

WORLD TRADE ORGANIZATION

G/L/556
26 July 2002

(02-4142)

Council for Trade in Goods

MAJOR REVIEW OF THE IMPLEMENTATION OF THE AGREEMENT ON TEXTILES AND CLOTHING IN THE SECOND STAGE OF THE INTEGRATION PROCESS

Adopted by the Council on 23 July 2002

1. In carrying out its mandate to oversee the implementation of the Agreement on Textiles and Clothing (ATC), the Council for Trade in Goods is required, by Article 8.11, to conduct a major review before the end of each stage of the integration process. The second stage, which began on 1 January 1998, ended on 31 December 2001, hence, the need to conduct the second major review before the end of 2001.

2. Article 8.11 of the ATC also requires that, at least five months before the end of each stage, the Textiles Monitoring Body (TMB) shall provide a comprehensive report on the implementation of the Agreement during the stage under review. For the present review, the TMB submitted its report in document G/L/459, dated 31 July 2001. In addition, background statistical information with respect to trade in textiles and clothing was prepared by the Secretariat at the request of the TMB and was circulated in document G/L/474.

3. The Council began its review at a meeting convened for this purpose on 27 September 2001, focussing on the goals and objectives of the review, the organization of the work and the establishment of a timetable. The Council noted the substantial information contained in the TMB's comprehensive report and considered that it would make a useful contribution to the review.

4. It was agreed that the review process would be structured around three broad subject areas, containing several individual topics. These were:

(a) The Integration Process and Other Related Issues (Article 2)

- Integration Programmes of the Members
- Increases in the Rates of Quota Growth
- Art. 2.1 - Notifying quantitative restrictions
- Art. 2.4 - No new restrictions except under ATC or GATT 1994
- Art. 2.10 - Advanced integration
- Art. 2.15 - Removal of restrictions
- Art. 2.11 and 2.17 - Administrative arrangements

(b) Use of Transitional Safeguard Mechanism (Article 6)

(c) Other Articles of the ATC

- Article 5 - Circumvention of restrictions by transshipment, false declaration, etc.
- Article 7 - Abiding by GATT 1994 rules and disciplines so as to achieve improved market access, ensure the application of policies for fair and equitable trading condition (AD, CVD, IP), avoid discrimination against textiles in general trade policies

- Special and Differential Treatment in the ATC
 - Provisions related to new entrants and small suppliers (Articles 1.2 and 2.18)
 - Provision related to cotton producing exporting Members (Article 1.4)
 - Provision related to small suppliers' growth on growth (Article 2.18)
 - Provisions related to LDCs (Articles 1.2 footnote and 2.18)
- Article 1.5 - Autonomous Industrial Adjustment
- Article 1.6 - Rights and obligations of Members under WTO and Multilateral Trade Agreements
- Article 3 - Treatment of quantitative restrictions other than those under the MFA (Art. 2)
- Article 4 - Changes in rules, procedures, etc. (e.g. rules of origin)
- Article 8 - Functions of the TMB

5. It was also decided that these subjects would be taken up at Council meetings to be held on 17 and 26 October 2001. The reports on the three meetings held by the Council to conduct the review are contained in documents G/C/M/51, 52 and 56.

6. As the topics were discussed, the representative of Uruguay, on behalf of the members of the International Textiles and Clothing Bureau (ITCB) that are also Members and observers of the WTO (henceforth ITCB Members), provided papers with assessments and analyses of the matters under discussion. These were circulated in documents G/C/W/304 and 325. In addition, they made a number of proposals for adoption by the Council which, they considered, were necessary to restore the balance of rights due to them under the Agreement. These proposals were circulated in document G/C/W/339.

7. At the meeting of 17 October 2001 (G/C/M/52), the ITCB Members and some other developing Members pointed out that in the Uruguay Round, they had hoped to gain significantly in the area of textiles and clothing. It was an area where they had competitive advantage and the concessions which they had to make in other areas would be justified only if significant benefits were forthcoming in the areas of textiles and agriculture. Accordingly, they stressed the importance they attached to this second review, not only in view of the significance of textiles and clothing trade for the developing and least-developed country Members, but also since it came at a critical time, just three years before the end of the transitional process and when the full integration programmes of Members had been notified. In the view of the ITCB Members and some other developing Members, the objective of the major review was to evaluate Members' experience, to consider the progress achieved in relation to the objectives and to conduct a stock-taking. This would enable the Council to assess if the process of integration was or was not on track to achieve its prime objective of re-integrating the textiles and clothing sector into normal GATT rules by 2005, to forestall any problems during the implementation process and, where necessary, to take corrective action to ensure that the balance of rights and obligations is not impaired, in accordance with the Council's mandate under Article 8.12.

8. The same Members emphasized that the objective of the ATC was actually to liberalise trade in textiles and clothing through progressive integration and that the central purpose of the ATC was the elimination of quotas through the operation of the integration process. They were deeply concerned that little progress had been achieved towards this objective, as reflected in the documentation before the Council. In fact, the integration programmes of the restraining Members had concentrated on low value-added yarns, fabrics and textile made-up products with very few clothing items being included; moreover, the bulk of quotas remained in place. In this respect, even after the third stage integration, the number of quotas that would remain in place were as high as 701 out of 757 in the case of the United States, 164 out of 219 in the case of the European Communities and 241 out of 295 in the case of Canada. Thus, progress had been meagre and had not led to the

expected benefits for exporting, developing Members. Consequently, the review of the integration process should focus on whether there had been progress towards the meaningful phasing-out of the quota system. The progressivity of the process, that is, the gradual phasing-out of the quota restrictions during the transitional period, not just at the end of that period, was a necessary and inherent condition of full implementation. They also emphasized that, whereas Article 1.5 of the ATC required Members to allow for continuous autonomous adjustment and increased competition in their markets to facilitate the integration process, the restraining Members had, in fact, impeded this.

9. In their view, another key aspect of the integration process was the increases in the rates of annual quota growth. In this area, it was considered that the application of the growth rate increases could not be considered a substitute for effective integration of products. Furthermore, the actual growth rate increases had not provided significant improvements in market access as, on average, the actual pre-ATC growth rates were low. On the basis of average pre-ATC growth rates, the average addition in access during the first two stages of the ATC implementation had amounted to only 0.73% per year in the EC, 1.03% in the US, and 1.22% in Canada. As a result, the quotas continued to be restrictive.

10. Also in this regard, ITCB Members and some other developing Members considered that the ATC provisions in favour of small suppliers, least-developed country Members and cotton-producing exporting Members had not been fully implemented by some restraining Members in conformity with those provisions.

11. In their view, the purported increases in imports in the restraining Members' markets could not be attributed to the implementation of the ATC. They further pointed out that increases in imports were neither relevant to assessing the fulfilment of obligations under the Agreement, nor could they justify any violations of those obligations. The ten-year period and progressivity of the process were not mutually exclusive; they had to go hand in hand. Furthermore, the Agreement did not provide that the quota restrictions were to be eliminated only at the end of the ten years.

12. In sum, this group of Members argued that an objective assessment of the situation would lead to the conclusion that the balance of rights and obligations embodied in the ATC had been impaired to the disadvantage of developing, exporting Members. They based this conclusion on instances of violation of certain obligations. In other cases, implementation of ATC provisions by the restraining Members had not been in conformity with the object and purpose of the Agreement. In some further cases, ATC provisions had not been given full meaning and effect. Accordingly, the major review should develop an overall assessment leading to clear recommendations, which would enable the restraining Members to fully and faithfully implement the ATC. These Members, therefore, proposed that the Council adopt decisions pursuant to its self-standing mandate under Article 8.12 to restore the balance of rights and obligations under the Agreement.

13. The developed, restraining Members considered that the differences between their positions and those of the developing countries could be traced to the differing views on what was expected during the life of the ATC. In their opinion, the ultimate purpose of the Agreement was the full integration of the textiles and clothing sector into GATT 1994 rules and disciplines by 1 January 2005, with the consequential elimination of all GATT inconsistent restrictions by that date. They fully supported the implementation of the Agreement and the effective realization of its objective of full integration. They recalled, in this regard, that there were three negotiated variables in the ATC; namely, the length of the transitional period, the product coverage and the accelerated growth rates. The ten-year time-period and the faster growth rates had been accepted by the developed Members as part of a negotiated package that included product coverage with products not subject to restrictions.

14. In their view, the ATC specified a ten-year transition period to allow the industries to adjust to the full integration of the textiles and clothing sector. The transition path was that defined by the

ATC. It comprised three stages of integration during which minimum thresholds of volumes of imports must be integrated. Also, the products integrated during each stage must include products from the four groups identified in Article 2. Otherwise, the ATC left the choice entirely to the importing Member as to which textile and clothing products, restrained or not, were to be integrated at any given stage during the transition period. Another key element was the growth-on-growth provisions for those products remaining under restraint during the transition period. These provisions clearly specified the increases in growth rates for the purpose of facilitating the opening of domestic markets. In examining the integration process of the Members maintaining restrictions, and in assessing the implementation of the ATC, it was necessary to consider the combined impact on market access of the integration of products and of the growth-on-growth provisions.

15. In their view, the growth rate increases were an inherent aspect of the process leading to full integration which, due to their cumulative effect, had served to increase market access possibilities. Starting with a pre-ATC growth rate of 6%, the ATC's growth-on-growth provisions would lead to a 19% increase in the quota levels by 2002. In fact, imports into the developed, restraining Members had increased at a substantial rate during the period in which quotas had been applied. In the US there had been, on the one hand, a rapidly rising share of the US market held by imported clothing and, on the other hand, a rapid contraction of the US clothing sector since 1994. In the EC, between 1995 and 2000, imports had increased 54% and these imports had come mostly from developing countries. In Canada, total clothing imports since 1994 had increased by 71%, imports from developing countries had grown by 79% during the 1995-2000 period. It must also be borne in mind that, during the transitional period, a number of quotas had been eliminated, including on some key products such as women's, girls' and children's blouses and shirts, some through the application of Article 2.15. Norway had abolished all of its remaining quota restrictions by 1 January 2001 using Article 2.15, which was four years in advance of the agreed deadline, while Canada had also applied this provision. As regards the application of advancement of growth rates for small suppliers and least-developed Members, the restraining Members concerned considered that the method which they had applied was consistent with the ATC.

16. With respect to autonomous industrial adjustment, the developed, restraining Members considered that this process was proceeding well in order to ensure the smooth, final re-integration steps. This was witnessed by decreases in employment, increases in imports and in the market share held by developing Members and changes in production and in products. It was also noted that the obligations in Article 1.5 applied to both developed and developing Members, though in different ways.

17. Bearing all this in mind, they considered that the ATC implementation process was on track, was proceeding as rapidly as expected, and that the full integration of the textiles and clothing sector into GATT 1994 rules and disciplines, with the consequent removal of quotas, would be achieved by the end of the ten-year transitional period. Furthermore, in cases where Members felt that their interests were not being respected during the implementation of the ATC, they should use the mechanism built into the Agreement to address such problems.

18. In addition to examining the operation of the integration process, the Council also discussed, at its meeting of 17 October 2001, other topics which had been identified at the previous meeting. These included the introduction of new restrictions (Article 2.4), advanced integration (Article 2.10), removal of restrictions (Article 2.15), administrative arrangements (Articles 2.11 and 2.17), plus the use of the transitional safeguard mechanism (Article 6).

19. On the circumvention of restrictions in terms of ATC Article 5, a developed, restraining Member considered that this was a serious, continuing problem and was a major issue. Investigations had consistently shown a high rate of circumvention activity in several Members which had been used as transshipment points. Failure to deal effectively with this problem was contrary to the letter and spirit of the ATC and had had a negative impact on its industry. The ITCB Members stated that they

did not condone circumvention of restrictions and had extended cooperation consistent with the ATC requirements. Citing figures from investigations by the Customs authorities of the Member concerned, they pointed out that claims about widespread circumvention were not supported by facts and were greatly exaggerated. On the contrary, the measures that the importing Member had put in place to address the perceived problem were disproportionate. By prescribing additional documentary requirements, these measures impeded the utilization of access available to restrained Members under the ATC.

20. The developed, restraining Members referred to Article 7.1(a) of the ATC on improved market access for textile and clothing products and considered that this provision had not produced a noticeable result. While it required that improved access to markets should be achieved through such measures as tariff reductions and bindings, reductions or elimination of non-tariff barriers and facilitation of Customs, administrative and licencing formalities, the markets in many developing Members required greater access for the exports of textile and clothing products. The ITCB Members and some other developing Members considered that all Members, developed and developing, had been implementing their specific Uruguay Round commitments in accordance with their schedules of concessions. They referred to the report by the TMB which stated that there had been no notifications of non-compliance with any specific market-access commitments undertaken as a result of the Uruguay Round. Therefore, there did not appear to be a problem and, in fact, a number of developing Members had adopted autonomous market liberalization measures. They emphasized that any additional reductions in tariffs or bindings was a matter for future negotiations.

21. At the meeting held on 26 October 2001 (G/C/M/56), the review continued with the examination of other ATC articles and provisions, including special and differential treatment, autonomous industrial adjustment (Article 1.5), rights and obligations of Members under WTO and Multilateral Trade Agreements (Article 1.6), changes in rules and procedures (Article 4), and functions of the TMB (Article 8). At this meeting, Members also presented their overall observations and assessments with respect to the implementation process.

22. Based on the discussions, which are set out in detail in the reports on the meetings, the Council noted a number of considerations and arrived at certain conclusions, as follows:

- the reaffirmation by all Members of their commitment to achieve the full and faithful implementation of the ATC by 1 January 2005;
- the importance of the full integration of this sector into WTO rules and disciplines by 1 January 2005 in view of the significance of trade in textile and clothing products as an important source of employment and export earnings for the economies of many Members, in particular, for developing and least-developed country Members;
- the declining trend with respect to the application of the transitional safeguard mechanism during the second stage; while recognizing that Members may resort to the safeguard provisions of the ATC during its final years, called upon all Members to apply it as sparingly as possible, consistently with the provisions of Article 6 and the effective implementation of the integration process under the Agreement;
- the views expressed by Members with regard to the implementation of ATC provisions in favour of small suppliers, new entrants, cotton-producing exporting Members and least-developed country Members and reaffirmed the importance of full implementation of those provisions;
- the views expressed by Members with respect to problems relating to circumvention of the ATC; reiterated the importance of full cooperation in addressing these problems consistent with the

provisions of Article 5 and emphasized the need for any remedies to be proportionate to the problem;

- the views expressed recalled the provisions of Article 7 and called on all Members, as part of the integration process and with reference to the specific commitments undertaken as a result of the Uruguay Round, to take actions to abide by GATT 1994 rules and disciplines so as to achieve, *inter alia*, improved market access;
- the appreciation for the comprehensive report prepared by the TMB on the implementation of the ATC in the second stage and stressed the need for continued supervision by the TMB of the implementation of the ATC during the third stage;
- the importance of maintaining full transparency in all aspects of the implementation process and of facilitating the examination by the TMB of all measures taken under this Agreement, and called upon all Members to comply with all ATC notification requirements in a complete and timely manner;
- the importance of the Council overseeing and regularly evaluating the progress, in accordance with Article IV.5 of the WTO Agreement and Article 8 of the ATC, of the functioning of the ATC, whose implementation is being supervised by the TMB;
- that Members should allow for continuous autonomous industrial adjustment and increased competition in their markets in order to facilitate the integration of the textiles and clothing sector into GATT 1994 and encouraged Members to provide information to the TMB, from time to time, on relevant developments in this area.

23. On a number of other topics examined by the Council, the understandings and positions held by groups of Members differed substantially and, thus, it was not possible to arrive at agreed conclusions. The detailed views are set out in documents G/C/M/52 and 56, and are summarized hereunder.

24. In respect of Article 1.6, ITCB Members and some other developing Members referred to instances during the second stage of the ATC implementation process in which a restraining Member had eliminated quota restrictions on certain non-WTO Member countries with respect to textile and clothing products, while continuing to apply such restrictions on WTO Members. This was inconsistent with that Member's obligation under GATT 1994, especially Articles I and XIII, and therefore, impaired the rights of WTO Members whose exports to that Member had been restrained by quotas. They pointed out that Article 1.6 of the ATC provided that "Unless otherwise provided in this Agreement, its provisions shall not affect the rights and obligations of Members under the provisions of the WTO Agreement and the Multilateral Trade Agreements"; therefore, the rules of GATT 1994 applied unless the ATC contained a different rule, which in this instance was not the case. The developed, restraining Members noted that the ATC was clearly an exception to the MFN principle; it allowed for the discriminatory elimination of restrictions on WTO Members. Therefore, one could not make an argument that such a procedure would not be possible in cases involving non-Members. Also, there was no requirement under the ATC to provide similar treatment to WTO Members and to non-WTO Members.

25. In relation to Article 2.4, ITCB Members referred to two specific cases in which the obligations under that Article had not been lived up to. In one case, in the context of implementing a customs union, a Member had imposed new restrictions on imports of textile and clothing products from a number of countries. These restrictions had not been notified to the TMB. A dispute settlement panel and the Appellate Body had found that these restrictions were not permitted under Article XXIV of the GATT, and that they were inconsistent with the concerned Member's obligation

under Article 2.4 of the ATC. Further, such Member had implemented the panel recommendations in this matter and had reached a mutually satisfactory solution with another Member while maintaining the restrictions on other countries. In response, it was pointed out that the implementation of the customs union covered all trade policy aspects and required a common trade policy. These restrictions were only part of this general agreement which also contained positive aspects including a drastic reduction in tariffs.

26. The other instance relating to Article 2.4 involved a restriction imposed by a developed, restraining Member on another Member's exports of cotton and man-made fibre underwear. The Members concerned did not notify the TMB of this restriction or of the ATC provision under which the introduction of such restriction could be justified. Subsequently, the TMB had found that there was no provision in the ATC that justified this restriction, nevertheless, the restriction continued to be in place. According to ITCB Members, the introduction of such restriction amounted to impeding the realization of the objectives of the ATC and it hampered the TMB in carrying out its mandate of examining the conformity of all measures with the provisions of the ATC. They recalled that the TMB had already noted that the restriction in question was not justified under Article 4 of the ATC either. In response to this point, the concerned Members argued that the restraint arrangement on cotton and man-made fibre underwear was a mutually satisfactory agreement. The restraining Member considered that its measure was consistent with Article 4 of the ATC, which allows for changes to be made to restrictions applied under the ATC and that the changes should not upset the balance of rights and obligations under the Agreement.

27. ITCB Members referred to Articles 2.11 and 2.17 and raised their concerns about the failure of a restraining Member to notify the elimination of visa arrangements in respect of products to be integrated in Stage 3, a violation of Article 2.11. In response, the Member concerned said that prior notification of the elimination of the visa requirement was not required under the provisions of the ATC; such administrative arrangements were a matter for agreement between the Members concerned. The Council noted that subsequently the Member concerned had announced its decision not to require visas on integrated products.

28. Reference was also made by ITCB Members and some other developing Members to situations involving the impairment of access due to changes in rules of origin and to certain related administrative formalities. The restraining Member had fundamentally modified its rules of origin pertaining to textile and clothing products with effect from July 1996, for trade policy reasons, and these changes had disrupted the utilization of existing market access under the ATC and had violated its obligation under Article 7.1(c). It was argued that the changes in rules of origin were not justified either under the ATC or the Agreement on Rules of Origin. The changes in rules of origin had upset and impaired the balance of rights accruing to them under the ATC. When some adjustments were subsequently made, the rules for some products of particular export interest to developing Members had not been reinstated to the pre-ATC rules. Reference was also made to a change in the definition of cotton products, implemented from May 2000, which had resulted in an expanded coverage of restrained cotton products and it was questioned if consultations on this had been held with concerned Members. For its part, the concerned Member was clear in its reading of Article 4 that the kind of changes that it had made in 1996 were permitted by the Agreement as long as they did not upset the balance of rights and obligations that had existed before the change. It had consulted with all Members that had expressed concern on this issue, including cotton-producing, exporting Members and understandings had been reached with some Members.

29. Reference was also made by ITCB Members and some other developing Members to the use of anti-dumping investigations and measures on restrained products, which had had serious adverse effects on the exports of some developing countries. There had been an impairment of the balance of rights and obligations as the market access made available through integration and growth rates, though inadequate, were being taken away through anti-dumping actions in this area. According to these Members, by disrupting the utilization of access, these actions had impeded the realization of

the objectives of the ATC. They pointed out that several aspects of the methodology used by the Member concerned in dumping determinations had since been faulted by a WTO dispute settlement panel and the Appellate Body. In response, the concerned restraining Member reiterated that it applied anti-dumping legislation in a fully transparent manner in compliance with WTO obligations.

30. Towards the end of the second stage of the integration process, at the Fourth Ministerial Conference, a Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17) was adopted, containing a section which pertained to some of the subjects being discussed in the major review.¹

¹ "4. Agreement on Textiles and Clothing

Reaffirms the commitment to full and faithful implementation of the Agreement on Textiles and Clothing, and agrees:

- 4.1 that the provisions of the Agreement relating to the early integration of products and the elimination of quota restrictions should be effectively utilised;
- 4.2 that Members will exercise particular consideration before initiating investigations in the context of antidumping remedies on textile and clothing exports from developing countries previously subject to quantitative restrictions under the Agreement for a period of two years following full integration of this Agreement into the WTO;
- 4.3 that without prejudice to their rights and obligations, Members shall notify any changes in their rules of origin concerning products falling under the coverage of the Agreement to the Committee on Rules of Origin which may decide to examine them.

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."