the sector through a complex system of taxation and subsidies. Some policy measures like Hank Yarn Obligation made it mandatory for spinning firms to ensure low cost supply of specialized yarn for handlooms and power looms firm (Tewari 2005).

25 The main objective of 1985 Textile Policy of the government was to increase the production of cloth of acceptable quality at reasonable prices to meet the clothing requirements of a growing population. The new textile policy had proposed a restructured framework in the following dimensions- (i) industry is viewed in terms of stages of manufacturing process- spinning, weaving and processing; (ii) industry is provided fuller flexibility in the use of various fibres; (iii) industry is subjected to more pragmatic policies regarding creation or contraction of capacities by units in order to increase competition and promote healthy growth of industry. A domestic fibre approach, provision for capacity expansion and beneficial approach for protection and promotion of handloom sectors were the other major developments under the policy (Dutt and Sundaram 2000: 614-616).

(vi) Application of safeguard provisions under normal GATT provisions for the products not under restraint at the time of introduction of phase out or those already phased out;

(vii) Simplicity and progressivity as the basic criteria of the emerging agreement.

However, the Agreement subsequently adopted a transitional arrangement of 10 year period with progressive integration of 16, 17, 18 and 49 percentages of volume at 1990 levels. It also provided for an expansion of existing quotas at 17, 25 and 27 per cent respectively in the three subsequent phases.

The ATC implementation period however, did not present much scope for growth of Indian industry- the growth in textiles and appareis sector was at a relatively slower pace than in the 1980s (Tewari 2005: 16). In the first stage from 1995-98, there was surge in the transitional safeguard measures against India as applied by the US. The US action in one category 435 of Womens' and Girls' Wool Coats from India was brought before the Textiles Monitoring Body wherein it regarded that 'serious damage' as envisaged by Article 6 of ATC had not been demonstrated, but it could not reach a consensus on the existence of actual threat of damage as required for initiating safeguard action. However, US subsequently removed it (WTO G/L/179, 1998). So also, in the case of transitional safeguard action against India by the US *Measures affecting Imports of Woven Woolen Shirts and Blouses from India* (WT/DS33/R, 1997), both the Panel and Appellate Body held that the safeguard measures imposed by the US on these Indian products violated the provisions of the ATC. But US announced withdrawal of the actions before conclusion of the Panel's work.

In the second stage of ATC also Indian exports had to face constraints from US visa requirements for products integrated into GATT, which was subsequently removed by the US on the ground of consistent protection from India (WTO G/L/459, 2001). Another instance of Transitional Safeguard action was reported as initiated by Colombia against India and Brazil (WTO G/L/459, 2001). This period also saw the changes in the US Rules of Origin requirements challenged by both EU and India, and illustrated the differential treatment meted out by US to both. However, the celebrated *EC-Bed Linen case* gave a greater push to developing countries' efforts to challenge the unjust protectionist measures against major powers like EC. However in the last and final phase of ATC implementation also, there was considerable number of

antidumping actions pending against developing country imports- this being a mechanism directed against specific industries in the competing developing countries. So also the reported countervailing duty actions in textiles during the period by EU were mostly directed against India (WTO G/L/683, 2004). These developments highlighted the vulnerability of Indian industry to the trade restrictions imposed by the developed countries during the ten year period since the inclusion of textiles as a area of multilateral negotiations.

The trends in the post ATC period for Indian textiles and clothing industry could be more interesting. However due to the short span of time since the dismantling of MFA quotas, no much reliable data is available for analysis. The available figures (World Trade Report 2006 and Adhikari and Yamamoto 2005) indicate a positive percentage change of 25 and 19 percent respectively for the US and EU markets in 2005. The data from industries of importing countries indicate high growth rate for non-apparel and clothing categories for both China and India in the US, with China leading in the first and India in the second categories. As for EU, total imports of non-apparel products declined with imports from India also indicating a negative growth (Nair 2006: 235). A slight decrease in Indian exports of certain textiles categories to the EU is also indicated by the UNDP study (Adhikari and Yamamoto 2005: 10).

The figures released by the Director General of Commercial Intelligence and Statistics (DGCI&S) indicate the following aspects. One major impact of the quota phase out is the expansion of industry size in India. As per the 2006 figures, the industry size has expanded from US$ 37 billion in 2004-05 to US$ 47 billion in 2005-06. In this period, the domestic market increased from US$ 23 billion to US$ 30 billion, whereas the exports increased from around US$ 14 billion to US$ 17 billion (Ministry of Textiles 2006a). Another indicator is the investment scenario in Indian textiles and clothing sectors which has recorded an all time increase of about 88 per cent in 2005-06. The textile exports which had been stagnating in the quota period in the range of US$10-13 billion recorded a growth of 8.7 per cent in 2003-04; and 3.9 per cent in 2004-05. However, in the first year of quota free regime i.e. in 2005-06, the textile exports increased from a level of US$ 14.02 billion in 2004-05 to US$ 17.08 billion, recording a robust growth of 21.8 per cent. As per the latest available DGCI&S data, India's textile exports during the period April – June 2006 have amounted to US$ 4.6 billion recording a growth of 15.6 per cent in dollar terms and

20.5 per cent in rupee terms over the exports during corresponding period of the preceding year (Ministry of Textiles 2006a). All these indicate the progress of Indian textiles and clothing industries in the post quota period.

V.4. Conclusion

The Indian industry had been one of the worst hit economies in the whole discriminatory regime for textiles and clothing. Since the earliest voluntary restraint agreement arrived at with the Lancashire industry, the comparative bargain of Indian cotton textiles has been restricted by several legal and policy measures. Through out the deliberations of international arrangements for regulation of textile trade, India is consistently seen to discard the notion of developing country exports disrupting the markets of developed country members with a marginal share in the total world exports. It has illustratively pointed out that the low-cost imports criteria does not actually apply to countries like India, where low technological levels and other infrastructural bottlenecks take away the benefits of low factor cost. The resultant low productivity level of Indian labour is a major constraint for attaining an equitable margin of profits in the trade from this sector. However, India had consistently held that a multilateral solution would be most appropriate for the solution of trade issues and has sustained considerable damage to its trade in textiles and clothing sectors, especially in handlooms and handicraft products where the chances of disruption of developed country industries itself do not exist.

It could be seen that even during the post liberalization efforts during the ATC implementation period, Indian products were a consistent target for import restrictions in the form of transitional safeguard measures and other trade defence measures like safeguards and antidumping. The illustrative cases brought by India challenging the unjust imposition of trade remedies and excessive restrictive policy measures like Rules of Origin criteria indicate a shift in trade scenario in favour of developing countries at least in principle. With the dismantling of the hitherto discriminatory regime for textiles and clothing completely, the trade is expected bring a tide of benefits in favour of developing countries. The projected combined export share of India and China in the US market was 65 per cent post MFA as against their combined share of 20 per cent in 2003. If the projected increase in India's exports by about 20 per cent in the first year of ATC removal is anything to go by, the expected gains could be significant.

However, in the free trade regime following the ATC, where market forces determine the comparative benefits realized, the competitiveness of the industry could be more critical than any other element. In determining competitiveness, low costs alone would not be sufficient. Due to the inherent peculiarities of the sector, a substantial emphasis is on the factors like design, fashion, variety and quality. It is considered that the lower price advantage does not make substantial difference to the developed country markets like EU and US with high income sector, where demand is price inelastic. In this context, the peculiar development of global trade in especially apparel being increasingly organized by the increasingly organized powerful buyers, mainly large retailers and branded merchandisers such as Wal Mart, Nike etc. who coordinate the design, production and distribution of apparel with highly mobile, globally dispersed clothing value chains (Tewari 2005). Thus, in the period after dissolution of quotas, access to major markets may in fact become more constrained as global buyers restructure their sourcing patterns towards highly competent 'full package' suppliers (Tewari 2005). So also, the sourcing pattern with efficient replenishment and short turn-around times in sourcing, adoption of sophisticated information technology and electronic data exchange can be major determinants over the price factor (Nordas 2005). In this context, the technological developments and efficiency of supply chain of the countries like China can be major determinants of textile trade.

The removal of all discriminatory restrictions in favour of low-cost countries has effected on one hand, a relocation of industries to low cost regions of the south. The major competition to indigenous producers in India could be from the branded corporate merchandisers relocating to low cost countries and from outward processing trade which takes the benefit of low cost production and highly integrated supply systems to capture the free and competitive world market. For the large textile and clothing industries in developing and least countries like India, Pakistan and Bangladesh, where economic growth, employment and livelihood issues are interlinked with industrial production and export earnings, this could be a major handicap. Therefore, a revival and modernization of domestic industries, reduction of infrastructure bottlenecks, value addition, vertical integration, efficient sourcing and distribution patterns along with fiscal reforms, tax incentives and changes in restrictive policy patterns at the domestic level is called for. It needs to address the restrictive devices emerging in the domestic as well as international level to sustain

the progress in one sector where it can be a leading trader. Improvement in technology by putting the various government schemes like Technology Upgradation Fund, Technology Mission on Cotton, Scheme for Integrated Textile Parks, and Infrastructural Projects like Textile Marts for marketing showcasing textiles, apparels, handicrafts, handlooms and jute products, Human Resource Development Projects through institutes like National Institute for Fashion Technology (NIFT) fro fashion education and design upgradation; Sardar Vallabhbhai Patel Institute of Textile Management (SVPITM) set up in 2002 specifically to prepare Indian textile industry to face the challenges of the post-MFA period and to establish itself as a leader in the global trade through training and diploma programmes in textile marketing, merchandising and management and Apparel Training and Design Centres (ATDCs) to train manpower in the garment industry are significant developments (Ministry of Textiles 2006a). Together with development oriented Textile Policies and sub-sectoral initiatives like cotton and jute policies should bring considerable improvement. In short India needs to address the restrictive devices emerging in the domestic as well as international level to sustain the progress in one sector where it can be a leading trader.

CHAPTER VI
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The international regime regulating textiles and clothing finally ended on 1st January, 2005 with the complete implementation of Agreement on Textiles and Clothing (ATC). This regime, it should be noted, evolved in response to certain needs of the developed countries, specifically to protect their domestic interests in textiles and clothing. Multifibre Arrangement (MFA), representing this international regime, had many intricate facets. While MFA was a multilateral agreement with defined rights and obligations for the Parties, it also allowed bilateral negotiated deals to continue within its multilateral framework. It should be further noted that within the framework of MFA, both the developed and developing countries had specific, but differential interests. MFA framework by legalizing some of these bilateral settlements within its multilateral framework could be largely regarded as inimical to the interests of the developing countries. For this reason, developing countries in the Uruguay Round negotiations insisted on the termination of this regime. ATC was negotiated within Uruguay Round framework as a compromise deal. While developing countries agreed to accommodate IPRs, services and other sectors on the Uruguay Round negotiating agenda, the developed countries agreed to dismantle MFA. The present study examined some of these issues in the context of history, evolution and regulation of textiles and clothing sector, delineating the interests of developed and developing countries. The study also examined the possible regulatory regimes within which textiles and clothing might fall. In other words, the study outlined some of the likely regulatory mechanisms which may emerge specifically for textiles and clothing sector.

The emergence of textiles and clothing sector had a fairly long historical antecedent. According to one view, the emergence of this sector was regarded as a development of significant historical importance due to its correlation with Industrial Revolution and rapid economic development in the industrialized countries. The evolution of this sector in the industrialized West was also linked to the colonial subjugation and other related issues. The developments after Second World War, particularly with the emergence of new states, changed the conception of this sector. The benefits of cost and resources brought comparative advantage in this sector in

favour of developing countries within a brief period of time, making it their first step to industrialization. It came about as an indispensable sector in terms of satisfying basic human needs as well as the contribution to production, employment and development. The subsequent threat to the domestic textiles and clothing industries in developed countries from cheaper imports of developing countries led to the development of protectionist and discriminatory restrictions. While the developed world insisted on the liberalization of the global markets in various other sectors, it sought to take refuge under intricate web of protectionism for the textiles and clothing sector.

The seeds of protectionism in this sector started with restrictive measures against Japan, which had emerged as a major competitor for the textile industries in Western Europe and North America in 1950s. The continued increase in imports from Japan resulted in the evolution of bilateral and voluntary restraint actions between individual countries and industries. These measures were not GATT-consistent. The ways, however, were found to make these measures somewhat GATT-consistent. GATT-consistency was found by applying the GATT provision for balance of payment restrictions (Article XII) and exemptions to certain major textile traders Japan (Article XXXV), along with the negotiations for bilateral restraint arrangements especially in the 1950s. This was the beginning of a bilateral but voluntary regulatory regime under what could be termed as a 'sui generis' system of norms, outside the purview of the existing GATT regime.

The evolution of an institutional regulatory device in textiles and clothing trade in the form of various voluntary arrangements, for example, as Voluntary Export Restraints (VERs) or Orderly Marketing Arrangements (OMAs) operated as a convenient measure to avoid the GATT import restriction standards. Though they were *prima facie* inconsistent with the GATT provisions, these restraints could not be checked due to its 'voluntary' nature. But where voluntary arrangements were not forthcoming, increasing reliance on unilateral import quotas prevailed. The term 'voluntary' in all these arrangements was a camouflage for a protectionist measure. These so called 'voluntary' export restraint arrangements were imposed by the importing countries on the exporting countries. The bilateral nature of this arrangement was in clear violation of GATT principles.

In order to restrict the low priced imports from developing countries which could not be dealt with either under the GATT Antidumping or safeguard provisions,

a policy tool known as 'market disruption' was proposed by the US. It was not clear as to how this concept of "market disruption" could be justified as GATT-consistent. According to the US proposal made before the GATT meeting the concept of 'market disruption' arose on account of the elements namely- (a) sharp increase in imports over a brief period of time and (b) such increase in a narrow range of commodities which was mainly traced to the export of manufactures from countries with low wages. A GATT Working Party established to consider the problem concluded that situations described as market disruption included elements like sharp and substantial increase or potential increase of imports of particular products from particular sources; products offered at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing countries; serious damage to the domestic producers and threat thereof; and the price difference existing not due to any governmental intervention in fixing or formation of prices or from dumping practices, which could include all or some of these elements.

However there were several limitations to this formulation- the disruption was determined without any factual determination of any damage; the simultaneous existence of damage together with increase or potential increase of disruption could lead to market disruption without any causal link between the two; the "injury level" to be established for remedying disruption was comparatively low and could trigger action on actual or perceived threat of disruption. The discretion of exporting country to decide the incidence of disruption unilaterally without any evidence of real disruption and the absence of any trigger lever to initiate action, mainly prompted unfair practices in textile trade. It thus came to be operated as a tool to legitimize and accommodate the export restraints without expressly circumventing the GATT provisions and to take away the comparative advantage of developing country trade. It was used for negotiating a special safeguard clause relating the textiles and clothing sector.

Initially, one year temporary arrangement called Short Term Arrangement (STA) in 1961 provided for restraining cotton textile imports from particular sources at particular levels when they caused or threatened to cause market disruption. It mainly regulated trade through voluntary export restraints and imposed quotas on imports from particular countries- thus legitimizing quantitative restrictions in textile trade. The option of mutually acceptable bilateral arrangements was also provided. The Long Term Arrangement (LTA) in 1962 expressly apportioned the obligations

between exporting and importing countries- with exporting countries (typically developing countries) to avoid disruptive effects in import markets and importing countries (typically developed countries) to progressively relax the restrictions imposed. The safeguards clause under LTA even permitted restrictions in situations where countries just believed to be threatened or subjected to disruption. In other words, a potential threat concerning 'market disruption' was included as a factor. Though initially the provision was used regularly, in subsequent years there was a shift to bilateral arrangements as a preferred policy tool, as it would provide flexibility and choice in devising restrictive arrangements to suit individual country interests (See Annex II- Textiles and Clothing Arrangements: Comparative Study at page 47).

The Multifibre Arrangement (MFA), concluded in 1974, expanded the coverage of textiles and clothing sector to include all the other non-cotton and synthetic fibre products within the restrictive trade provisions, provided quantitative restrictions on instances of market disruption or under mutually restraint arrangements. The increasing dumping of these non-cotton and synthetic fibres in the markets of developing countries was another issue. The operative core of MFA was held to be the specific limitations in bilateral agreements negotiated under the auspices of MFA with individual supplier country, thereby legitimizing bilateral restraints which were otherwise inconsistent with GATT provisions. Almost all the textile products were brought within quantitative restrictions under a multilateral framework permitting bilateral restraint arrangements. As noted by one expert, 'MFA was an umbrella and bilaterals were the actual scene of protective content.' MFA further allowed for liberalization measures under a 6 per cent annual growth as a target for imports under quotas. It also provided for a multilateral surveillance of implementation of MFA under the Textiles Surveillance Body.

MFA was initially devised with the sole criterion of establishing a link between disruption of imports and existence of serious damage to domestic industry. The measurable standard for disruption through an examination of indicative factors and the requirement of factual statement to initiate action made the market disruption a difficult option. Alternatively, new mechanisms and policies like 'reasonable departures clause,' increasing categories of sensitive products for protection, unfavourably low threshold for protection under 'basket exit mechanism,' low growth rate detrimental to LDCs, anti surge provisions, etc. were sought in the subsequent phases of MFA. MFA, accordingly, had a unique evolutionary path, legitimizing in

the process several protectionist policies devised by the developed world. The evolution of MFA, in a sense, represented the domination of developed world in the international trading system, that is, GATT. As stated above, the dissolution of MFA was a reality in the latter part of Uruguay Round negotiations. The developed world, particularly the US, was getting increasingly concerned about protecting its IPRs in the developing world.

In the 1980s, MFA covered 14 per cent of textile trade and 40 per cent of trade in apparel. Other quantitative restrictions which were mostly GATT inconsistent had made the total of trade subject to restraints approximately to 60 per cent in textiles and 65 per cent in apparel, during the period. The efforts under MFA and its predecessors had been to progressively liberalize all restrictions which were otherwise inconsistent with GATT to make it subject to the textile Arrangement. Inspite of the noble ideals to progressively achieve the reduction of trade barriers and liberalization of trade in these products, MFA was still regarded as the most comprehensive and sophisticated framework for protectionism in textiles and clothing trade. It had set quotas at the most extraordinary levels of details, particularly targeting the specific products of advantage to the developing countries.

Following a persistent demand for the dismantling of existing textiles and clothing regime, the issue was taken up at the Multilateral Trade Negotiations in the Uruguay Round (1986-1994). The survey of different country positions shows that textiles and clothing was one of the contentious issues at the WTO. The coordinated developing country position under the International Textiles and Clothing Bureau (ITCB) assisted to fetch a better bargain- a deal was struck to phase out the existing restrictions over a transitional period of 10 years. The final Agreement on Textiles and Clothing (ATC) was in fact a compromise deal between the two groups. It designed the integration process to be carried out in three stages where a certain per cent of volume of a country's 1990 level of imports were included in the integration process and also provided for accelerated expansion of non integrated quotas at specified levels and allowed a transitional safeguard mechanism to deal with new cases of serious damage or threat of serious damage to domestic producers in products not yet integrated into GATT.

Though designed as an equitable phase out programme for liberalization of the sector and its integration into the GATT 1994, ATC carried seeds of discriminatory protection within. The extensive product coverage including previously unrestrained

products, provision for restraining members to integrate according to their own choice; the provision to skip integration by postponing integration of more sensitive product groups, backloaded obligations under ATC phase out, inter alia, took away the basic purposes of a multilateral textile arrangement. Moreover, a transitional safeguard mechanism was provided as a delicate compromise arrived at between the exporting and importing country members. In one way, this provision carried the elements of 'market disruption' and 'selective restrictions' into the WTO period.

An evaluation of ATC implementation indicated lower threshold of commitments and bypassing of obligations by a group of importing countries thereby affecting the interests of exporting countries. The rights, interests and obligations in the ATC period were seen to be clearly divided between the developed and developing country members of the WTO. The vested interests of the developed countries to protect their domestic industries at any cost had led to a series of unreasonable and unjustifiable restrictive measures, often under the garb of transitional safeguard action. The transitional measures were taken to deal with serious damage or threat of serious damage to products not under restraints and not yet integrated into GATT. It permitted selective restrictions inconsistent with the ATC provisions and was resorted to by importing countries, especially the US. But there were instances of developing countries effectively challenging these measures, thereby claiming victory in principle.

These concerns between the developed and developing countries were also reflected in some of the WTO cases. The jurisprudence on textile protectionism during this period mainly concerned the question of transitional safeguard provision applied under Article 6 of the ATC. In the dispute settlement process in *US-Restriction on Imports of Cotton and Man-made Fibre Underwear* (1997) and *US-Measures Affecting Imports of Woven Woolen Shirts and Blouses* (1997) initiated against US by Costa Rica and India respectively, the transitional safeguard measures under the ATC were ruled illegal. In another action by Pakistan on *US- Transitional Safeguard Measure on Combed Cotton Yarn* (2001), the unilateral action by US was held invalid as US had failed to demonstrate that the subject of imports caused 'an actual threat' of serious injury to the domestic industry. In another interesting case of *Turkey- Restrictions on Imports of Textiles and Clothing Products* in the context of implementing a Customs Union was held unjustified. It categorically held that ATC allowed restrictions only pursuant to its provisions, and there was no other provision

for general or security exceptions, or under the provisions of Regional Trade Agreement.

ATC was regarded as an attempt to remove the protectionist anomalies perpetuated by MFA and its predecessors to the developing countries in the sector. With the operation of multilateral rules textiles and clothing trade was expected to return to free and non-discriminatory trade practices. With the end of transition period by 1 January, 2005, all the restrictions stood terminated and the textiles and clothing sector fully integrated into the GATT, thereby putting an end to a 'special and discriminatory regime that has been in application for more than five decades.' According to one view, the timely and full implementation of the ATC should also be regarded as 'a renewal of manifestation of WTO Members for their commitments undertaken in the framework of the multilateral trading system, thereby also strengthening the credibility of the system' (WTO G/L/683, 2004).

In the post ATC era, textiles and clothing trade is inevitably subjected to market forces and competition. With almost 49 per cent of products integrated on the last day of operation of ATC, it is not probable to assume that the institutionalized restrictions in this sector have been removed overnight. Several studies point out that the trade would be subjected to market forces from now on and competitiveness should be the key to survival. Different economic projections indicated the free and non discriminatory trade in textiles and clothing to bring substantial benefits to the developing countries. However, the trade patterns in the period do not indicate very substantial market access for developing countries especially from Asia. This mandates an examination of the post ATC developments and the possibilities for the emergence of alternative legal regime for textiles and clothing.

In the present context, any unfinished business under ATC will have to be carried into NAMA negotiations. But the tariff cutting modalities being not finalized and the fate of Doha and the subsequent Hong Kong work program in abeyance (as on the date of completion of this study), the requirement for lowering the tariff walls may not be realized. Meanwhile, the emergence of preferential treatment to trade under regional or bilateral or preferential trade arrangements would determine the improved trade conditions for textile exporters. However there is greater possibility of increasing recourse to trade remedies like antidumping and countervailing duty actions and safeguard measures to restrict trade in this sector.

In the trade scenario after 2005, the likelihood of comparatively easier antidumping actions against targeted firms in targeted countries could be a major impediment to the trade interests of competitive suppliers like India. The growing vulnerability of the textile exporters to antidumping actions is best illustrated in the *EC- Bed Linen Case* (2003) wherein India challenged the antidumping action initiated against its imports of cotton type bed linen to EU, mainly on technical grounds of the method used to calculate dumping margin. Such developments would seriously undermine the competitive performance of developing countries to resort to expensive dispute settlement mechanisms to contest the technical nuances of antidumping action and overcome market access restrictions in the long run. So also, the last phase of ATC implementation revealed that large number of Countervailing Duty Actions were initiated against countries like India, where the textiles and clothing industries under subsidies and promotion schemes from the government.

It is expected that the emerging regime in textiles and clothing trade would be substantially influenced by the some of the following factors in the future (See, Annex III- Post ATC: Factors Affecting Textiles and Clothing Trade in at page 98):

(i) The Non Tariff Barriers to textiles and clothing trade which continue to be higher even after the quota phase out would be a major determinant of trade. For example, the stringent customs procedures warrant actions like pre-shipment inspections, certification of origin, inflexible origin criteria, alternative measuring standards effecting adverse conversion factors and strict labour and environmental standards are common.

(ii) The visa requirements include standards comparable to the complicated Electronic Visa Information System as between US and China making it difficult for developing countries and least developing countries to meet, thereby restricting their market access.

(iii) Another significant development regarding the calculation of customs duty is by the differential HS code classification of trading partners. For example, countries like India adopt a six-digit classification whereas advanced countries like US and EU adopt upto ten-digit classification of products, facilitating substantial product differentiation, particularly significant for textiles and clothing products. This cannot be adopted by developing and least developing countries which do not have the sufficient data or the infrastructure to mandate such classification standards.

(iv) Though the application of safeguard action during the ATC period and after is negligible, the manifestation of safeguards as textile specific clauses operating under the preferential and regional trading arrangements between major exporting and importing countries is a cause of concern. The tariff walls being exceptionally higher in this sector, any preferential access under such arrangement becomes very significant. The possibility of sector specific safeguard action on the ground of a disruptive situation practically carriers the elements of market disruption into the new phase as well.

In this connection, a major derogation in the period is the specific safeguard action against China and the scope for restraining Chinese textile trade until 2008. The Chinese Protocol of Accession to the WTO is the legal key to this development. Interestingly, it incorporates the same language of market disruption of 1960s to continue restraining Chinese exports. This indicates the possibility of mechanisms for restraining newly acceded members having a considerable interest in this sector. The US-China and the EU-China Agreements negotiated in lieu of unilateral safeguard actions indicate the returning of quantitative restrictions under mutually negotiated terms. The trend is thus towards regulation of sensitive textiles product lines, where the bulk of trade is carried out by the developing countries. Further the scope for trade agreements arrived at outside the realm of GATT/WTO has the potential to facilitate unprecedented restriction. The preferential access to growing developed country markets for textiles and clothing products is the factor prompting such a development.

All these developments have prompted the concerns of bilateral restrictions, voluntary actions and actions on criteria comparable to market disruption likely to return in new forms and undistinguishable patterns. The unrestricted trade in the sector is overshadowed by the threat of restrictive application of GATT/WTO induced trade remedy actions, origin requirements, high tariffs etc. So also, the significant concerns of adjustment pressures after the quota phase out in less developed countries like Bangladesh and Cambodia highlight the feature of the evolving trade pattern being non-responsive to the requirements of marginal trading partners. Finally, it would be too early to determine the intricate pattern of trade developments in this sector conclusively. But with not too many positive developments or any considerable expansion of trade in favour of developing countries, there are significant concerns about the free and fair trade in textiles and clothing under the present global trading system.

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