



Implementation Issues and Concerns The Agreement on Textiles and Clothing

Examination of proposals referred to the CTG By the Ministerial Conference

Submission¹

With respect to implementation-related issues and concerns regarding the Agreement on Textiles and Clothing (ATC), the Ministerial Conference at Doha, *inter alia*, decided as follows:

“Requests the Council for Trade in Goods to examine the following proposals:

- 4.4 that when calculating the quota levels for small suppliers for the remaining years of the Agreement, Members will apply the most favourable methodology available in respect of those Members under the growth-on-growth provisions from the beginning of the implementation period; extend the same treatment to least-developed countries; and, where possible, eliminate quota restrictions on imports of such Members;
- 4.5 that Members will calculate the quota levels for the remaining years of the Agreement with respect to other restrained Members as if implementation of the growth-on-growth provision for stage 3 had been advanced to 1 January 2000;

and make recommendations to the General Council by 31 July 2002 for appropriate action.”
(WT/MIN(01)/17, paragraph 4)

Context of Ministerial Conference decision:

2. At the outset, it is important to recall that the above proposals emanated from a long process of the consideration of implementation-related issues and concerns. It is therefore essential that, for any worthwhile examination of these proposals, this background is kept in view.

¹ By ITCB members that are also Members or Observers of the WTO, namely, Argentina; Bangladesh; Brazil; China; Colombia; Costa Rica; Egypt; El Salvador; Guatemala; Honduras; Hong Kong, China; India; Indonesia; Republic of Korea; Macao, China; Maldives; Mexico; Pakistan; Paraguay; Peru; Sri Lanka; Thailand; Uruguay and Viet Nam.

3. As a general context, it is also important to bear in mind the following Ministerial commitments:

- “We attach the utmost importance to the implementation--related issues and concerns raised by Members and are determined to find appropriate solutions to them”. (Paragraph 12 of Doha Ministerial Declaration -- WT/MIN(01)/DEC/1)
- “The Ministerial Conference [is] determined to take concrete action to address issues and concerns that have been raised by many developing-country Members regarding the implementation of some WTO Agreements and Decisions”. (3rd preambular paragraph of Decisions on Implementation-related Issues and Concerns adopted by the Ministerial Conference at Doha -- WT/MIN(01)/17)
- “In addressing the outstanding implementation issues and concerns, the General Council will assess the existing difficulties, identify ways needed to resolve them, and take decisions for appropriate action”. (4th preambular paragraph of Decisions on Implementation-related Issues and Concerns adopted by the Ministerial Conference at Doha -- WT/MIN(01)/17)

Context of the two proposals referred to the CTG by the Ministerial Conference:

4. In the specific context of the two proposals, it may be recalled that the implementation of few WTO agreements gave rise to as many concerns as the implementation of the ATC. This is because of the great importance of trade in textiles and clothing for developing countries. The sector accounts for about 20% of their exports of manufactured products. For some developing countries, especially the least-developed among them, its share in their export earnings is even larger. Manufacture of clothing is a labour-intensive activity. The sector is, therefore, particularly important for the creation of employment opportunities in these economies.

5. However, the implementation of the ATC failed to come up to developing countries' legitimate expectations, especially as 1/3rd of the gains from expansion of world income from the implementation of the Uruguay Round agreements was attributed to liberalization in textiles and clothing under the ATC.

6. Therefore members of the ITCB, together with other developing WTO Members, have consistently raised their concerns with respect to the implementation of the ATC. In fact they have made a compelling case that, for reasons summarized below, the balance of rights due to them under the Agreement has been seriously impaired:

- (i) The implementation of the central tenet of the ATC -- the integration process -- has remained inconsistent with the explicit object and purpose of the Agreement, i.e., to secure a **gradual** and **progressive** phase-out of quota restrictions. The Agreement envisioned the phase-out of restrictions “during” the transition period, not merely at the end of it.

Thus eight years into the Agreement, few quotas have been phased out and, unless major improvements are effected, the large bulk will remain until the end of the transitional period on 1 January 2005: 701 out of 758 in the United States, 167 out of 219 in the EU, 239 out of 295 in Canada.

These numbers look equally bad after quotas on China and Chinese Taipei are also taken into account. These two have joined the WTO only recently. The number of quotas now remaining in place is: 851 out of 932 in the United States, 222 out of 303 in the EU, and 292 out of 368 in Canada.

In terms of trade, barely 20% of imports that were under specific quota restriction have been liberalized. Although 51% of trade in the sector has been shown as “integrated” in a narrow technical sense, this comprises mainly imports of products which were not under quota restriction.

- (ii) Canada and the US have implemented the growth-on-growth for small suppliers inconsistently with the letter and spirit of the relevant provisions of the ATC (Article 1:2 and 2:18). They chose a different methodology than the EU to implement these provisions to the disadvantage of small suppliers.
- (iii) The provisions of the Agreement in favour of least-developed countries and cotton-producing exporting countries have been completely ignored, rendering them to complete inutility. (The former by Canada and the US, the latter by all three restraining Members).
- (iv) The EU removed quota restrictions on certain non-WTO Members, while maintaining them on developing economies Members of the WTO; this in obvious disregard of the fundamental principle of MFN treatment and inconsistently with Article 1:6 of the ATC.
- (v) The US substantially changed its rules of origin with respect to textile and clothing products from July 1996 with the obvious purpose of pursuing trade objectives.

When challenged by the EU under the dispute settlement procedures of the WTO, the US partly modified these rules; but only in a manner that took into account the particular export interests of the EU.

Worse still, in doing so, it enlarged the coverage of certain cotton made-up products. Thus, it has now been specified that these products should be deemed to be that of cotton even if they contain as little as 16 percent of cotton by weight. (Prior to this, these products were considered to be that of cotton only if they contained cotton as their chief weight).

The changes in rules of origin led to widespread disruptive effects for trade.

- (vi) In a number of instances, new restrictions have been introduced without justification under the ATC, thus violating Article 2:4 of Agreement.
- (vii) In addition, a number of unjustified anti-dumping actions particularly targeting products that were already under quota restrictions, and unduly cumbersome customs and administrative procedures, have also had the effect of impairing access under the Agreement.

7. In light of the above, ITCB members developed some practical suggestions for redressing the problems identified. These suggestions included the two that have been referred to the CTG by the Ministerial Conference for examination and recommendation for appropriate action.

Examining the two proposals:

8. In examining the two specific proposals referred to the CTG by the Ministerial Conference, it is essential, first, to recall that Article 1:5 of the ATC explicitly provided that "In order to facilitate the integration of textile and clothing sector into GATT 1994, Members should **allow for** continuous industrial adjustment and increased competition in their markets" (emphasis added). Contrary to this, however, one major restraining Member has followed a declared policy to "ensure that integration of the most sensitive products will be deferred until the end of the ten year period". Another has "considered appropriate to retain control over quotas with a view to keeping the possibility of using them as a bargaining chip to obtain better market access in third countries". Thus they have, in effect, hindered rather than "allowed for" the process of autonomous adjustment in their markets. The adoption of the two proposals would go some way in rectifying the situation, facilitating increased competition and, thereby, the integration process.

9. Second, the proposal with respect to small suppliers and least-developed country Members is in line with the letter and spirit of the relevant provisions of the ATC (Article 1:2 and 2:18). Its adoption will bring the implementation of these provisions by Canada and the US at par with that of the EU.

10. In this context, it is important to recall the relevant provisions of the ATC.

Article 1:2:

"Members agree to use the provisions of paragraph 18 of Article 2 and paragraph 6(b) of Article 6 in such a way as to permit meaningful increases in access possibilities for small suppliers..."

Article 2:18:

"As regards those Members whose exports are subject to restrictions on the day before the entry into force of the WTO Agreement and whose restrictions represent 1.2 percent or less of the total volume of the restrictions applied by an importing Member as of 31 December 1991 and notified under this Article, meaningful improvement in access for their

exports shall be provided, at the entry into force of the WTO Agreement and for the duration of this Agreement, through advancement by one stage of the growth rates set out in paragraphs 13 and 14, or through at least equivalent changes as may be mutually agreed with respect to a different mix of base levels, growth and flexibility provisions. Such improvements shall be notified to the TMB".

It may be noted from the above provisions that the implementation of Article 2:18 had to be guided by the principle laid down in Article 1:2.

11. Contrarily, however, Canada and the US implemented the above provisions for special treatment for small suppliers differently than the EU. The EU calculated the increases in growth rates for Stage 1 by increasing them first by 16% and second by 25%, i.e., cumulatively. However, Canada and the US did not do so. They simply "substituted" Stage 2 increases for Stage 1, increasing the pre-ATC growth rates by 25% only omitting to add the 16% as well. Thus the implementation of the provisions has differed as highlighted below:

	<u>EU</u>	<u>Canada/US</u>
Stage 1: Pre-ATC growth rate increased by:	16% + 25%	25%
Stage 2: Stage 1 growth rate increased by further:	27%	27%
Stage 3: Stage 2 growth rate increased by another:	27%	27%

It is apparent that the difference in the methodology employed by Canada and the US resulted in significantly lower access to small suppliers than was due to them under ATC.

12. As noted above, the guiding principle was to use the provision of Article 2:18 "in such a way as to permit meaningful increases in access possibilities". The term "advancement by one stage" in Article 2:18 did not mean simply "substituting" the second stage growth factor for the first stage growth factor. The stages in the ATC growth rates had to have cumulative effect. It was only logical that, in determining the growth rates for Stage 1, the growth factor for Stage 2 had to be applied in addition to the Stage 1 growth factor. The further increases in the following stages had also to incorporate the cumulative effect. Had the drafters of the ATC intended the growth factors for later stages to merely substitute for the earlier stage growth factors, they would have used the term "substitution" (instead of advancement by one stage) and constructed the provision accordingly.

13. In light of the above, it is apparent that the interpretation placed by Canada and the US on the term "advancement by one stage" and the methodology employed by them has not been consistent with the provisions of the ATC in favour of small suppliers. The adoption of the proposal will bring their implementation at par with that of the EU.

14. Third, the 3rd preambular paragraph of the ATC envisaged that special treatment be accorded to least-developed country Members. A footnote to Article 1:2 further

provided that, to the extent possible, these Members may also benefit from meaningful improvements in access possibilities as for small suppliers. Likewise, the Ministerial Decision on Measures in Favour of Least-developed Countries adopted at the conclusion of the Uruguay Round also provided that the various agreements and instruments should be applied in a flexible and supportive manner for the least-developed countries and that, “to this effect, sympathetic consideration shall be given to specific and motivated concerns raised by the least developed countries in the appropriate Councils and Committees”.

15. While the EU did not apply any quota restrictions on least-developed country Members, Canada and the US failed to give any meaning to the provisions in favour of these Members. They ignored their implementation altogether, rendering those provisions to total inutility.

16. Fourth, the second proposal (envisaging the advancement of growth-on-growth provision for stage 3) has been necessitated because, overall, the balance of benefits due to developing countries under the Agreement has remained unfulfilled. As brought out earlier, the manner in which the restraining countries have implemented the integration programmes leaves the large bulk of quotas in place until virtually the end of the transitional period.

17. Moreover, while only a few quota restrictions have been eliminated, the access accruing to developing countries under the Agreement has been seriously impaired by new restrictions in violation of the provisions of the ATC, unjustified anti-dumping actions on products already under quota restrictions, and other customs/ administrative formalities including changes in rules of origin.

18. The approval and implementation of the two proposals would partly redress the balance. Indeed, the CTG has a specific mandate to take appropriate decisions to ensure that the balance of rights embodied in the Agreement is not being impaired (Article 8:12 of the ATC).

19. Fifth, the approval of the two proposals will enhance market access opportunities for developing countries, in particular the least-developed among them, and contribute to the operationalization of the Ministers’ desire expressed in their Declaration in Doha as follows: “International trade can play a major role in the promotion of economic development and the alleviation of poverty... The majority of WTO Members are developing countries. We seek to place their needs and interests at the heart of the [WTO] Work Programme... We shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development. In this context, **enhanced market access**... [has an] important role to play” (paragraph 2 of Doha Ministerial Declaration).

20. Sixth, it may be emphasized that the two proposals fall within the existing provisions of the ATC. Their adoption does not require any modification in the Agreement or the domestic legislation of the restraining countries.

Closing remarks:

21. In examining the proposals referred to the CTG by the Ministerial Conference, it is essential to recall the context in which these have been under consideration over the long process of discussion on implementation-related issues and concerns. They resulted from widespread concerns raised by developing-country Members regarding the implementation of the Agreement on Textiles and Clothing. Their adoption and approval will go some way towards completing the unfinished business relating to implementation issues and concerns, and operationalizing Ministers' decision "to take concrete action to address issues and concerns that have been raised by many developing-country Members regarding the implementation of some WTO Agreements and Decisions."

22. We urge the CTG to take immediate action to recommend the approval of the two proposals by the General Council, which would reinforce developing countries' confidence in the multilateral trading system and advance the WTO work programme in general.
