

Post#quota directions of global textiles & clothing trade # a legal and policy analysis

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In the Name of Allah, the Most Gracious, the Most Merciful

POST-QUOTA DIRECTIONS OF GLOBAL TEXTILES & CLOTHING TRADE - A LEGAL AND POLICY ANALYSIS

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for the degree of Doctor of Philosophy

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ABSTRACT

The textiles & clothing (T&C) sector has been one of the most regulated and protected sectors in global trade. Even though T&C occupies a lesser share of international trade than other sectors, it remains crucial to developing countries and least developed countries (LDCs). Issues in T&C trade revolve around the trade flow of T&C products from developing countries/LDCs to the prime markets of the EU, US and other developed countries. Developing countries compete for greater market access, which is often manipulated by developed countries to meet goals other than economics and trade. One of the key instruments in this manipulation were quantitative restrictions (better known as quotas). Quotas violated fundamental obligations under GATT. Adoption of the quota system meant that T&C was treated as an exception to the GATT framework. Quotas regulated global T&C trade from post-World War II through to 31 December 2004. From 1 January 2005, quotas were abolished in international T&C trade. This thesis examines the impact of quota elimination on international T&C trade. The objective of the thesis is to estimate the future direction of T&C trade after quota expiration. The thesis begins with a historical analysis of the quota system. The main observation from history is that T&C production always eventually moves to new countries which have comparative advantage. Imposing restrictions on trade in T&C merely postpones the day that production will shift to poorer nations. As such, measures which guarantee market access to specified developing countries are merely postponing the time when even poorer developing countries or LDCs will have the opportunity to produce and export T&C. The thesis analyses pre-expiration predictions and the conflicting interests on trade liberalisation amongst third world countries. These conflicting interests continue to this day. The thesis also examines major issues that affect global T&C trade and conducts case studies on major Asian T&C manufacturers, with a special focus on China and Pakistan. The underlying objective of the case studies is to analyse the pre-elimination estimates in order to predict the future direction of global T&C trade. Additionally, the thesis also assesses the efficacy of safeguards and anti-dumping measures as instruments of trade regulation after quota expiry.

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ABBREVIATIONS

AGOA:	African Growth Opportunity Act
ASEAN:	Association of South East Asian Nations
ATC:	Agreement on Textiles and Clothing
CBI:	Caribbean Basin Initiative
CBTPA:	Caribbean Basin Trade and Partnership Act
CITA:	US Committee for the Implementation of Textile Agreements
CMT:	Cut Make Trim
CTG:	Council for Trade in Goods
DR-CAFTA:	Dominican Republic-Central America Free Trade Agreement
DSB:	Dispute Settlement Body
DSU:	Dispute Settlement Understanding
DTS:	Direct to Store
EBA:	Everything But Arms
EEC:	European Economic Community
EU:	European Union
Euro-Med:	Europe-Mediterranean
FDI:	Foreign Direct Investment
FOB:	Free on Board
FTA:	Free Trade Agreement
GASMA:	Gujranwala Art Silk Manufacturers Association
GATT:	General Agreement on Trade and Tariffs
GSP:	Generalised System of Preferences
ILO:	International Labour Organisation
IMF:	International Monetary Fund
IT:	Information Technology
ITCB:	International Textiles and Clothing Bureau
LDCs:	Least Developed Countries
LTA:	Long-Term Arrangement Regarding Cotton Textiles
MFA:	Multifiber Arrangement
MFN:	Most Favoured Nation
MMF:	Man Made Fibre
MOU:	Memorandum of Understanding

NAFTA:	North American Free Trade Agreement
NAMA:	Non-Agricultural Market Access
NICs:	Newly Industrialised Countries
NT:	National Treatment
NTB:	Non-Tariff Barriers
NTC:	National Tariffs Commission, Government of Pakistan
OPP:	Outward Production Processing
OTEXA:	Office of Textiles and Apparel, US Department of Commerce
PFY:	Polyester Filament Yarn
PTA:	Preferential Trade Agreement
PSS:	Product Specific Safeguards
ROO:	Rules of Origin
RTA:	Regional Trade Agreement
SAARC:	South Asia Association for Regional Cooperation
SAFTA:	South Asian Free Trade Agreement
SSA:	Sub-Saharan Africa
STA:	Short-Term Agreement Regarding International Trade in Textiles
T&C:	Textiles and Clothing
TMB:	Textiles Monitoring Body
TS:	Transition Safeguards
TSB:	Textiles Surveillance Body
TUF:	Technology Upgradation Fund
UK:	United Kingdom
UNCTAD:	United Nations Conference on Trade and Development
US:	United States
USCIT:	US Court of International Trade
USITC:	United States International Trade Commission
USBTA:	United States – Vietnam Bilateral Trade Agreement
VERs:	Voluntary Export Restraint
VJEPA:	Vietnam-Japan Economic Partnership Agreement
WB:	World Bank
WTO:	World Trade Organisation

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Umair Hafeez Ghori, 'Rising to the Challenge: Asian Survivors of the Quota Expiry in Global Textiles and Clothing Trade' (2009) 6(2) *Manchester Journal of International Economic Law* 95.

Umair Hafeez Ghori, 'ASEAN & South Asia; Victims & Winners in Textiles & Clothing Trade after Quota Expiry' presented at the 17th Annual ANZSIL Conference, Wellington (31 June - 5 July 2009).

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Umair Hafeez Ghori, 'The Statistics Tell a Story; an Asian Look at the Evolving Global Textiles & Clothing Trade after Quota Expiry' *University of New South Wales Law Research Series 2009-16*.

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INTRODUCTION & THEORETICAL FOUNDATIONS

I.1 SCOPE OF THE THESIS

Textiles and Clothing¹ is a critically important sector of international trade for developing countries and LDCs. The T&C sector is attractive for such countries because it requires relatively simple technological inputs, carries a low investment threshold and provides employment by engaging abundant labour resources.² The T&C sector has been a contentious area in multilateral trade negotiations. Issues in T&C trade revolve around the trade flow of T&C products from developing countries/LDCs to the prime markets of the EU, US and other developed countries. Developing countries compete for greater market access, which is often manipulated by developed countries to meet goals other than economics and trade.

This manipulation is popularly referred to as the “protectionist” policies of the developed countries.³ These policies typically feature extensive restraints on T&C products of particular interest to the developing countries/LDCs. However, the actual rationale behind such policies of the developed countries involves a delicate balancing between domestic interests and trade liberalisation.

Conversely, it is not just the developed countries that can be “accused” of protectionism. The developing countries insulate their economies against most

¹ Reference in this thesis would be made to textiles and clothing collectively as T&C.

² See for example Vinod Aggarwal, *Liberal Protectionism: the International Politics of Organized Textiles Trade* (Berkley, University of California Press 1985) 2-3; Richard P. Appelbaum, ‘TNCs and the Removal of Textiles and Clothing Quotas’ (Working Paper 3, Center for Global Studies, University of California, Santa Barbara) (2005) i & 3; Hildegunn Kyvik Nordås, ‘The Global Textile and Clothing Industry post the Agreement on Textiles and Clothing’ (Discussion Paper No.5, WTO, 2004) 1; Michiko Hayashi, ‘Trade in Textiles and Clothing: Assuring Development Gains in a Rapidly Changing Environment’ (UNCTAD/DITC/TNCD/2006/9) ISSN 1816-2878 (UN Publication, 2007) 1.

³ See for example Aggarwal, *Ibid*, 5-6, 8, 44-185; See generally David Yoffie, *Power and Protectionism*, (New York, 1983); See generally Bernard Hoekman & Michael Kostecki, *The Political Economy of the World Trading System: the WTO and Beyond* (2nd Ed. 2001); M. Rafiqul Islam, *International Trade Law of the WTO* (1st ed. OUP, 2006), 133 & 134; See also Michael Trebilcock & Robert Howse, *the Regulation of International Trade* (3rd Ed. Routledge, New York, 2005) 190, 259, 512 & 598.

T&C imports that could potentially challenge their domestic industries. In some developing countries/LDCs, the T&C sector is not only important economically but also politically because T&C products are a major source of employment and export earnings.⁴ Developing economies' reliance on T&C industries is not just in terms of exports and earning foreign exchange but also in terms of diversifying economic activities away from the traditional agrarian vocations, poverty alleviation and for providing employment to their rural populace (particularly women).⁵

Developing countries/LDCs find themselves particularly vulnerable to changes in global trading patterns. This sensitivity means that T&C is amongst the most protected industry in both developed and developing countries. This sector has been the subject of extensive protectionism ever since the beginning of the industrial revolution.⁶ Although the T&C sector has declined in importance for some developed countries (see Figure I) it nevertheless remains a significant employer.⁷

⁴ In 2003-2004, T&C trade represented about 7% of total world exports. Out of this 57% represent the more labour intensive clothing sector and 43% is the less labour intensive but more mechanised textiles sector (ILO, 'Promoting Fair Globalization in Textiles and Clothing in a post-MFA Environment; Report for discussion at the Tripartite Meeting on Promoting Fair Globalization in Textiles and Clothing in a Post-MFA Environment' (2005) 5); In 2005, T&C exports generated US \$ 479 Billion in global exports and accounted for 4.6% share in the global merchandise exports (WTO, International Trade Statistics 2006, <http://www.wto.org/english/res_e/statistics_e/its2006_e/its06_toc_e.htm> at 20 November 2007). The global T&C export figure swelled to US \$ 612.1 Billion in 2008 and accounted for 3.9% share in the global merchandise exports (WTO, International Trade Statistics 2009 <http://www.wto.org/english/res_e/statistics_e/its2009_e/its09_merch_trade_product_e.htm> at 20 May 2010).

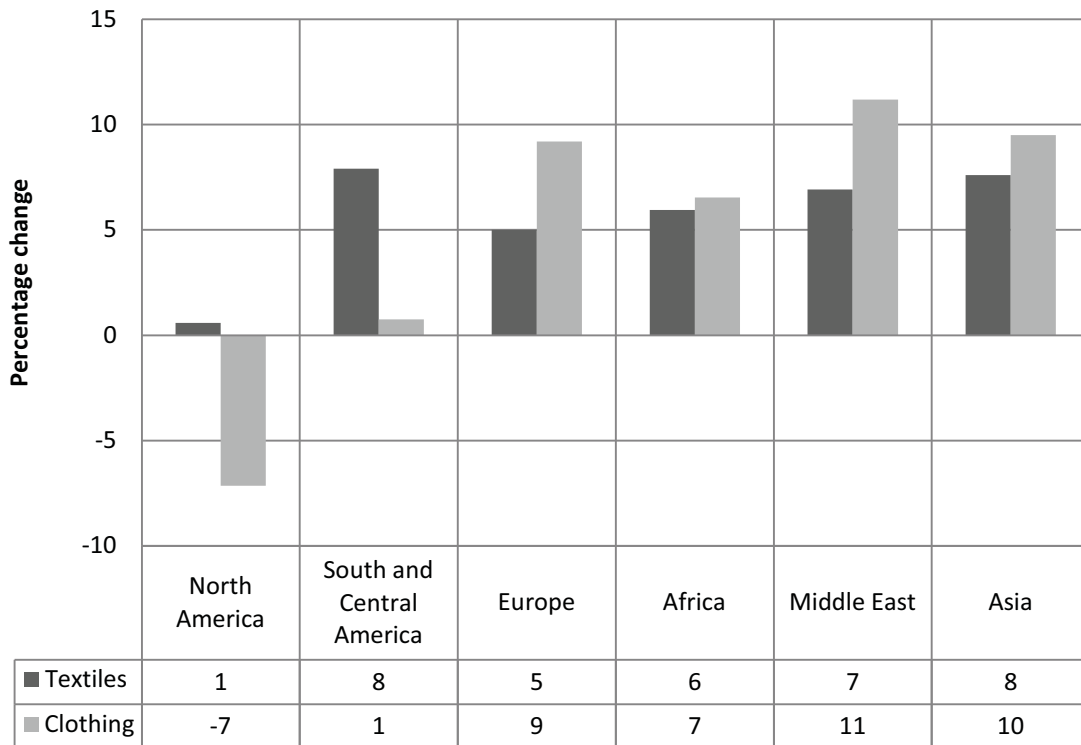
⁵ See generally Hayashi, above n 2; see generally Appelbaum, above n 2.

⁶ See generally Kitty G. Dickerson, *Textiles and Apparel in the Global Economy* (2nd ed. Prentice-Hall, New Jersey, 1995); Pietra Rivoli, *Travels of a T-Shirt in the Global Economy* (1st ed. John Wiley & Sons, New Jersey, 2005); Ratnakar Adhikari & Yumiko Yamamoto, 'The Textile and Clothing Industry: Adjusting to the Post-Quota World', in *Industrial Development for the 21st Century: Sustainable Development Perspectives*, (New York: United Nations, Department of Economic and Social Affairs).

⁷ For example in the US, wage and salary employment in the apparel and textile industry is expected to decline by 46 percent from period 2004-2014, compared with a projected increase of 14 percent for all industries combined. (Source: Bureau of Labor Statistics, US Department of Labor, *Career Guide to Industries, 2006-07 Edition*, Textile, Textile Product, and Apparel Manufacturing, on the Internet at <<http://www.bls.gov/oco/cg/cgs015.htm>> at 9 September 2009).

**(Figure I) World Exports of Textiles and Clothing by Region 2000-08
(Percentage Change)**

Source: WTO, *International Trade Statistics 2009*



The importance of a traditional sector such as T&C to developed economies, even in times of rapid industrial advancement, has led to the adoption of a range of measures such as trade remedies, tariff barriers, non-tariff barriers, discriminatory preferential treatment regimes and quantitative restrictions. These measures have been applied variably by countries (regardless of their development status) but the most notorious and trade distorting amongst these were quantitative restrictions (popularly referred to as “quotas”). Quotas regulated global trade in T&C for more than forty years after the end of World War II. Regulation by quotas meant that the T&C sector was treated as an exception to world trading norms agreed under the GATT 1947, which prohibited such conduct. The uneasy relationship between the GATT and quotas is discussed in Chapter 1.

Put simply, quotas restricted market access of T&C exporters in a discriminatory and trade distorting manner. One of the consequences of the

quota system was that it led to establishment of T&C industries in countries that enjoyed no advantage in manufacturing T&C, but possessed abundant labour resources. These countries grew to rely on guaranteed minimum access (assured by the quota system) to the developed economies for their T&C products. Conversely, countries that were much better placed in manufacturing T&C products in terms of comparative advantage, labour resources and industrial capability were artificially restrained in exporting and manufacturing to their full potential – something that went against the very spirit of liberalisation and equality of opportunity envisioned under the GATT. These issues, along with the supporting materials, will be examined in more detail in Chapters 1 and 2.

As a result of the Uruguay Round compromises, T&C quotas were finally abolished in January 2005. This is a major shift in an area that is vital to the economies of not only the developing nations/LDCs but also the developed countries. Prior to the expiry of quotas, several predictions were made on the negative effects of this change on the poor countries that exported T&C products to fuel their economies. A particular prediction was that China (along with countries such as India and Pakistan) would be the major beneficiary of this change (see Chapter 2 for further discussion and Chapters 3 & 4 for analysis of these predictions) whilst many other countries would not be able to compete and would suffer great socio-economic consequences. This realisation resulted in division amongst the developing countries into those that sought continuation of quotas in one form or the other and those that favoured their termination (see Chapter 2 for a detailed review).

The main objective of this thesis is to explore the history and future of regulation in global T&C trade through quotas and the consequences thereof. The future of global T&C trade raises policy challenges for the WTO and the multilateral trading system itself. The thesis explores issues associated with the contention that T&C is a “unique” sector possessing characteristics that are

different from other sectors of world trade. This contention is a direct consequence of conflicting interests in T&C trade that beg a solution.

This solution cannot merely be based upon the oft-quoted mantra “let the free market take its course” nor can it be in the form of a “one size fits all” solution when there are several socio-economic and political concerns associated with this sector. These concerns take many forms e.g. which nation’s economy should gain at another’s expense? To what extent can policymakers of the developed economies justify trade policies that shield their domestic industries from effects of increased imports? What is the extent of the developed countries obligations to assist developing countries in their economic growth? How can countries dependent on quotas transition to another sector?

Additionally, there are political concerns such as opening or restricting domestic markets of developed countries to imports from developing countries. As the review of trade liberalisation demonstrates, liberalisation is never a welcome step for domestic industries accustomed to protection from the state.

The T&C sector has also come to be associated with the issue of human rights, labour rights and employment for women in the poorer countries where wages are low by standards of the developed countries. This gives the impression that labour (particularly women) are often exploited and this itself is the “secret” behind comparative advantage of the Asian T&C manufacturers.

Since T&C is a global industry, policies made by governments have far reaching consequences that often transcend geographical boundaries. This raises further issues e.g. which nation’s workers, with few employment alternatives available to them, should lose at the expense of others i.e. should workers in The Philippines lose their jobs so that individuals in Vietnam or India can be employed? These questions and concerns have underpinned all

regimes that have existed in the Post-World War II period to the abolition of quotas.

With the abolition of quotas and the consequent integration of T&C trade into the traditional GATT/WTO system, the question now is how should these concerns be addressed? How conflicting interests of nations are balanced in an area of critical importance to developing countries/LDCs and yet continues to hold importance for developed countries as well. Interestingly, developed countries still feel compelled to protect this sector even while their industrial evolution has taken them to more advanced sectors of manufacturing.

Trade following the expiry of the quota system is still in a state of flux, notwithstanding the passage of more than five years. The results, facts and statistics available so far are mixed and this area is expected to undergo numerous changes as countries adapt themselves to “freer” trading in T&C. However, the T&C sector is still not truly “free” from trade distortion which now occurs through tariff, non-tariff barriers and trade remedies such as safeguards and anti-dumping. As trade in T&C continues in the quota free era, conflicting interests and the critical importance this sector holds for countries and, basically, millions of people in this world (directly and indirectly) makes it an ideal topic for research.

The introduction of the thesis briefly outlines the research method and the general approach taken during the research. It also briefly discusses the relevant economic and non-economic rationales that can be used to explain trade in T&C. The introduction also provides a brief overview of the chapter structure of the thesis.

1.2 RESEARCH METHOD

International trade embraces the social sciences, economics and law. This thesis does not examine the economics of T&C trade nor the application of

social theories but rather concentrates on the law and policy issues associated with international T&C trade.

The perspective of this thesis is that of developing countries/LDCs and the effects of quota expiry in T&C trade. Since developed countries were the constrained target markets under the quota system, the primary trade flow examined will be exports from developing to developed economies. Where relevant, imports by developing countries are also considered. This is accomplished through careful examination of trade statistics from various sources. These statistics feature prominently in case studies incorporated within this thesis (see Chapters 4 & 5) and have been relied upon to assess development in the T&C sector after quota expiry. This research analyses developments after 2005. The cut-off date for statistics is 30 June 2010.

In addition to an examination of trade statistics, this thesis relies on interviews with government and trade officials in Pakistan (as a case study of a country predicted to be a major beneficiary of quota expiry). The idea behind this approach is to highlight the sensitivity and “footloose” nature of trade in the T&C sector, which often proves trade projections incorrect.

I.3 THEORETICAL FOUNDATIONS

I.3.1 Mercantilism and the Classical economic theories of trade

Numerous theories attempt to explain the economic and non-economic rationale behind international trade law and policy. For the purposes of this thesis, the central concept is that of comparative advantage in manufacturing T&C. This concept was forwarded by David Ricardo as the theory of comparative advantage and it is viewed as a reaction against the traditional policies of mercantilism during the 17th and 18th century.⁸ Mercantilism

⁸ Gianni Vaggi & Peter Groenewegen, *A Concise History of Economic Thought; From Mercantilism to Monetarism*, (1st ed. Palgrave MacMillan, New York, 2003) 15-22, 23-28; Trebilcock & Howse, above n 3, 1-2; Raj Bhala, *International Trade Law: Theory and Practice* (2nd Ed, LexisNexis, 2001) 1; In a classic statement on Mercantilism by Thomas Mun (published in 1644) entitled ‘*England's Treasure by Forraign Trade or the Ballance of our Forraign Trade is the Rule of our Treasure*’ [sic] foreign trade

emerged in Britain during 17th and 18th century.⁹ Put simply, the proponents of mercantilism advocate regulatory measures by the government in order to maintain a favourable balance of trade, which in turn, was translated as aggressively exporting industrial output while imposing restrictions on imports.¹⁰

Another dimension of mercantilism is active promotion and use of indigenous raw materials for industrial production rather than importing finished goods that could potentially compete with domestic industries.¹¹ This aim is accomplished through taxes on export of raw materials, export subsidies on finished products and import duties on imported goods.¹² Chapter 1 will further discuss the historical application of this theory to the T&C sector.

Adam Smith's seminal work *The Wealth of Nations* sharply criticises mercantilism and offers an alternative that came to be known as the *Theory of*

was considered a means to increase national wealth (<http://ideas.repec.org/b/hay/hetboo/mun1664.html> at 18 May 2010).

⁹ Vaggi & Groenewegen, Ibid, 15-22, 23-28; Trebilcock & Howse, above n 2, 1-2; Raj Bhala, *International Trade Law: Theory and Practice* (2nd Ed, LexisNexis, 2001) 1; Adam Smith, *The Wealth of Nations* (1776) (eBook Edition, Petersfield Harriman House, 2007, eBook ISBN 9781435667907), 305.

¹⁰ In a classic statement on Mercantilism by Thomas Mun (published in 1644) entitled '*England's Treasure by Forraign Trade or the Ballance of our Forraign Trade is the Rule of our Treasure*' [sic] foreign trade was considered a means to increase national wealth. Mun wrote in Chapter II that "*The ordinary means therefore to encrease [sic] our wealth and treasure is by Forraign Trade [sic], wherein wee [sic] must ever observe this rule; to sell more to strangers yearly than wee consume of theirs in value. For suppose that whe theis [sic] Kingdom is plentifully served with the Cloth, Lead, Tinn, Iron, Fish and other native commodities, we doe yearly export the overplus[sic] to forraign[sic] Countries to the value of twenty two hundred thousand pounds; by which means we are enabled beyond the Seas to buy and bring in forraign [sic] wares for our use and Consumption, to the value of twenty hundred thousand pounds; By this order duly kept in our trading, we may rest assured that this order duly kept in our trading, we may rest assured that the Kingdom shall be enriched yearly two hundred thousand pounds, which must be brought to us in so much Treasure; because that part of our stock which is not returned to us in wares must necessarily be brought home in treasure.*" (accessed online from <http://ideas.repec.org/b/hay/hetboo/mun1664.html> at 18 May 2010;

¹¹ see also Trebilcock & Howse, above n 2, 1-2.

¹² Mun further wrote that: "*We may likewise diminish our importations, if we would soberly refrain from excessive consumption of forraign [sic] wares in our diet and rayment [sic], with such often change of fashions as is used, so much the more to increase [sic] the waste and charge; which vices at this present are more notorious amongst us than in former ages. Yet might they easily be amended by enforcing the observation of such good laws as are strictly practised in other Countries against the said excesses; where likewise by commanding their own manufactures to be used, they prevent the coming in of others, without prohibition, or offence to strangers in their mutual commerce.*" (Mun, above n 9, Chapter 3, Paragraph 2).

Absolute Advantage.¹³ Smith's argument was based on the logic that if domestic households find it prudent to source their family needs from external suppliers then the same can be done by nations as well i.e. source commodities or products from another country if one cannot produce them domestically.¹⁴

Smith argued that all nations are not endowed equally. Some nations have natural environment suited to exploitation of mineral wealth whilst other nations may have the resources to produce particular goods. It would, therefore, make economic sense for a nation to source products that it cannot produce from the other nation and vice versa.¹⁵ Smith's argument is that in order to do this, unilateral trade liberalisation is the best policy for any nation, regardless of reciprocation by its trading partners.¹⁶

The theory of comparative advantage forwarded by Ricardo expanded upon Adam Smith's earlier work on the theory of absolute advantage. Ricardo states that in international trade, the overall economic welfare of countries can be maximised if countries specialise in production and export of products which they can produce more *efficiently*.¹⁷ These products can be traded with other nations for products which cannot be produced as *efficiently*.¹⁸

The theory of comparative advantage, with its inherent appeal to ideals of public welfare and enhancement of efficiency, still forms the basis of global

¹³ Smith comments that "...in the mercantile system, the interest of the consumer is almost constantly sacrificed to that of the producer; and it seems to consider production, and not consumption, as the ultimate end and object of all industry and commerce" (Smith, above n 9, 426).

¹⁴ Smith writes: "What is prudence in the conduct of every private family can scarcely be folly in that of a great kingdom. If a foreign country can supply us with a commodity cheaper than we can make, better buy it of them with some part of the produce of our own industry" (Smith, above n 9, 293-294 cited by Trebilcock & Howse, above n 2, 3).

¹⁵ Trebilcock & Howse, above n 3, 3.

¹⁶ Smith, above n 9, 305.

¹⁷ See generally discussion by David Ricardo on foreign trade in David Ricardo, *The Principles of Political Economy and Taxation* (3rd ed. John Murray, Albermarle Street, London, 1821) 131-161, Available online

<<http://books.google.com/books?id=iUUJAAAAQAAJ&printsec=frontcover&dq=The+Principles+of+Political+Economy&cd=2#v=onepage&q&f=false>>) at 18 May 2010; See also discussion of comparative advantage theory in Islam, above n 3, 6; Simon Lester, Bryan Mercurio, Arwel Davies & Kara Leitner, *World Trade Law; Text, Materials and Commentary* (1st Ed., Hart Publishing, Oxford & Portland, Oregon, 2008) 46; Melvyn Krauss, *How Nations Grow Rich* (1st Ed. OUP, New York, 1997) 4-5.

¹⁸ Ricardo, *Ibid*.

trade.¹⁹ In theory, free trade leads to maximisation of public benefit i.e. by encouraging removal of barriers, countries achieve economies of scale and scope, which enhances their efficiency in utilising their resources.²⁰ This increased efficiency raises total output of efficiently produced goods, that in turn increases trade.

However, the global accrual of benefits from free trade is a slow process since more countries have to realise its benefits and take appropriate measures to “free” their trade.²¹ A major shortcoming of Ricardo’s theory was the assumption that countries would maintain constant costs at levels of production, which would lead to complete specialisation in goods where the country enjoyed comparative advantage.²² Therefore, if trade liberalisation occurs between countries, the theory of comparative advantage states that if a country enjoys comparative advantage in production of certain goods, it will export those goods. Otherwise it will import goods.²³

Similarly, the theory of comparative advantage also ignores that countries often *create* comparative advantage through investment in human capital or research and development. By doing so, countries acquire expertise and gain advantage in a particular field e.g. India’s investment in Information Technology (IT) infrastructure and education makes it a leading exporter of IT products and services. At the same time, India has an abundance of cheap labour that enables it to manufacture and export clothing. Yet, India’s IT boom happened as recently as 10-15 years ago, whilst it enjoyed an abundance of labour resources for decades.

This element is highlighted by the work of Swedish economists Eli Heckscher and Bertil Ohlin (popularly referred to as the *Factor Proportions Theorem* (factors

¹⁹ Trebilcock & Howse, above n 3, 4; Lester & Mercurio, above n 17, 51

²⁰ Islam, above n 3, 7.

²¹ Ibid.

²² Trebilcock & Howse, above n 3, 4.

²³ Bhala, above n 8, 42

proportions theorem) or the *Heckscher-Ohlin Hypothesis*).²⁴ This theory rectifies some of the perceived flaws in Ricardo's theory.

Heckscher and Ohlin agree with Ricardo that international trade is based on differences in comparative costs but their objective was to focus on the factors behind the differences in comparative costs – an issue ignored by Ricardo.²⁵ Heckscher and Ohlin state that trade occurs on the basis of differences in factor abundance between countries e.g. a country with abundance of labour resources will trade in labour intensive goods whilst a country endowed with natural resources will trade in commodities and raw materials.²⁶ The reason for this is simple: a labour-abundant country is able to produce labour-intensive goods cheaply and a land-abundant country can produce land-intensive goods cheaply.²⁷

Tying factors proportions theorem with theory of comparative advantage means that countries enjoy *comparative advantage* in producing goods that utilise more abundant factors more intensively – countries will export its abundant factor goods for imported goods that use its scarce factors more intensively.²⁸

It is tempting to apply this theory to global T&C trade straightaway. After all labour-intensive Asian countries manufacture clothing and export these to the capital-intensive EU/US who produce capital-intensive goods such as automobiles, communication equipment, IT technology sectors and export these to the labour-intensive nations. However, the problem lies in the fact that EU/US still “export” T&C products and Asian countries continue to “import” T&C products despite being endowed differently. If read this way, the theory loses some of its appeal.

²⁴ See generally Bertil Ohlin, *Interregional and International Trade* (Reprint, Routledge, New York, 1998).

²⁵ Ibid, 571 -575; Bhala, above n 8, 42-43.

²⁶ Ohlin, Ibid, 12, 29 & 30 (Ohlin uses a comparison between Australia and Great Britain to illustrate “important differences in endowments of productive agents”).

²⁷ Bhala, above n 8, 43.

²⁸ Trebilcock & Howse, above n 3, 4.

This thesis will not dwell on the merits of the classical economic arguments summarised above. Rather, it explains global T&C trade through competition-based theories of trade, business school theories and non-economic rationales. The theories examined in this thesis link with at least some dimension of trade in T&C. These theories are used as a theoretical foundation at the outset of the thesis and thereafter, the thesis concentrate on their legal and policy application in the ensuing chapters.

I.3.2 Theory of Monopolistic Competition

This theory is propounded by English economist Edward Chamberlin.²⁹ The theory of monopolistic competition explains the intra-industry trade between countries i.e. trade in similar products between two countries.³⁰ One basis for such trade is simply “consumer preferences.” Chamberlin’s response is different.

Chamberlin claims that firms (and, by implication, countries) compete with one another by differentiating their products.³¹ According to Chamberlin, patents and trademarks serve to make “*a product unique in certain respects*” while leaving “*room for other commodities almost but not quite like it.*”³² By doing this, firms gain monopoly power and indulge in “monopolistic” competition.³³

Chamberlin further writes that in order to increase volume of sales by differentiating his products from the competitors, the seller may have to vary the quality of the product.³⁴ This process entails “*...technical changes, a new design, or better materials; it may mean a new package or container; it may mean more*

²⁹ See generally Edward Chamberlin, *The Theory of Monopolistic Advantage; a re-orientation of the Theory of Value* (7th ed. Harvard University Press, Cambridge Massachusetts, 1960).

³⁰ Bhala, above n 8, 48.

³¹ Chamberlin, above n 29, 56;

³² Ibid, 62.

³³ Ibid, 68-70.

³⁴ Ibid, 71.

*prompt or courteous service, a different way of doing business, or perhaps a different location.”*³⁵

In addition to product differentiation, Chamberlin states that sellers influence sales volume by advertising, which is intended to increase demand for his goods.³⁶ The advertising costs are later adjusted in the price of the goods which is possible only due to the seller:³⁷

(a) capitalising on imperfect knowledge on part of the buyers as to means whereby wants may be most effectively satisfied.

(b) altering wants by advertising or selling appeal.

According to Chamberlin, “price” constitutes only one “relatively unimportant phase” of the competitive process.³⁸ Rather, price competition is evaded by attracting the buyer’s attention towards a trade-mark, or by competing on the basis of quality or service.³⁹

An interesting aspect of price based competition, according to Chamberlin, is that the seller may not cut the prices of their goods to avoid the perception of inferior quality by the consumer.⁴⁰ This behaviour of the consumer is done pursuant to the blind recognition of quality of a product with its price i.e. the higher the better.⁴¹

The theory of monopolistic competition explains why the EU (and other developed countries) still manufacture and export clothing, while importing similar products from Asian manufacturers. In other words, the basis of EU’s clothing manufacturers competing with low-cost Asian suppliers is *product*

³⁵ Ibid.

³⁶ Ibid, 72.

³⁷ Ibid.

³⁸ Ibid, 73.

³⁹ Ibid.

⁴⁰ Ibid, 107.

⁴¹ Ibid, 107.

differentiation. This is accomplished by manufacturers “branding” their clothing products, backed up aggressive advertisements that often target the niche market segment. Since majority of Asian products target low-to- medium value added segment, many EU based manufacturer are able to differentiate their products, regardless of their true origin. Thus, by differentiating its clothing products, an Italian shirt manufacturer can appeal to the “discerning” consumer in the target market, while a Vietnamese manufacturer is relegated to the “budget-conscious” consumer level.

I.3.3 Product Cycle Theory

This is a business school theory that explains patterns of specialisation in international trade.⁴² It was propounded by Prof. Raymond Vernon of the Harvard Business School in the 1960’s.⁴³ Vernon’s theory states that the US and other developed countries enjoy comparative advantage at the research and development stage of product innovation.⁴⁴

Figure II illustrate the stages of the product cycle. The product cycle theory states that producers based in developed countries, relying on their superior capabilities in terms of financial and human capital, initiate the product cycle.⁴⁵ Product is firstly introduced into the domestic market.⁴⁶ At this stage, the primary aim is to identify shortcomings and flaws in the product rather than profits.⁴⁷ Product improvement is done by close review of the consumer feedback and sale trends.⁴⁸ The target market, at this stage, is the niche market segment of the domestic market that fetches higher value.⁴⁹

⁴² Trebilcock & Howse, above n 3, 5.

⁴³ See generally Raymond Vernon, ‘International Investment and International Trade in the Product Cycle’ (1966) 80 (2) *The Quarterly Journal of Economics* 190; See also Raymond Vernon, ‘The Product Cycle Hypothesis in a New International Environment’ in H. Peter Gary (Eds.) UN Library on Transnational Corporations (Volume 3) *Transnational Corporations and International Trade and Payments* (1st ed, Routledge, New York, 1993) 46, 55.

⁴⁴ Ibid, 190.

⁴⁵ Ibid.

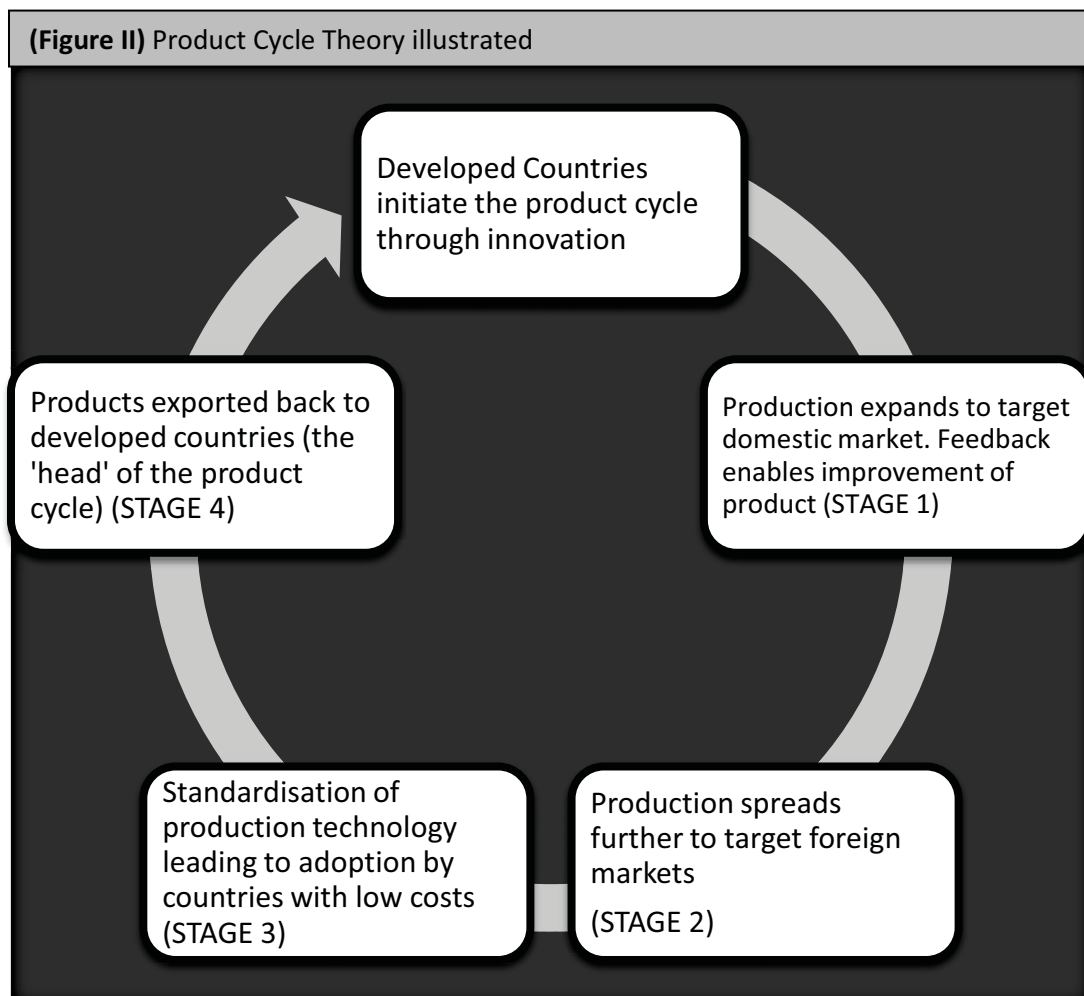
⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid, 195-196.

⁴⁹ Vernon, above n 43, 48.

In the second stage, after having “perfected” the product for mass commercialisation, the product is introduced in the general domestic market.⁵⁰ The objective now becomes generation of profit. Vernon states that it is up to this stage that, quasi-rents can be earned by the developers.⁵¹ As the product cycle advances, quasi-rents gradually dissipate.⁵²



In the third stage, the product’s outreach spreads to the consumers in the developing countries/LDCs.⁵³ The production correspondingly increases to meet increased demand.⁵⁴ This is where the country that initiates the product

⁵⁰ Vernon, above n 43, 196.

⁵¹ Ibid, 196; Trebilcock & Howse, above n 3, 5.

⁵² Trebilcock & Howse, Ibid.

⁵³ See also discussion on the Product Cycle Theory by K. Aswathappa, *International Business* (3rd ed. Tata McGraw-Hill, New Delhi, 2008) 79-80; See also Charles Hill, Tom Cronk, Rumintha Wickramasekera, *Global Business Today: an Asia-Pacific Perspective* (1st ed. McGraw-Hill Irwin, North Ryde, 2008) 56-57.

⁵⁴ Aswathappa, Ibid; Hill et al, Ibid.

cycle realises the full extent of profits from marketing the product.⁵⁵ This level of profitability is a direct reflection of the *comparative advantage* a country holds in manufacturing and marketing the product.⁵⁶ Eventually, the product and the associated production process become standard.⁵⁷ The production process is adopted by developing countries that enjoy lower labour costs, which affects the profitability of the producers in the developed countries.⁵⁸ This may lead the original producer to close down production facilities in the developed countries and shift to production sites in low-wage countries.⁵⁹ At this point in time, the comparative advantage starts shifting in favour of the developing countries.

The shift of comparative advantage is complete when developing countries/LDCs are able to mass produce the product.⁶⁰ At this stage in the product cycle, developing countries/LDCs are exporting the product back to developed countries (that morph into net importers).⁶¹ The product cycle, therefore, becomes complete. In order to remain competitive and profitable, the developed countries must continue to innovate either by introducing new products or developing sophisticated variants of the older products.⁶²

The product cycle theory assumes that there are no barriers to trade.⁶³ This assumption somewhat undermines the actual application of the product cycle theory in the T&C context. As Chapters 1 & 2 will demonstrate in connection with global T&C trade, barriers to trade effectively impede shifting of comparative advantage from developed countries to developing countries/LDCs.

⁵⁵ Aswathappa, Ibid; Hill et al, Ibid.

⁵⁶ Aswathappa, Ibid; Hill et al, Ibid.

⁵⁷ Vernon, above n 43, 202-203.

⁵⁸ Aswathappa, above n 53, 79-80; Hill et al, above n 53, 56-57; Bhala, above n 8, 49.

⁵⁹ Aswathappa, Ibid.

⁶⁰ Bhala, above n 8, 49.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

The product cycle theory is also limited to products that possess a degree of sophistication i.e. products follow a sequence of innovation, design, development, marketing, product improvement, before it reaches the full maturity stage of mass production.⁶⁴ Having said this, the product cycle theory explains the trade and marketing behaviour of countries more accurately than theory of comparative advantage and factors proportions theorem especially in the case of manufactured goods.⁶⁵

However, at first reading, it is difficult to see how the product cycle theory explains international trade in T&C. After all, what is so sophisticated about a traditional sector such as T&C?

In response to this query it can be said that even though the product cycle theory does not fully explain trade in T&C, it helps us in understanding the development and history of the T&C sector. By understanding the history, the present can be explained and the future, deciphered e.g. If the history of textiles manufacturing is considered, the UK did not “invent” textiles but perfected an efficient production process. This enabled the UK manufacturers of textiles to efficiently produce and thus export more textiles against their competitors who did not possess the “new” technology at that point in time. At this early stage of the product cycle, UK and eventually other industrialised countries realised quasi-rent from the new production technology.

As the production technology spread to other parts of the world over the centuries, the technology became more common and the production of textiles proliferated to other developed countries such as Germany and the US. With this spread, the extent of quasi-rent gradually dissipated. With the spread of textiles manufacturing technology to Asian producers, the comparative advantage shifted to other countries (such as Japan, South Korea & Taiwan)

⁶⁴ Ibid.

⁶⁵ Ibid.

that adopted the technology supported by availability of abundant labour resources.

Eventually, these countries lost comparative advantage as well as the production process shifted to other Asian countries such as Malaysia, Indonesia, India, Pakistan and most notably, China. Again, the shifting process in the product cycle was affected by a barrier to trade (in the form of quotas) that suppressed the comparative advantage of certain countries, while artificially gestating textiles industries in countries that possessed little or no comparative advantage. This issue will be discussed in greater detail in Chapters 1 & 2.

Presently, the developed countries that initiated the product cycle in T&C manufacturing 200-300 years ago have become net importers of T&C products. As the thesis demonstrates later, developed countries find it difficult to retain primacy in T&C manufacturing i.e. in order to remain at the 'head' of the product cycle, developed countries have to either innovate or introduce significant improvement in mature products that lends it a distinctive character against competing products.

I.3.4 Flying Geese Model

This is a variant of the product cycle theory forwarded by Japanese economist Kaname Akamatsu in the 1930's, but received better recognition in the early 1960's after further development of the theses by Kiyoshi Kojima. According to Akamatsu, the *"wild-geese flying pattern of industrial development denotes the development after the less-advanced country's economy enters into an international economic relationship with the advanced countries."*⁶⁶

The flying geese model differs from the product cycle theory in respect of the perspective taken i.e. the product cycle theory describes the evolution of trade

⁶⁶ Kaname Akamatsu quoted from Kiyoshi Kojima, 'The "flying geese" Model of Asian Economic Development: Origin, Theoretical Extensions and Regional Policy Implications' (2000) 11 *Journal of Asian Economics* 375, 377.

in a product from the standpoint of developed countries. The flying geese model describes the same evolutionary process from the perspective of developing country.⁶⁷

The flying geese model branches off from the stage of the product cycle theory where a new product is introduced to the developing countries (see Figure II).⁶⁸ The flying geese model postulates in the first stage that imports into developing countries attract consumer's interest, which triggers demand.⁶⁹ To meet increasing demand, local production begins in the developing country.⁷⁰ However, local production, at this stage, is hindered by low-quality and high cost of production, therefore, demand in the domestic market is mainly met by imports.⁷¹

The next stage begins once the developing country manages to overcome the issues of quality and high production costs.⁷² Local production increases to meet growing domestic demands internally.⁷³ At the same time, the developing country erects tariff barriers and other import restrictions to shield domestic industries from competing imports.⁷⁴ Domestic production is also encouraged in order to reduce current account deficits that are usually strained by imports.⁷⁵ By favouring domestic industries against imports and acquiring further production technology which leads to the gradual displacement of imports and *creation* of comparative advantage for large-scale production.⁷⁶ At this stage, foreign investment also starts flowing in, albeit slowly.⁷⁷

⁶⁷ Malcolm Dowling & Chia Tien Cheang, 'Shifting Comparative Advantage in Asia: New Tests of the "Flying Geese" Model' (2000) 11 *Journal of Asian Economics* 443, 446; Kojima, Ibid.

⁶⁸ Dowling & Cheang, Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid. 447.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ See discussion in Kojima, above n 66, 382.

⁷⁷ Dowling & Cheang, above n 67, 447.

In the third stage, domestic demand slows and production shifts to target foreign export markets.⁷⁸ To maintain competitive edge over other export rivals, the exporter country imports capital goods for expanding production base.⁷⁹ This also attracts growing FDI since the corresponding industry, by this time, have lost comparative advantage in the developed countries and have relocated their production processes overseas (refer to Figure II).⁸⁰

In the fourth stage, domestic production slows due to increasing costs and competition from other countries.⁸¹ This impacts export growth and FDI inflow since foreign investors are more interested in other venues.⁸² Finally, when wages and production costs increase to the level where comparative advantage is lost, the domestic producers relocate or reorganise in order to continue business.⁸³

According to Kojima, the basic aim behind flying geese model is to explain the “catching-up process of industrialization in latecomer economies, which consists of: (i) a basic pattern, i.e. single industry grows tracing out the three successive curves of import, production, and export; and (ii) a variant pattern in which industries are diversified and upgraded from consumer goods to capital goods and/or from simple to sophisticated products.”⁸⁴

Another dimension of the flying geese model is the “agreed specialisation model” whereby regional proliferation of industrialisation (based on the flying geese pattern) leads to convergence in specialisation amongst countries.⁸⁵ This can potentially result in trade conflicts and competition amongst regional trading partners which undermines regional trade.⁸⁶ In order to counter this,

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Kojima, above n 66, 376.

⁸⁵ Ibid, 386-387.

⁸⁶ Ibid, 386.

Kojima presents the “theory of agreed specialisation” where intra-industry trade is promoted.⁸⁷ Kojima writes that if two countries (essentially two different firms based in two countries) agree to specialise in product X and product Y respectively, then both parties can obtain an increased volume of both goods at lower prices.⁸⁸

The post-GATT 1947 history of development of Asian T&C industry (discussed in Chapters 1 & 2) lends credence to the flying geese model perspective on the pattern of development in T&C trade.⁸⁹ The flying geese model envisions regional transmission of industrialisation from ‘lead goose’ (Japan) to ‘follower geese’ (Asian NICs, ASEAN and China) in a process where an investing country “transplants” its comparative disadvantage in production into a recipient country.⁹⁰ By doing so, the comparative advantage of the recipient country is enhanced and this leads to expansion in production and trade between countries (this process is referred to as the “pro-trade oriented FDI”).⁹¹

I.3.5 Competitive Advantage Theory

Professor Michael Porter advances the competitive advantage theory that aims to move beyond theory of comparative advantage and its derivatives based on differences in relative cost of production as the basis of international trade.⁹²

In his analysis, Porter states that the classical economic theories on trade and industrial success are not sufficient to explain patterns of trade.⁹³ Porter claims that the assumptions underlining the classical trade theories are “*unrealistic*”

⁸⁷ Ibid.

⁸⁸ Ibid, 387.

⁸⁹ See for example Harvey Cutler, David Berri, Terutomo Ozawa, ‘Market Recycling in Labor-intensive Goods, Flying-Geese Style: an Empirical Analysis of East Asian Exports to the US’ (2003) 14 *Journal of Asian Economics* 35, 38.

⁹⁰ Kojima, above n 66, 376.

⁹¹ Ibid; Dowling & Cheang, above n 67, 448.

⁹² Bhala, above n 8, 50.

⁹³ Michael Porter, *the Competitive Advantage of Nations* (1st Free Press Ed., Free Press, New York, 1990), 12.

and that “*these assumptions bear little relation, in most industries, to actual competition.*”⁹⁴

Moving away from the classical economic theories, Porter acknowledges that product cycle theory (a business school theory) represents “*a truly dynamic theory*” that explains the nexus between productivity and the basis of international trade.⁹⁵ However, Porter points out, the product cycle theory does not answer why the US “*no longer corners the market for advanced goods, nor has it ever.*”⁹⁶ Porter also queries the non-occurrence of the inevitable loss of advantage by many industries in the developed countries as postulated in the product cycle theory.⁹⁷

The crux of the competitive advantage theory is to explore causes behind some countries “sustaining” advantage in industries while other countries lose their advantage over time.⁹⁸ This, therefore, means that Porter’s theory revolves around a country *creating* and then *sustaining* competitive advantage in particular fields; Porter terms this the “competitive advantage of nations.”⁹⁹

According to Porter, competitive advantage is first *created* and then *sustained* through a “*highly localized process*” which hinges around “*differences in national economic structures, values, cultures, institutions and history.*”¹⁰⁰ In order to explain the concept of *creation* and *sustenance*, the competitive advantage theory poses four questions:

- 1) What are the sources of domestic competitive advantage?
- 2) How is domestic competitive advantage *created*?
- 3) How is domestic competitive advantage *sustained*?

⁹⁴ Ibid, 12-13.

⁹⁵ Ibid, 17.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid, 18.

⁹⁹ Ibid, 18.

¹⁰⁰ Ibid, 18.

- 4) What is the role of the state in nurturing competitive advantage in the international context?

According to Porter, the response to the first question is that a firm develops competitive advantage by coming up with new methods of conducting its *primary* and *support* activities.¹⁰¹ This is accomplished by adopting new work procedures, efficient technology and also by ensuring that all links in the value chain are well coordinated and managed.¹⁰² Porter defines “primary activities” as comprising “ongoing production, marketing, delivery and servicing of the product” and “support activities” as consisting of providing inputs, technological know-how, human resources, general management and finance.¹⁰³

Regarding the second question, Porter surmises that competitive advantage is created by firms innovating through discovery of new and improved ways of competing in an industry.¹⁰⁴ Innovation can either be through improving quality of product, production processes or adopting new approach to marketing and distribution.¹⁰⁵

In response to the third query, Porter states that sustaining competitive advantage is dependent on the source of the advantage itself.¹⁰⁶ He distinguishes between two types of advantages:¹⁰⁷

- 1) **“lower order advantage”** consisting of low labour costs or cheap raw materials that are relatively easy for countries to imitate; and
- 2) **“higher order advantage”** consisting of proprietary process technology, product differentiation based on unique products or services, brand

¹⁰¹ Ibid, 50; Bhala, above n 8, 50.

¹⁰² Bhala, Ibid.

¹⁰³ Porter, above n 93, 50.

¹⁰⁴ Ibid, 45.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid, 49-50.

¹⁰⁷ Ibid.

reputation, customer relationships. Achieving these requires more advanced skills and capabilities.

Porter's response to the final factor is that a firm gains competitive advantage in global trade by "configuring its value chain activities in an appropriate manner, and ensuring that these activities are properly integrated."¹⁰⁸ Additionally, firms may also enter into strategic alliances or partnerships in order to pursue a global strategy.¹⁰⁹

Porter further writes that "Nations succeed where local circumstances provide an impetus for firms to pursue such strategies early and aggressively. Nations fail where firms do not receive the right signals, are not subject to the right pressures, and do not have the right capabilities."¹¹⁰

Therefore, Porter's argument seems to be that a free trading environment ensures that firms adapt to changes and those that successfully adapt are rewarded for their adaptability. This theory, like the product cycle theory and flying geese model, potentially offers a better explanation of the success and failures of T&C dependent countries after quota expiry (Chapters 4 & 5 will examine case studies which confirms a number of theoretical premise in the competitive advantage theory as well as other business school theories).

I.3.6 Stolper-Samuelson Theorem

The Stolper-Samuelson theorem was published by Professors Paul Samuelson and Wolfgang Stolper in 1941.¹¹¹ The Stolper-Samuelson theorem explains the income distribution effects of trade liberalisation i.e. there are always parties

¹⁰⁸ Ibid, 51.

¹⁰⁹ Ibid, 54-55.

¹¹⁰ Ibid, 68.

¹¹¹ Wolfgang Stolper & Paul Samuelson, 'Protection and Real Wages' (1941) 9 (1) *the Review of Economic Studies* 58.

that are affected adversely by trade liberalisation.¹¹² This theory explains why and who will be in favour of trade liberalisation and who will not.¹¹³

The Stolper-Samuelson theorem explains the effects flowing from trade liberalisation between a labour-abundant and a capital-abundant country.¹¹⁴ However, similar to the factors proportions theorem, the Stolper-Samuelson theorem deals with inter-industry and not intra-industry trade.¹¹⁵ The Stolper-Samuelson theorem postulates that liberalising trade between labour-abundant and capital-abundant countries leads to an increase in the relative price of labour in the labour-abundant country and a decrease in price of labour in a capital-abundant country.¹¹⁶

According to the Stolper-Samuelson theorem, this occurs due to effect of trade liberalisation on relative demand for factor inputs i.e. demand for labour rises in labour-abundant country while it falls in the capital-abundant country.¹¹⁷ The situation is the exact inverse in the capital-abundant country. The implication of this model is that liberalised trading environment favours the abundant factors and undermines the scarce factors.¹¹⁸ In simple terms, industries that will face increased competition from imports as a result of reduced tariffs and trade liberalisation will oppose such measures. While industries that benefit from cheap raw materials or imports will favour reduction of tariffs and liberalised trade.

¹¹² Bhala, above n 8, 66.

¹¹³ Ibid, 65-66.

¹¹⁴ Ibid.

¹¹⁵ Ibid, 66.

¹¹⁶ In words of Stolper and Samuelson "*International trade necessarily lowers the real wage of the scarce factor expressed in terms of any good*" (see Stolper & Samuelson, above n 111, 66).

¹¹⁷ Bhala, above n 8, 67.

¹¹⁸ Jagdish Bhagwati succinctly summarises the Stolper-Samuelson theorem relationship between tariff-protection and wage levels of the scarce factor by stating that "*protection (prohibitive or otherwise) raises the real wage of the scarce factor*" (Jagdish Bhagwati, 'Protection, Real Wages and Real Incomes' (1959) 69 (276) *The Economic Journal* 733, 734). Bhagwati's article responds to an earlier restatement of the Stolper-Samuelson theorem by Kelvin Lancaster, 'Protection and Real Wages: A Restatement' (1957) 67 (266) *The Economic Journal* 199.

Applied to T&C trade, the Stolper-Samuelson theorem explains well why industry associations in the developed countries fiercely oppose end of quotas, reduction in tariff protection,¹¹⁹ and relaxation in use of safeguards or antidumping measures. The *prima facie* vindication of the effects predicted by this theory appears throughout the thesis especially in Chapters 2, 3 & 5. However, an economic assessment of the Stolper-Samuelson theorem falls outside the scope of this thesis.

I.3.7 Public Choice Theory

This theory explains the nexus between trade and politics. Essentially, the public choice theory is an explanation for the role of politicians in shaping trade policies of countries. It was first popularised by Duncan Black in 1948¹²⁰ in the form of the *median voter theory*, which was expanded by James Buchanan and Gordon Tullock, eventually evolving into the public choice theory.¹²¹

Politicians are termed as producers of a good i.e. policy and the voters/public-at-large are termed as consumers.¹²² The relationship can therefore be translated as: *Voters "pay" the "suppliers" of the "goods"* i.e. the politicians attract more votes for "better" policy initiatives.

However, the reality is not so simple since the politician is not always concerned with welfare of the ordinary voter. Rather, his interests are often better served by allying with well-organised industry groups that work through lobbying.¹²³ These groups may prove to be a richer vein of votes as compared to the more scattered ordinary consumer.

¹¹⁹ Lloyd Metzler comments "*Whether a tariff injures or benefits a country's scarce factors of production depends largely upon how it affects the output of exports and of commodities competing with imports*" (Lloyd Metzler, 'Tariffs, Terms of Trade, and the Distribution of National Income' (1949) 57 (1) *The Journal of Political Economy* 1, 7)

¹²⁰ See generally Duncan Black, 'On the Rationale of Group Decision-making' (1948) 56 (1) *The Journal of Political Economy* 23.

¹²¹ See generally James Buchanan & Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (1st ed. University of Michigan, Ann Arbor, 1965)

¹²² Bhala, above n 8, 1517.

¹²³ Buchanan & Tullock, above n 121, 298.

Thus, the politicians are often more concerned about effect of trade liberalisation on the industries instead of the consumers, since the industries are more influential, better organised and well-funded. According to Alan Sykes, this behaviour of the politicians results in policies that favour non-liberalisation of trade even where economic considerations dictate otherwise.¹²⁴ Alternatively, any unanticipated changes in economic conditions may result in situations where substantial political dividends can be reaped for increased protection to the local industries.¹²⁵ Politicians are aware that trade liberalisation is often unpopular with import-competing local industries. If such industries are well-organised and politically influential, few policy-makers risk trade liberalisation.

This theory supports the rationale for quotas (see Chapter 1 for discussion) i.e. why were quotas introduced on T&C in the first place? Why did it take four decades for the quota system to be abolished even though it went against the very basis of the multilateral trading system? What will the policy-makers rely on after the quotas have expired to appease the “voters”? These questions underpin the use of trade remedies to “protect” local T&C industries in the developed countries.

I.3.8 Application within the thesis

The business school theories generally explain the industrial cycles and transition of economies. From being initially dependent on T&C, countries often move through stages whereby reliance on T&C is gradually reduced. This transition raises certain policy issues for T&C trade that are discussed in the thesis.

The competition theories (theory of monopolistic competition and the competitive advantage theory) explain the competitive behaviour of countries

¹²⁴ Alan Sykes, ‘Protectionism as “Safeguard”: A Positive Analysis of the GATT “Escape Clause” with Normative Speculations’ (1991) 58 *University of Chicago Law Review* 255, 279.

¹²⁵ *Ibid*, 279.

dependent on T&C. These theories, when read in conjunction with the business school theories, explain the pre and post-quota expiration patterns in T&C trade.

Finally, the non-economic rationales explain the experiences of countries engaged in trade liberalisation. Since trade liberalisation often leads to industrial transition, these theories offer insights into reactions of various groups that are in favour of or that oppose this process. In the context of this thesis, these theories explain various aspects of global T&C trade.

I.4 STRUCTURE OF THE THESIS

Chapter 1 introduces the brief history of regulation in global T&C trade especially in the post-World War II/GATT era. This chapter is important in terms of highlighting the developmental flows of T&C industries from the developed countries to Japan and then from Japan on to the Asian NICs. Chapter 1 also summarises various frameworks that regulated trade in T&C from the controversial bilateral VERs to the comprehensive MFA regimes. The essential theme worth noting is that diversity in T&C manufacturing was direct effect of the quota system. Each time developing countries diversified to an unrestrained product segment within the T&C industries, quota restrictions on newer products were soon attracted.

Chapter 2 is a brief look at the issues pertaining to the expiry of the quotas especially under the transitory regime of the ATC. The popular image of quotas uniting developing countries/LDCs, since it universally affected them, is dispelled. A major, albeit unintended, effect of the quota system was establishment of T&C industries in countries that otherwise lacked the capacity to manufacture T&C. This raises further complications since the developing countries often entertained opposing views on quotas. These views stem from the impression that T&C (like agriculture) is a unique sector and hence merits its own sectoral regime in global trade. Chapter 2 highlights these disputes that emerged with the realisation that after quotas expire, a few major

developing countries will dominate this sector while a majority of manufacturers will be displaced from the previously quota-restrained markets of the EU/US.

Chapter 3 is an examination of major issues that are identified in academic and professional literature as affecting global trade in T&C after expiry of quotas. The aim behind this chapter is to emphasise the issues that directly affect the countries that engage in T&C manufacturing. The majority of the issues examined spring from the policies maintained by the developed countries. The chapter examines the impact of ROO, preferential trade regimes that “promote” trade, tariff barriers, non-tariff barriers, impact on OPP operations in clothing manufacturing, role of large retailers that have emerged as important players and shapers of domestic policies and finally the human rights issues related to clothing manufacturing. This chapter lays the foundations for Chapter 4.

Chapter 4 is a case study of Asian T&C manufacturers in the post-elimination period. This chapter should be read in conjunction with issues examined in Chapter 3. One aim behind the case studies is to investigate the pre-elimination predictions and whether these predictions actually came true. Chapter 3 makes special focus on two leading Asian manufacturers of T&C namely China and Pakistan. China features centrally amongst all analysis on T&C trade and was universally predicted to be the winner of quota elimination. Pakistan was also predicted to be a potential beneficiary but its actual performance has been mixed. The case study on Pakistan includes data obtained from the domestic T&C industry and trade officials. It also includes interview findings that reveal the current state of affairs in a major T&C dependent economy. Furthermore, Chapter 4 covers other Asian manufacturers that were quota dependent and those that have graduated from basic clothing manufacture to investment in the T&C sector in other countries (a trend consistent with the product cycle theory and flying geese model). The main aim, however, behind case studies

is to look at recent trade figures in order to predict the likely direction of future trade in T&C.

Chapter 5 looks at the main trade remedies that will be utilised as market control mechanisms after expiry of quotas, namely safeguards and anti-dumping. This chapter is divided into two parts. Each part provides an overview of the trade remedy and assesses the trade remedies in the likely application scenarios that emerge after quotas i.e. developing-to-developing countries and developed-to-developing countries. This chapter assesses the effectiveness and their likely application to protect domestic industries. The chapter reviews the existing academic literature and critiques on trade remedies and then applies it to the T&C trade. The chapter also suggests a new method of analysing possible application of anti-dumping measures by dividing potential users into reactive and pre-emptive users of anti-dumping measures. The aim behind this chapter is to highlight that, in the long-run, trade remedies are an ineffective method of controlling market access since their application only delays the inevitable.

Chapter 6 is the **concluding chapter** of the thesis that relies extensively on the issues highlighted in Chapters 3, 4 and 5. The way forward for international T&C trade is to allow countries to trade on the basis of their strengths. Since T&C is a global industry that is of particular importance to the poor countries, it can be transformed into an engine of growth and poverty elimination. The current ROO/GSP regimes maintained by developed countries actually do not perform this function satisfactorily. The fallout of these policies is that the poor countries remain trapped in a low-value added product cycle. This chapter argues that if developed countries reduce reliance on trade remedies and on tariffs/non-tariff barriers, actual trade liberalisation is achievable. Such trade liberalisation, in the short run, means that the poor countries would be unable to compete with the established T&C manufacturers. But in the long run, as the comparative advantage in this sector shifts gradually, China and other manufacturers will transition to higher value added sectors. When this occurs

LDCs and other developing countries (that currently lack comparative advantage), will step in to fill the vacuum. By delaying trade liberalisation, the industrial transition process is delayed. By not allowing this transition to happen earlier, LDCs are actually being prejudiced in terms of socio-economic development.

CHAPTER 1

HISTORY OF REGULATION IN TEXTILES & CLOTHING TRADE

1.1 INTRODUCTION

Almost all civilisations have produced and traded in T&C throughout history.¹²⁶ The trade value of T&C is further enhanced by the fact that clothing, like food, is a basic human need. Therefore, nations have strived to attain self-reliance in order to meet this critical need of their populace while trading any surplus with other nations. Throughout history, the T&C sector has been associated with independence, self-reliance, employment for the masses and progress.¹²⁷ But where self-reliance is threatened due to vagaries of foreign trade or competition with other nations, trade restrictions are often attracted. Perhaps this is a basic explanation of why this sector came to be regulated and managed.

The earliest recorded attempt at regulating T&C trade was in the late seventeenth century when the British prohibited Indian cloth from being imported.¹²⁸ The age of industrialisation saw emergence of the UK as the global leader in textiles production. The preponderance of the UK textiles industries was not just due to efficient production processes or by colonising other nations (which provided cheap sources of raw materials as well as potential markets) but also due to the prevalent economic policy of mercantilism (see the Introduction). This trade philosophy assured that exports

¹²⁶ See for example Robin Netherton & Gale Owen-Crocker, *Medieval Clothing and History* (1st ed. Boydell Press, Woodbridge, 2006); see also a comprehensive history of textiles trade and development in David Jenkins, *The Cambridge History of Western Textiles* (1st ed, Cambridge University Press, Cambridge, 2003); see also G.K. Ghosh & Shukla Ghosh, *Indian Textiles; Past and Present* (1st ed, APH Publishing, New Delhi, 1995) 23-28.

¹²⁷ A famous example is of Mahatma Gandhi (the founding father of India and the leader of the independence movement from the British). He followed non-violent policies of civil disobedience and adopted the *swadeshi* policy which involved the boycott of foreign-made goods, especially goods of British origin. Gandhi emphasized that *khaddi* (homespun cloth) should be adopted by all Indians as their dress instead of British-made textiles (see Ghosh & Ghosh, *Ibid*, 243-244).

¹²⁸ Rivoli, above n 6, 152-156; Dickerson, above n 6, 34.

of T&C were always higher than imports in order to maximise national wealth.¹²⁹

In the late seventeenth and the eighteenth century, the British colonial authorities, realised the importance of domestic T&C production and expected their colonies to absorb their produce e.g. British authorities attempted to block the development of a textile industry in their American colonies by not only restricting access to the necessary technology but also prohibiting trade with other nations.¹³⁰

Upon gaining political independence from the UK, the US producers managed to circumvent the protectionist barriers enacted by the erstwhile colonial authorities by surreptitiously acquiring the necessary expertise to organise their own domestic industry.¹³¹

The newly set up US textiles industries soon experienced impressive growth and resorted to protective tariffs, import substitution and embargoes in order to promote further growth.¹³² This was another manifestation of the doctrine of mercantilism where domestic T&C industries are aggressively shielded from any detrimental competition from imports. Thus, protection following growth and development of domestic T&C industries is a common factor noticeable in the protectionist policies adopted by both the US and the UK throughout the nineteenth century. Emulating these two, countries in Western Europe and Canada followed suit in developing their domestic textiles industries as well.¹³³

¹²⁹ Dickerson, Ibid, 33, 34 & 319; See also comments by Thomas Mun, above n 8.

¹³⁰ Aggarwal, above n 2, 9-10; Dickerson, Ibid, 27.

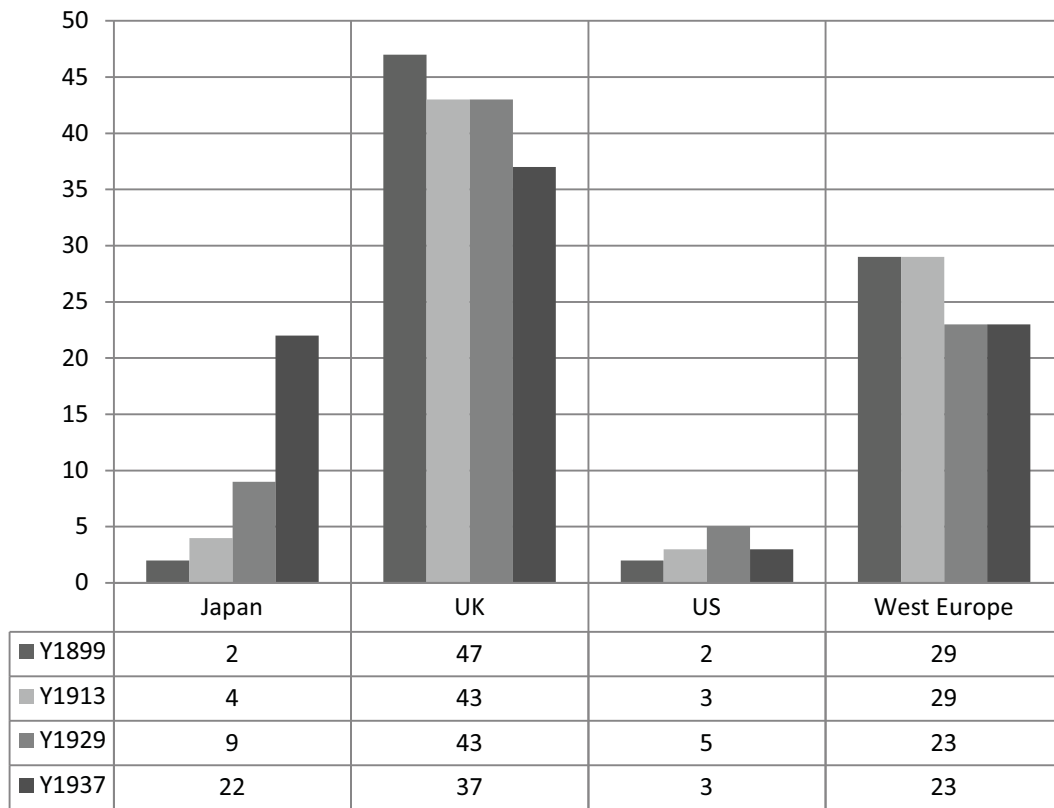
¹³¹ Rivoli, above n 6, 78-79.

¹³² Dickerson, above n 6, 28, 319-320.

¹³³ See generally AB McCullough, *The Primary Textiles Industry in Canada: History and Heritage* (1st ed. National Historic Sites Publications, Ottawa, 1992); Dickerson, above n 6, 320.

(Figure 1.1) Comparison of Share in the Global Textiles & Clothing Export of Major Developed Countries (in Percentage)

Source: Il-Park & Anderson, *infra* n 134, 540.



In the nineteenth century, Japan emerged as the first Asian nation to develop its own textiles base on a similar industrial scale as the UK.¹³⁴ The rise of Japan continued during the pre-World War II/early-twentieth century period and it challenged the domination enjoyed by the British industries.¹³⁵ Japan's rise also competed with the burgeoning US industries and this heightened competition between Japan, the US and the UK (see Figure 1.1).¹³⁶

¹³⁴ Japan's economic growth began in 1868 with the Meiji Restoration (see Young Il-Park & Kym Anderson, 'The Rise and Demise of Textiles and Clothing in Economic Development: The Case of Japan' (1991) 39 *Economic Development and Cultural Change* 531, 534); Japanese development in the textiles industries followed soon after import of British spinning machines for producing cotton-based products to meet domestic demand. However, Japanese producers soon shifted their strategy towards export of finished textiles goods. Japan eventually became a leading exporter of cotton textiles while importing raw cotton from India and the US (see Dennis McNamara, *Textiles and Industrial Transition in Japan* (1st ed. Cornell University Press, New York, 1995) xiii); In addition to Cotton, Japanese industries continued to manufacture the traditional Silk and Silk textiles products (See Hirohisa Kohama, *Industrial Development in Postwar Japan* (1st ed, Routledge, New York, 2007) 32; See also Thomas Carlyle Smith, *Political Change and Industrial Development in Japan* (1st ed. Stanford University Press, Stanford, 1955) 54; Aggarwal, above n 2, 10.

¹³⁵ Il-Park & Anderson, *Ibid*.

¹³⁶ *Ibid*, 539-540.

The competition between rising nations increased with the establishment of T&C industries in Latin American and Central European states (these nations also pursued import substitution policies to favour their industries).¹³⁷ As a result, the US and the UK industries experienced a significant loss of share in global T&C exports.¹³⁸

Japan significantly expanded its exports as compared to the US and the UK in the aftermath of the Great Depression of the 1930's¹³⁹ (see Figure 1.1). Japan's increased exports to the US and the UK eventually led to the first *Voluntary Export Restraint* (VER) in textiles being signed between the US and Japan in 1935-36.¹⁴⁰ This VER was complemented in 1936 with the imposition by the US of selective tariffs upon Japanese textiles products.¹⁴¹ But these two measures failed to reduce imports from Japan.¹⁴² Finally, after protracted negotiations between the US and Japanese trade associations, a formal agreement limiting the Japanese textiles exports was signed.¹⁴³

The reaction of the US and Japan's role in development of the global T&C industries is worth examining. Japan's impressive recovery from the ravages of war to become a global leader in manufacturing of T&C products is the genesis of the post-World War II system of institutionalised regulation of T&C trade. The following section examines a brief history of Japan's rise and how it led to a system of organised derogation from established norms of the GATT. The restrictions introduced into the GATT system covering T&C trade (which

¹³⁷ Dickerson, above n 6, 320.

¹³⁸ Ibid.

¹³⁹ Jean-Louis Juvet, 'The Cotton Industry and World Trade' (1967) 1 *Journal of World Trade Law* 540, 541; Aggarwal, above n 2, 10.

¹⁴⁰ VER is an agreement whereby the exporting country agrees to limit / control exports so that the importing country does not impose restrictive trade measures like quotas and high tariffs (See Martin Wolf, 'Why Voluntary Export Restraints? An Historical Analysis' (1989) 12 (3) *The World Economy* 273); Dickerson, above n 6, 321.

¹⁴¹ Dickerson, Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

included quotas and safeguards) severely distorted global trade in this sector and their effects were felt for many years to come.

1.2 THE RISE OF JAPAN AND THE GATT ERA

Japan lost nearly three-quarters of installed capacity to manufacture textiles after World War II.¹⁴⁴ This significantly eroded Japan's industrial capacity. After World War II, the US extended technical assistance to the Japan in an effort to assist Japan's recovery.¹⁴⁵ By 1953 Japanese exports of T&C products exceeded similar exports by the US and the UK.¹⁴⁶

By mid 1950's, the domestic producers in the US and the UK became increasingly vocal in their concerns about Japanese resurgence and called for restrictions on Japanese textiles exports.¹⁴⁷ Aggarwal comments that while US aid may have made some contributions to the recovery of Japanese textiles industries, it was not the most important factor. Rather, Japanese advantage lay in use of more modern equipment combined with lower wage scale.¹⁴⁸ The very industries they had helped recover a few years earlier!

The Japanese T&C industries were well aware of their dependence on the US market and undertook a voluntary and unilateral restraint of exporting T&C to the US in December 1955.¹⁴⁹ However, this restraint did little to satiate the thirst that US industries had for additional protection and a year later, a second VER on cotton textiles was signed by Japan (this VER came into force in 1957 and set a five year limitation on cotton textile products).¹⁵⁰

¹⁴⁴ Juvet, above n 139, 541; see also McNamara, above n 134, 36-37.

¹⁴⁵ Japanese industries restored enough capacity to meet domestic demand and supply the UN forces during the Korean War (1950-53) (see McNamara, Ibid, 37).

¹⁴⁶ In 1953, Japan's T&C exports stood at US \$ 746 Million whilst the US and UK figures were US \$ 539 Million and US \$ 343 Million (Dickerson, above n 6, 321).

¹⁴⁷ Aggarwal, above n 2, 44-45.

¹⁴⁸ Ibid.

¹⁴⁹ 22% of Japan's total T&C exports went to the US in 1956 (Ibid, 48-50).

¹⁵⁰ Ibid, 50-53. A lesser known VER is of Italy in 1957 on velveteen exports to US (see Niels Blokker, *International Regulation of World Trade in Textiles* (1st ed. Martinuss Nijhoff Publishers, Dordrecht, 1989) 96).

The era of decolonisation also resulted in contraction of the European textiles industries (particularly the British industries which were one of the largest and most established in the world). A major consequence of decolonisation was the loss of captive markets and increased competition from countries that began exporting cheap textiles products from their nascent industries.¹⁵¹

Japan was only one of headaches for the US T&C industries since the end of World War II also marked independence of many countries from colonial rule.¹⁵² These developing countries set about establishing their own T&C industries. Leading examples amongst these countries are India and Pakistan that started exporting cotton textiles products.¹⁵³

Japanese textiles industry was amongst the earliest industries in Japan that looked for offshore locations offering low labour and production costs.¹⁵⁴ The motivation for moving offshore was likely due to Japan gradually moving to higher sectors of production as well as part of its restructuring strategy.¹⁵⁵ This move by Japanese industries was initially in the spinning industries since low-cost imports into Japan and into Japanese export markets began to affect their competitiveness.¹⁵⁶

Japanese investment into the Asian NICs was welcomed by budding economies and started a trend that is best explained by the theories such as flying geese model and the product cycle theory (see the Introduction). Japanese industries realised as early as 1960's that even if production technology was upgraded, the industry's future lay in shifting production to other developing nations.¹⁵⁷ With the liberalisation of Japanese foreign investment policies over late 1960's and the early 1970's, Japanese textiles

¹⁵¹ Sanjoy Bagchi, *International Trade Policy in Textiles – Fifty Years of Protectionism* (ITCB, Geneva 2001) 13 & 22-23; Juvet, above n 139, 547.

¹⁵² Juvet, *Ibid.*, 547.

¹⁵³ *Ibid.*

¹⁵⁴ McNamara, above n 134, 67.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

industries invested heavily in the investor-friendly Southeast Asian countries such as Indonesia, Thailand and Malaysia.¹⁵⁸

The initial target of these textiles industries in Southeast Asian countries (now the ASEAN nations) was to cater to the local markets.¹⁵⁹ The early restructuring and regional investment strategy by Japan during the 1960's and 1970's turned ASEAN countries into a "sub-mill", which produced intermediate yarns and gray fabrics for further processing/value addition either in Japan or a third country.¹⁶⁰ Japanese firms also pursued the "anticipated dividend" strategy in the Latin American countries which aimed at earning dividends and commissions from extending technical guidance to the recipient countries.¹⁶¹

The diversification of Japanese economy from the T&C sector to other sectors through investment and restructuring enabled Japan to divert labour resources towards more lucrative sectors of production. At this stage, T&C trade was governed (similar to trade in other goods) under the GATT 1947 framework and there was no sector-specific multilateral trade agreement on T&C.¹⁶² The GATT 1947 framework was a result of US led efforts to adopt a multilateral (as opposed to bilateral) approach to resolving trade issues.¹⁶³ The GATT was the forerunner of the WTO and was viewed as "a direct expression of US views on the appropriate form of concerted action in the commercial policy area."¹⁶⁴ Ironically, it was the US (along with other developed countries) that later on laid the very basis of systematic departures from the GATT framework in the practice of T&C trade policy.¹⁶⁵

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid. 68.

¹⁶¹ Ibid.

¹⁶² Jared Landaw, 'Textile and Apparel Trade Liberalization; The need for a Strategic Change in Free Trade Arguments' (1989) *Columbia Business Law Review* 205, 206.

¹⁶³ Ibid.

¹⁶⁴ Kenneth Dam, *the GATT – Law and International Economic Organization* (Chicago, 1970) 12.

¹⁶⁵ Kitty Dickerson, 'Textile Trade: The GATT Exception' (1996) 11 *St. John's Journal of Legal Commentary* 393, 401; Bagchi, above n 151, 2.

The basic aims of the GATT may be summarised as follows:

- Non-discrimination in trade; this basic rule is reflected in the Most Favoured Nation (MFN) and the National Treatment (NT) provisions. The effect of these principles is that member states, in conducting trade, must extend the same treatment on trade matters to all other members.
- Prohibition on quantitative restrictions and protection of domestic industry through tariffs; If a member state does decide to protect its domestic industry then such protection should be through the imposition of tariffs on imports rather than by quantitative restrictions or by any other means. *Thus, quota restrictions were prohibited and only permissible under limited circumstances.*
- Safeguard Actions; In case of serious injuries to the domestic industries, imposition of safeguards must be non-discriminatory in nature.
- Providing a predictable basis for trade; Members states should know what to expect so that they could model their domestic trade policies accordingly.
- Dispute Settlement; A reliable, impartial and working mechanism to resolve disputes amongst member states. This carried an important comfort factor to newly emerging states so that they would not feel developed countries possessed undue advantages in the event of trade disputes.
- Providing for "waiver" and emergency action; Member states may take action in circumstances where it is deemed necessary in protection of domestic industries.

The departures from the GATT norms with respect to T&C trade were necessitated by a number of factors. In protecting its domestic industries, the US Government considered the legal remedies under the GATT to be of limited utility e.g. GATT Article XXV (waiver clause) and the Article XIX (safeguards) were viewed as unsatisfactory for political and economic reasons.¹⁶⁶ Therefore, concluding bilateral trade agreements with exporting countries was the only viable alternative for the developed countries to limit imports.¹⁶⁷ However, this process took considerable time because not only interests of participating countries were to be considered but also because a new round of negotiations had to be conducted for each country.¹⁶⁸

Clearly, T&C trade was a major exception to the fundamental aims of GATT 1947. The VERs created a situation where a major trading activity was being conducted on a global scale outside the scope of the newly emergent multilateral trading system.

Initially, the establishment of GATT did little to impress the emerging Asian economies that pursued policies of import substitution and invoked balance of payment provisions under GATT Article XVIII.¹⁶⁹ Meanwhile, Japan continued to face severe trade restrictions under VERs during the 1950s even after it was admitted into GATT as a member.¹⁷⁰

For the time, the VERs served as an effective instrument of protectionism since it was “voluntary” and did not violate the GATT principles on quantitative restrictions.¹⁷¹ Therefore, the VER served as a mutually acceptable solution for all parties involved and was viewed as a slight anomaly that would not disturb

¹⁶⁶ Gary Perlow, ‘The Multilateral Supervision of International Trade: Has the Textiles Experiment Worked?’ (1981) 75 *American Journal of International Law* 93, 94.

¹⁶⁷ Dickerson, above n 6, 322.

¹⁶⁸ Ibid.

¹⁶⁹ Under GATT Article XVIII, a country may be allowed to depart from certain GATT rules in order to remedy serious balance of payments problems. This may be done by refusal of the importing country to allow imports citing balance of payment issues. See also Dickerson, above n 6, 324.

¹⁷⁰ Ibid, 322.

¹⁷¹ Ibid, 324.

the main structure of the multilateral trading system.¹⁷² However, as the subsequent events showed, it evolved into a parallel system that mandated systematic departures from the GATT rules and principles.¹⁷³

Martin Wolf comments that in the history of VERs, “*textiles appear to have been the leading sector*” to cover new exporters and new products.¹⁷⁴ However VERs have not just been confined to T&C but have also been employed as an export restraint measure on automobiles, steel and consumer electronics.¹⁷⁵

A major example of how trade restrictive practices such as VERs (and later on quotas) distort world trade is that restrictions on exports of one country encouraged unrestrained countries to enter the controlling (importing) market and compete for share. In other words, VERs did little practically to protect the local T&C industries in the developed countries. This is illustrated by Hong Kong emerging to fill the vacuum left in the US import market by the restrained exporter (Japan).¹⁷⁶ Hong Kong was less dependent on the US for trade than Japan and managed to resist US pressure for export restraint.¹⁷⁷

¹⁷² Bagchi, above n 151, 28.

¹⁷³ Ibid, 28.

¹⁷⁴ Wolf, above n 140, 276 & 278.

¹⁷⁵ Ibid, 278 & 279.

¹⁷⁶ Hong Kong's share in the total imports of the US reached 23% in 1959 compared with 0.5% in 1956. This growth was a direct (and inevitable) outcome of throttling the trade of a competitive supplier and the resultant vacuum being filled by another supplier. Subsequently, this phenomenon featured in all regimes governing global T&C trade in the later years (Bagchi, above n 151, 32). See also comments in Perlow, above n 172, 95 where data from 1958-1960 is cited for US imports for Cotton Textiles (in square meter equivalent (SME)). Asian Suppliers such as South Korea, India, Pakistan and Taiwan drastically increased their exports to the US from 1958 to 1960 e.g. South Korea's export went from 4.8 Million SME in 1958 to 13.9 Million SME in 1960. Similarly, India and Pakistan recorded a growth from 3.2 Million SME and 0.4 Million SME to 52.7 Million SME and 16.1 Million SME respectively during the same period. Japan's decline as a result of these VER's from 1958 to 1960 in Million SME was from 309.2 Million SME to 273.3 Million SME. This highlights the redistributive effects of the VER and at the same time the ineffectiveness of VERs as a measure to protect the domestic industries.

¹⁷⁷ Perlow, Ibid; Bagchi, Ibid.

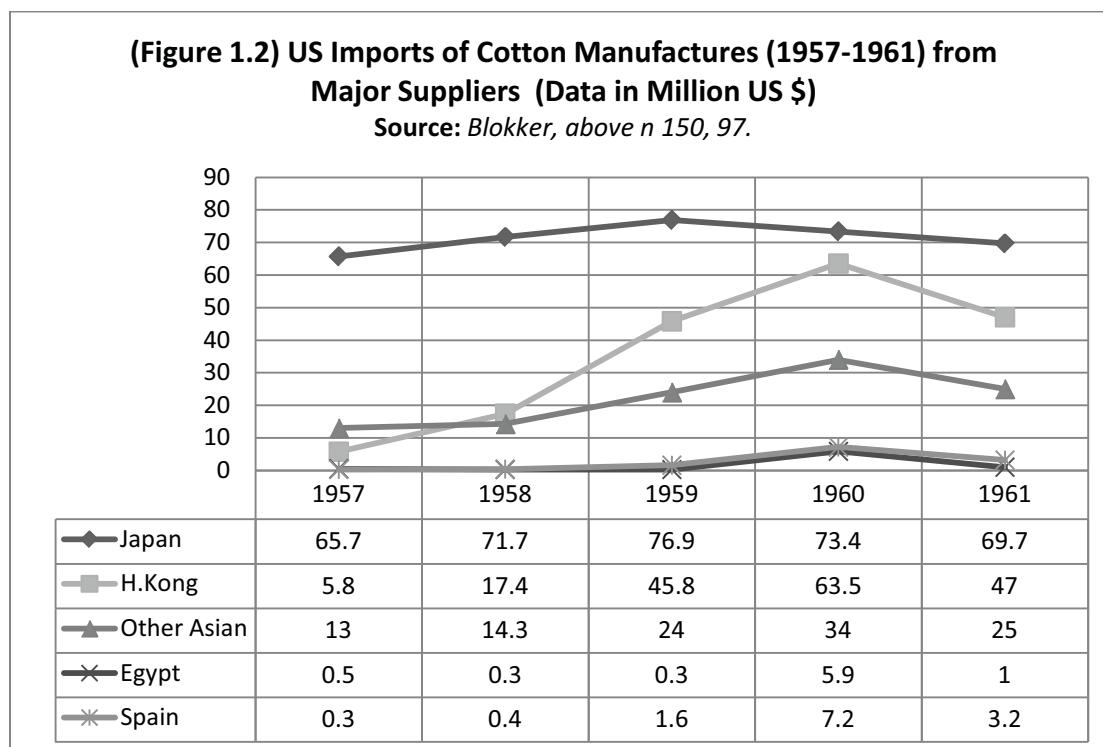


Figure 1.2 illustrates the rise in imports of cotton textiles from Hong Kong after Japan was restrained under the second VER. With the five year period starting in 1957, Japan's exports registered a gradual decline whilst Hong Kong's exports registered a massive increase from US \$ 5.8 Million worth of exports to the US in 1957 to US \$ 63.5 Million in 1960. Other Asian suppliers also capitalised on the restraints in Japan and managed to record some increase as well over the years 1957-1960.

The US industry associations began to view Hong Kong as a new threat and renewed their calls for export restraint on textiles products from Hong Kong.¹⁷⁸ However, the US failed to successfully conclude a VER with Hong Kong and consequently decided to seek a multilateral solution within the GATT framework to guard its industry interests.¹⁷⁹

¹⁷⁸ Hong Kong's exports of cotton goods to the US grew by nearly 700% between 1956 and 1961 (Rivoli, above n 6, 128 citing Aggarwal, above n 2, 53).

¹⁷⁹ Bagchi, above n 151, 29.

Similar to the US, the UK faced increased exports from India, Pakistan and Hong Kong.¹⁸⁰ These countries took full advantage of preferential access to the UK market under the *Imperial Preference System*.¹⁸¹ Soon the UK was importing more cotton than it could export and had to resort to similar protectionist tactics by pressurising its current and former colonies to “voluntarily” restrict their exports.¹⁸²

It was at this point in time that measures to safeguard balance-of-payments also came to be used to protect domestic industries from imports.¹⁸³ These measures were mainly employed by European countries under GATT Article XII.¹⁸⁴ However, these countries, like the US and UK, soon adopted measures outside the GATT norms to protect their T&C industries from import competition from low-wage countries.¹⁸⁵

In the backdrop of the VERs with Japan and the GATT-violating European restraints, the concept of “market disruption” evolved.¹⁸⁶ The first formal discussions on what soon proved to be a highly controversial concept were held under the auspices of the GATT Ministerial Meeting of 1959 in Tokyo. Market disruption was cited as a major occurrence in the economy of the developed countries caused by imports from developing countries.¹⁸⁷ This concept remained undefined and vague in its initial years but was extensively

¹⁸⁰ Ibid.

¹⁸¹ The trade of the Commonwealth countries was conducted under the Imperial Preference System negotiated in the Ottawa Agreements of 1932. The Ottawa Agreements of 1932 provided for reciprocal preferential tariffs for intra-Commonwealth trade (see generally David Glickman, ‘The British Imperial Preference System’ (1947) 61 (3) *The Quarterly Journal of Economics* 439).

¹⁸² The industries of these three countries undertook to limit their exports of cotton products for three years from 1959-1960 onwards (Bagchi, above n 151, 29). Martin Wolf points out that even though Hong Kong had refused to conclude a VER with the US, it did enter into a VER with the UK along with India and Pakistan. He comments that “*being a colony, [Hong Kong] could hardly do otherwise.*” (Wolf, above n 140, 277); See also Donald Keesing & Martin Wolf, ‘Textile Quotas against Developing Countries’ Thames Essay No.23 (London: Trade Policy Research Centre, 1980) 15-16; Blokker, above n 150, 97.

¹⁸³ Bagchi, above n 151, 30.

¹⁸⁴ Ibid.

¹⁸⁵ Dickerson, above n 6, 326.

¹⁸⁶ Blokker, above n 150, 96; Aggarwal, above n 2, 73.

¹⁸⁷ Blokker, Ibid, 71-72.

cited by the developed countries as a threat necessitating sector-specific regulation of T&C imports on a multilateral level.¹⁸⁸

The GATT Secretariat conducted a study soon after the Tokyo Ministerial on instances of market disruption. This study further led to establishment of a Working Party to identify problems in the earlier GATT Secretariat study. The Working Party was also tasked with recommending multilaterally acceptable solutions to market disruption. The report of the Working Party did not lead to a consensus on the definition of market disruption but nevertheless, this concept entered the GATT's legal order following final discussions by the GATT CONTRACTING PARTIES in November 1960.¹⁸⁹

Inclusion of market disruption in the GATT legal order resulted in three important changes in the GATT principles:

- A potential increase in imports could be sufficient to justify additional restrictions;
- Restrictions may be applied on a country specific basis rather than in a non-discriminatory manner (contrary to the MFN principle);
- Sizable price difference between injurious imports and like products in a domestic market could be used to justify increased restraints on imports.

The concept of “market disruption” differed from GATT Article XIX on safeguards since it permitted discrimination by singling out imports from a certain source rather than the total imports from all sources.¹⁹⁰ Also, it was not necessary for the harmful increase in imports to have taken place – an anticipation of an increase in imports could suffice for imposition of

¹⁸⁸ See discussions cited by Blokker, *Ibid*, 72-75.

¹⁸⁹ *Ibid* 79-80.

¹⁹⁰ Bagchi, above n 151, 36.

discriminatory restrictions.¹⁹¹ Moreover, the price difference between imported and domestic products of comparable quality could be the basis for determining the need for restrictions.¹⁹² Finally, there was no causative relationship between the increased imports and damage to the domestic industry as is the case in Article XIX and any independent instance of damage coupled with increase (or potential increase) of imports could lead to a determination of market disruption.¹⁹³

The decision to incorporate the concept of market disruption into GATT vis-a-vis T&C trade was due to the dissatisfaction amongst the developed countries on the balance between trade liberalisation under the GATT and safeguard actions.¹⁹⁴

The aim of incorporating market disruption into the GATT was to increase the potential of using safeguard measures in order to protect the domestic T&C industries of the developed countries.¹⁹⁵ By undermining the GATT in its formative years, the foundation of a system that justified adoption of discriminatory measures as a tool of protectionism was laid.¹⁹⁶ This discrimination continued to mar trade in T&C for the next four decades.¹⁹⁷ It is interesting to note that even though the concept of market disruption was not originally intended to apply only to T&C, it remains the only sector that has been subjected to this concept.¹⁹⁸

1.3 SHORT-TERM AGREEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES (STA) & LONG-TERM ARRANGEMENT REGARDING COTTON TEXTILES (LTA)

During the 1960s, the US Government was constantly hounded by T&C industry associations to stem the imports from low-cost countries that were

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Ibid; Dickerson, above n 165, 404-405.

¹⁹⁴ Blokker, above n 150, 87.

¹⁹⁵ Ibid.

¹⁹⁶ Dickerson, above n 6, 328.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

not only snatching share in the domestic market but also adversely affecting their exports.¹⁹⁹ The US was also of the view that quotas maintained by some European states over T&C imports were a blatant violation of the GATT rules.²⁰⁰ What deterred the US from following a similar policy route was the fact that it was the leading broker of the GATT and now could not risk being seen as its leading violator.²⁰¹ The STA represented a balancing act by the US whereby guarding interests of the domestic textiles industry was juxtaposed with the aim of maintaining integrity of the GATT.

The STA developed from the US proposals, set forth in a meeting held in the GATT Secretariat in July 1961 with 16 countries participating.²⁰² The US proposed a multilateral arrangement that dealt with “problems” in textiles trade and called for an “orderly expansion” in this sector.²⁰³ The US proposals hinged around an enabling provision that permitted imposition of quotas on imports from particular countries if such imports caused disruption of the market.²⁰⁴

The US proposals gained support from some developed countries namely Canada, Australia, Japan and Sweden.²⁰⁵ However, the developing countries had serious misgivings about the US proposals especially since it was a departure from the fundamental principles of the GATT.²⁰⁶ Developing country exporters such as India, Pakistan and Hong Kong were of the view that cotton textiles were not different from other commodities in international trade and did not merit special treatment.²⁰⁷ These countries were in the favour

¹⁹⁹ Ibid; see also Rivoli, above n 6, 128; Bagchi, above n 151, 39; Blokker, above n 150, 98.

²⁰⁰ Dickerson, Ibid, 328.

²⁰¹ Ibid.

²⁰² These countries were Australia, Austria, Belgium, Canada, France, Germany, India, Italy, Japan, Holland, Pakistan, Portugal, Spain, Sweden, the UK and the US (see Bagchi, above n 151, 40 & 69).

²⁰³ Bagchi, Ibid, 40.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid, 41.

²⁰⁷ Ibid.

of continuing with the existing voluntary arrangement along the lines of VERs that these countries had with UK.²⁰⁸

The US negotiator made it clear that unless a multilateral accord transpired, access to the US market would become restricted.²⁰⁹ Despite voicing serious misgivings and apprehensions, the participants in the meeting agreed to the US proposals that were based on the flawed definition of market disruption adopted earlier by the GATT.²¹⁰ This development laid the foundation of the STA.

The STA was effective from October 1961 to September 1962 and allowed one year restrictions on designated categories of cotton textiles in order to prevent market disruption until a more permanent solution was reached.²¹¹ The STA enabled the developed countries to control and regulate imports of cotton textiles from sources perceived to be responsible for market disruption.²¹² The STA also required that European countries that maintained unilateral restrictions to enlarge their quotas significantly.²¹³

The conclusion of the STA provided a temporary reprieve to the US industries (this is illustrated by Figure 1.2 which shows an immediate decline in US T&C imports from Japan, Hong Kong and other Asian suppliers as soon as the STA came into force in 1961). The stop gap nature of STA and its successor, the LTA represented significant developments in international trade at that time.²¹⁴ The

²⁰⁸ Ibid.

²⁰⁹ The US negotiator stated that “*There were strong domestic political pressures urging the US Government to take unilateral action and establish import quotas. Such action would be contrary to the generally liberal trade policies of the US in recent years, this government has advanced its proposals for a mutually acceptable solution.*” (See GATT, ‘Arrangements regarding International Trade in Cotton Textiles - Record of Meeting Held at the Palais des Nations, Geneva’ (L/1535 dated 24 August 1961), 3; See also Dickerson, above n 165, 407).

²¹⁰ GATT, ‘Summary Record of the Eleventh Meeting - Held at the Palais des Nations, Geneva, on Saturday, 19 November, at 9.30 am’ (SR.17/11 dated 5 December 1960), 171-172.

²¹¹ Note that only cotton textiles were targeted. Other textiles such as MMF and wool were not within the ambit of the STA even though the US industry associations exerted some pressure on the government to include wool (Dickerson, above n 6, 329).

²¹² Bagchi, above n 151, 41.

²¹³ Ibid.

²¹⁴ Dickerson, above n 165, 407-408.

unfortunate effect of these two arrangements was that textiles trade became recognised as an exception to the GATT provisions and hence subjected to a different regime.²¹⁵ This was done ostensibly on the grounds that threat of market disruption posed by “low cost” countries was a challenge unique only to T&C trade and this necessitated such special treatment.²¹⁶ Thus a body of rules came into being that existed parallel to the GATT framework by violating the MFN principle and the general prohibition on applying quotas on imports.²¹⁷

The aim of finding a long-term solution to the problems of global T&C trade, as envisioned in the US sponsored STA, resulted in the LTA.²¹⁸ The LTA was concluded at the expiry of the STA and it came into force on 1 October 1962.²¹⁹ The LTA went beyond the scope of the STA and its period of effectiveness was five years.²²⁰ The LTA retained the concept of market disruption (or the perceived threat of market disruption) as adopted by the GATT in 1960.²²¹

The Preamble of the LTA made it clear that the main target of the regime was the imports from the developing countries.²²² The language of the Preamble is exposed to subjective interpretation by the importing countries.²²³ The Preamble stated that:

“...in some countries situations have arisen which in the view of these countries, cause or threaten to cause “disruption” of the market for cotton textiles.”

(emphasis added)

The LTA allowed importing countries to enter into bilateral agreements with the exporting countries (Article 4 of the LTA) or alternatively, these countries

²¹⁵ Ibid, 408.

²¹⁶ Ibid, 330 & 407.

²¹⁷ Ibid, 407-408.

²¹⁸ Perlow, above n 166, 97-98

²¹⁹ Ibid, 98.

²²⁰ Ibid.

²²¹ Ibid.

²²² Bagchi, above n 151, 43.

²²³ Ibid, 57.

could impose unilateral restrictions if such agreement does not materialize (under Article 3 of the LTA).²²⁴ Additionally, the LTA was designed to permit the continuation of existing discriminatory restrictions on the LDCs and the introduction of new ones where none existed.²²⁵

The LTA placed limitations on volume of growth for imports for majority of cotton textiles products and allowed importing countries to restrain imports of cotton textiles from leading exporter countries.²²⁶ The LTA's membership included practically all countries that had a substantial interest in cotton textiles trade (whether as exporters or importers).²²⁷ Indeed, exporting countries found it difficult to remain outside the LTA and operate solely on the basis of GATT principles.²²⁸

The conclusion of LTA is a good example of the impact of domestic politics of the US affecting global T&C trade. The US T&C industries, at this stage, ranked amongst the top employer in the US and constituted a significant cross-section of public opinion, which the politicians found difficult to ignore. This is a vindication of the public choice theory (see the Introduction) where influential industry interests (and not economists) dictate the trade policies of a country through various activities such as lobbying for supportive candidates. The public choice theory can also be used to explain further expansions of the T&C sector-specific arrangements that came after the STA/LTA period. The successor regime of the STA/LTA and its later renewals were all pushed by domestic industry pressures on the policy-makers in the developed countries.

The LTA was twice renewed and governed the global T&C trade for more than ten years.²²⁹ The proponents of the LTA claimed that it provided for an

²²⁴ Juvet, above n 139, 554-555.

²²⁵ Ibid; Bagchi, above n 151, 43.

²²⁶ Dickerson, above n 6, 331.

²²⁷ Bagchi, above n 151, 48.

²²⁸ Ibid.

²²⁹ First renewal of the LTA was in 1967 and the second renewal in 1970. In all, the LTA (and its renewals) remained in force from 1 October 1962 to 31 December 1973. Its last extension was for only

“orderly growth” in T&C trade.²³⁰ The critics, on the other hand, claimed that the LTA condoned discrimination in international trade thereby undermining GATT’s efforts to reduce tariffs and eliminate discriminatory quotas.²³¹ The LTA was, therefore, not only a long-term reinforcement of the STA but also the approach that T&C was different from all other trade in goods.

Criticism is also directed towards the actual application of Articles 2:1 and 2:2 of the LTA. Article 2:1 provided for progressive relaxation of “*restrictions inconsistent with the provisions of the GATT on imports of cotton textiles*” with “*a view to their elimination as soon as possible.*” Article 2:2 went further and stated that “*no participating country shall introduce new import restrictions, or intensify existing import restrictions, on cotton textiles*” inconsistent with its GATT obligations.

If read together, these provisions prohibit participating countries from increasing the existing level of restrictions or introducing new ones.²³² Yet, under Article 3 of the LTA, countries were permitted to apply similar restrictions to avoid market disruption.²³³ This meant that quotas could reappear in another form and the objective of their eventual removal was, in reality, a transformation of their outward appearance.²³⁴

An interesting and paradoxical observation during the ten years of the LTA is how quotas distorted yet developed T&C trade globally. The distortion aspect came when developing countries were forced to restrict their level of T&C exports because of quotas. The development aspect is when exporting countries shifted to non-restrained T&C categories as soon as quota limits on restrained products were reached. In this way, quotas contributed to the diversification of the T&C exports of the developing countries. However, when

three months as a stop gap measure because in the meantime the GATT Council had appointed a Negotiating Group for the MFA which was expected to come into force on 1 January 1974.

²³⁰ Dickerson, above n 6, 331.

²³¹ Bagchi, above n 151, 57.

²³² Ibid.

²³³ Ibid.

²³⁴ Ibid.

exports in any unrestrained category increased, that category soon came under restraint.²³⁵

The import interests (such as the retail industry) in the developed countries were the main beneficiaries of cheap T&C imports since this enabled them to maximise profits.²³⁶ The importers also had a wide choice in terms of suppliers, therefore, when one country was comprehensively restrained, importers simply shifted to countries which were not under restraints.²³⁷ This shifting continued until pressure built up to bring these unrestrained suppliers under quotas as well.²³⁸

Another drawback of the LTA (from the developing countries perspective) was the arbitrary manner in which quotas were determined e.g. the US Government concluded quota arrangements with the governments of the developing countries for their T&C exports without any objective criteria for measuring market disruption.²³⁹ Similar to the VER era (discussed above), the developing countries had little leverage with developed countries because they were dependent on market access to keep their export industries running.²⁴⁰ Hence, developing countries concluded trade arrangements that incorporated bilateral quotas because failure to do so would have meant establishment of unilateral quotas under Article 3 of the LTA.²⁴¹ As mentioned above, at that point in time, there was no impartial body which could have acted in the appellate or review capacity to which the developing countries could have turned for redress.²⁴²

²³⁵ James Weaver & Ira Winakur, 'Impact of US Cotton Textiles Quotas on Underdeveloped Countries' (1968) 35(1) *Southern Economic Journal* 26, 32.

²³⁶ Rivoli, above n 6, 114-118 for a discussion on how import and local industry interests struggled with the US policy makers on imports of cheap T&C products.

²³⁷ Weaver & Winakur, above n 235, 32.

²³⁸ Ibid.

²³⁹ Ibid, 33.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.

The STA and the LTA, though limited to cotton textiles, represented the rise of post-World War II wave of protectionism and organised regulation of international T&C trade. Moreover, these two regimes also provided a template for the later arrangements governing trade in this sector.

1.4 MULTIFIBRE ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES (MFA)

“... the MFA is to the GATT as a brothel is to a cathedral.”²⁴³

1.4.1 Overview of the MFA

The MFA was an independent, multilaterally negotiated arrangement that purportedly represented the interests of both the importing (mostly developed nations) and the exporting members (developing countries and LDCs). Similar to its predecessors, MFA conflicted with the fundamental obligations under the GATT.²⁴⁴ However, unlike its predecessors, the MFA went beyond the scope of STA and LTA, which were cotton oriented.²⁴⁵ The MFA was an expanded effort to restrict rising imports of other textiles products like MMF fibre and wool.²⁴⁶

Here again, the paradoxical phenomenon of distortion and diversification is noticeable. On this observation, Rivoli comments that by “limiting imports of cotton textiles and apparel, US policy unwittingly encouraged its trading partners to upgrade their production and sales efforts to wool and to the increasingly popular man-made fibres such as nylon and polyester. Predictably, imports of man-made fiber apparel from Asia soon soared, with US imports of these fibers from developing countries increasing 2500 percent between 1964 and 1970. Just as predictably, US textile interests extended their

²⁴³ Dickerson, above n 6, 347 (based on comments on the MFA and its relationship with the GATT made by a trade official during Dickerson’s visits to Geneva, ca 1980’s).

²⁴⁴ The MFA allowed the use of quotas in a selective manner. This clashed with the obligations of avoiding quantitative restrictions and of the non-discriminatory treatment as contained in GATT Articles I, XI & XIII.

²⁴⁵ Dickerson, above n 165, 409-410; Dickerson, above n 6, 331; Bagchi, above n 151, 73, 76, 78-81.

²⁴⁶ Rivoli, above n 6, 129.

groans to these other sectors...US textiles interests began an intensive campaign to extend the LTA to other fibers, calling for the implementation of a *Multifiber Agreement*.”²⁴⁷

Since the MFA was an independently negotiated multilateral arrangement, its membership was separate from that of the GATT.²⁴⁸ However, similar to the LTA, the MFA had its origin in the GATT i.e. it emerged from the deliberations of the Working Party to examine the T&C sector constituted by the GATT Council in 1972.²⁴⁹ The GATT Council also set up a separate Negotiating Group to develop provisions of the MFA and later on went onto “adopt” the report of the Negotiating Group containing the MFA.²⁵⁰ Interestingly, this did not necessarily carry the seal of approval for the MFA by the GATT as is evident by the statement of the Chairman of the GATT Council.²⁵¹ The Chairman of the GATT Council stated that, “...it was up to individual governments to accept the Arrangement or, if they were not in a position to participate, not to accept it.”²⁵² This explanation was the reason behind a GATT Contracting Party’s “acceptance” when joining the MFA while a non-member “acceded” to it on terms to be agreed with other participant nations.²⁵³

The basic objectives of the MFA were to expand trade, reducing trade barriers and progressively liberalise T&C trade (Article 1:2). Additionally, the MFA aimed at ensuring equitable development of T&C trade and avoidance of disruption in both the importing and exporting countries.²⁵⁴ These objectives,

²⁴⁷ Ibid.

²⁴⁸ Bagchi, above n 151, 100.

²⁴⁹ Ibid; See also GATT, ‘Minutes of Council Meeting’ (C/M/93 dated 6 February 1974) 4.

²⁵⁰ Ibid.

²⁵¹ Ibid, 4.

²⁵² Ibid. This quote is from the response of the Chairman of the GATT Council to an enquiry from the representative of Uruguay who pointed out to “certain concepts which were different from the basic standards of GATT” and that the “Council should decide whether or not this body of legislation, which was different from the GATT, would in the future be a new body of law” (Ibid).

²⁵³ See Article 13(1). This provision of the MFA states that the Arrangement shall be “open for acceptance, by signature or otherwise, by governments contracting parties to the GATT or having provisionally acceded to the GATT...”

Article 13 (2) further provides that “Any government which is not a contracting party to the GATT, or has not acceded provisionally to the GATT, may accede to this Arrangement on terms to be agreed between that government and the participating countries.”

²⁵⁴ Bagchi, above n 151, 78.

in hindsight, not only seem idealistic but also paradoxical in that these aimed to reduce barriers to trade while permitting further restrictions.²⁵⁵

Further contradiction is found in the “principal aim” of the MFA (Article 1:3) i.e. “to further economic and social development of the developing countries and secure a substantial increase in their export earnings from textile products and to provide scope for a greater share for them in world trade in these products.” Clearly, it is difficult to reconcile this aim with the MFA, which in reality was designed to restrict trade of the developing countries.²⁵⁶

The MFA also established a multilateral surveillance mechanism to monitor implementation of the arrangement. The task of surveillance was entrusted to the newly formed Textile Surveillance Body (TSB).²⁵⁷

The expanded product coverage of the MFA included trade in MMF fibre and wool products that were to be brought within the framework of market disruption (which was the central concept in the MFA similar to its predecessor regimes). The MFA improved upon the inadequate definition of market disruption by establishing a causal relationship between the disrupting imports and the existence of serious damage to the domestic industry.²⁵⁸ The modification in this definition was done to specify existence of serious damage to the domestic producers and that such damage had “demonstrably” caused by the sharp rise of substantially lower priced imports from a particular country.²⁵⁹

Additionally, the MFA definition of market disruption required that factors such as “*turnover, market share, profits, export performance, employment, volume of disruptive and other imports, production, utilisation of capacity, productivity and*

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ See Articles 2:1, 2:2(i), 2:2(ii), 2:4, 2:5, 3:3, 3:4-3:9 of the MFA.

²⁵⁸ Ibid, 81.

²⁵⁹ Ibid, 82.

investments” should be taken into account in determining the existence of market disruption.²⁶⁰

Even though, the MFA definition of market disruption was much clearer than the previous definition, some shortcomings from the previous definitions were carried over into the new definition e.g. the concepts of actual threats of market disruption or the imminent increase of imports was not clarified.²⁶¹

The absence of any clarification regarding these important questions, therefore, left the determination of market disruption to the subjective judgment of the restraining countries.²⁶² This undermined the need for demonstrating the causal relationship between the imports in question and the existence of serious damage to the domestic industries.²⁶³ The element of subjectivity was a remanent from the STA/LTA era which introduced the concept of market disruption purely from the importing country’s perspective.

The MFA definition of market disruption placed critical importance on domestic price levels which was not always representative of the prices of the domestic producers.²⁶⁴ Moreover, since the textile categories consisted of a number of tariff lines, the value of imports were often based on weighted averages of different products that did not satisfy the requirement of “comparable quality.”²⁶⁵ This problem was exacerbated by a mismatch of product classification in the form of categories for quota purposes and the section of local industries thought to be affected by or threatened with damage.²⁶⁶

A major feature of the MFA regime was the special provision (Article 1:2) made for importing countries having small markets with high level of imports

²⁶⁰ See Annex A, Para. I of the MFA referred to by Bagchi, Ibid.

²⁶¹ Ibid, 83.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ GAO, *Implementation of Trade Restrictions for Textiles and Apparel*, (Washington DC, 1983) 19

²⁶⁵ Ibid, 25.

²⁶⁶ Bagchi, above n 151, 84.

and low level domestic production.²⁶⁷ This was done to avoid damage to what has been termed as the *Minimum Viable Production* (MVP) of these countries.²⁶⁸ The MFA allowed these countries to reduce the minimum quota growth rate from the minimum 6% level per annum to a lower positive rate in consultation with the exporting countries.²⁶⁹

The MFA also introduced many changes to “benefit” the developing countries/LDCs e.g. the MFA formally recognised the need to extend more favourable treatment in application of restrictions on the imports from developing countries (Article 6:1) and small suppliers (Article 6:3). Whether this actually benefitted developing countries/LDCs is a matter of debate.²⁷⁰

1.4.2 MFA I

The MFA went through a series of negotiated phases. It first became effective in 1974 and lasted until 1977. The first arrangement (MFA I) acted as the primary framework under which T&C trade could be conducted, and if need be, controlled.²⁷¹

The MFA was drafted in general terms that provided broad guidelines.²⁷² It was the bilateral agreements concluded under the aegis of the MFA that dealt with the specifics.²⁷³ The bilateral agreements hinged around occurrence or threat of market disruption, which triggered bilateral agreements limiting exports. The primary aim of bilateral agreements was to establish quotas on T&C products of the exporting countries. The MFA also provided for a

²⁶⁷ Ibid, 88-89.

²⁶⁸ Ibid, 89.

²⁶⁹ See comments by the Swedish delegation in GATT, above n 155, 3. Typically this clause (also known as the Nordic clause) was availed by Denmark, Norway and Sweden. The rationale behind this provision providing for special and differential treatment was the assumption that these countries, due to the small size of their domestic markets and high degree of imports, were unable to cope up even with 6% increase in imports without causing damage to MVP of their domestic industry (Ibid, 89).

²⁷⁰ Ibid, 90.

²⁷¹ Dickerson, above n 6, 334-335

²⁷² Ibid, 335.

²⁷³ See generally J. Michael Finger & Ann Harrison, ‘the MFA Paradox: More Protection and More Trade?’ (NBER Working Paper 4751, 1994); see also Dickerson, Ibid.

nominally better annual quota growth rate than the LTA.²⁷⁴ Furthermore, the MFA introduced new concepts in quota flexibility such as the *swing*, *carry forward* and *carryover*.²⁷⁵

With developed countries still dictating the terms under a liberal activation criteria for market disruption, the first MFA failed to live up to expectations e.g. The EEC faced internal problems of “burden sharing” whereby certain member states accepted a quantity of T&C imports to relieve burden on other member states.²⁷⁶ Additionally, circumvention (the practice of routing exports through an EEC member with fewer restraints in order to target restricted markets within EEC) compounded the problems for the EEC states.²⁷⁷ Furthermore, in response to the poor performance of their domestic textiles industries, Canadian and Australia adopted unilateral measures to supplement the bilateral agreements in place.²⁷⁸ This is a poor reflection on the effectiveness of a comprehensive multilateral regime on T&C.

Another instance of the ineffectiveness of the MFA was the hesitation on part of the TSB to assert itself e.g. the TSB preferred to exercise “moral pressure” rather than requiring compliance with its orders.²⁷⁹ More often it was the informal message that resulted in the “resolution of bilateral disagreements brought before it without the necessity of formal findings in favour of one or the other country.”²⁸⁰

²⁷⁴ Quota growth under the LTA was 5% whilst it was 6% in the MFA (Ibid, 337)

²⁷⁵ “Swing” allowed for transfer of a quota from one category to another i.e. if the quotas for a product were not filled, another product could be shifted to take advantage of the unused quota. “Carry forward” allowed the exporters to borrow from next year’s quotas and “Carryover” enabled exporting nations to add unused quota to that of the previous year (see Nigel Grimwade, *International Trade Policy: A Contemporary Analysis* (1st ed. Routledge, New York, 1996) 145).

²⁷⁶ Dickerson, above n 6, 337.

²⁷⁷ Ibid.

²⁷⁸ Ibid. It is interesting to note that Australia was a signatory to the original MFA but did not sign the later MFA renewals.

²⁷⁹ Perlow, above n 166, 106; Bagchi, above n 151, 99

²⁸⁰ Bagchi, Ibid, citing Mahmoud Abdel-Bari Hamza, *International Surveillance of Trade Measures – The case of the Textiles Surveillance Body*, UNCTAD document UNCTAD/MTN/220, 10 December 1981, 11-12.

Decision-making in the TSB was undermined due to a consensus based system.²⁸¹ Galvanising consensus in a body rife with conflicting interests in interpretation and application of the MFA was a near impossible endeavour.²⁸² Moreover, since the membership of the MFA was lopsided in the favour of the developed countries, this carried significant consequences for developing countries while the restraining countries availed full benefits of the protection under the MFA.²⁸³

A major example of the failure of the TSB to act authoritatively is the action taken by Sweden against India on cotton bed linen and woven blouses where the TSB was content in recommending that parties should enter into further consultations rather than pronouncing on the legality of the matter.²⁸⁴ Eventually the Swedish measures were allowed to continue for more than a year until their expiry at the end of MFA I.²⁸⁵ Similarly, the TSB also declined to pronounce any judgment on the issue of market disruption in the case of unilateral action taken by Sweden against Pakistan on cotton blouses.²⁸⁶ In this action, the TSB merely recommended replacement of unilateral measures with a VER on part of Pakistan.²⁸⁷ This effectively enabled Sweden to continue restraining Pakistani exports by a mere cosmetic change in the nature of the restraint.

However, there were two instances where TSB demonstrated that it was still a viable multilateral surveillance body e.g. in review of the EEC's phase out programmes, the TSB declared that several of them were inconsistent with the provisions of Article 2:2 of the MFA.²⁸⁸ In another case, the TSB recommended

²⁸¹ Perlow, above n 166, 106; Blokker, above n 150, 198.

²⁸² Blokker, Ibid, 210-211 & 239.

²⁸³ Hamza, above n 280, Paras. 72-74 and 79-82.

²⁸⁴ See GATT, Textiles Surveillance Body, 'Report of the Sixth and Seventh Meetings' (COM.TEX/SB/245 dated 1 June 1977), Paragraphs 6-10; Hamza Ibid, Paragraphs 72-74 and 79-82 cited by Bagchi, above n 151, 111.

²⁸⁵ Bagchi, Ibid, 111 & 152 (see footnote 2).

²⁸⁶ GATT, above n 284, Paragraphs 11-16

²⁸⁷ Ibid, Paragraph 16.

²⁸⁸ GATT, Textile Surveillance Body, 'Report to the Textiles Committee by the Textile Surveillance Body' (COM.TEX/SB/115 dated 28 August 1975) 1; Perlow, above n 166, 109-111.

prompt review of Australian action against Singapore and noted that the imports were minimal and that the Australian action was not justified.²⁸⁹

The most controversial issue during MFA I was the safeguard actions taken by Australia, Canada, Finland and France against imports from developing countries.²⁹⁰ These actions were taken under GATT Article XIX while these countries were participants of the MFA.²⁹¹

The safeguard actions led to disputes concerning interpretation of Article 9 of the MFA and the exercise of rights by MFA participants available to them under the GATT framework.²⁹² Australia and Canada vociferously defended their position in the TSB by arguing that MFA did not restrict the exercise of their GATT rights in any way.²⁹³ These countries argued that they were under no obligation to inform the TSB of their actions and believed that the MFA bodies did not have the competence to discuss actions taken under the GATT framework.²⁹⁴

Some countries (including both developed and developing) took exception to this view and insisted that countries invoking Article XIX should notify the TSB or the GATT TC and must also justify their actions.²⁹⁵ These countries were of the view that measures taken outside the MFA (such as GATT Article XIX) constituted “additional trade measures” as mentioned in Article 9 of the MFA.²⁹⁶ This view was not acceptable to Canada and Australia and this led to extensive discussions but there was no agreement on what constituted “additional trade measures.”²⁹⁷

²⁸⁹ GATT, Textile Surveillance Body, ‘Australian Restrictions under Article 3:5 on Imports from Singapore’ (COM.TEX/SB/142 dated 5 January 1976) 9-12.

²⁹⁰ Bagchi, above n 151, 111.

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ See also GATT, above n 288, 8; See also A.J. Sarna, ‘Safeguards Against Market Disruption – The Canadian View’ (1976) 10 *Journal of World Trade Law* 355, 358-359.

²⁹⁴ Sarna, Ibid, 369-370.

²⁹⁵ Bagchi, above n 151, 113

²⁹⁶ Ibid.

²⁹⁷ Ibid.

The MFA was eventually renewed. Australia decided to remain aloof from the renewed MFA and embarked upon an ambitious tariff reduction programme. Canada left the MFA but rejoined half-way through MFA II after terminating Article XIX actions under intense pressure from the UK and the US (quite possibly due to US desire for a renewal of the MFA).²⁹⁸

1.4.3 MFA II

Upon expiry of the MFA I, the MFA was renegotiated in 1977 and extended up to 31 December 1981 vide the 1977 Protocol of Extension of the MFA (the “1977 Protocol”). The EEC took the lead from the US in pushing for a renewed arrangement that was increasingly restrictive since the domestic industry pressure had mounted for control over surge in imports from low cost countries.²⁹⁹

The EEC’s initiative was designated as a “stabilization plan” and it rested on identifying sensitive categories of T&C imports.³⁰⁰ The EEC claimed that under the “stabilization plan” growth of imports would strictly correspond to growth of consumption rate i.e. imports will not exceed consumption rates.³⁰¹ For all other products a higher rate of growth will be permitted up to or even beyond 6% quota growth rate specified in the MFA Annex B, Paragraph 2.³⁰²

Additionally, the EEC also attempted to introduce the concept of “cumulative” market disruption i.e. once import penetration of low-priced T&C products reached a certain level, any increase (howsoever small) would be sufficient to cause market disruption.³⁰³ This meant that restrictions could be placed on exporters that were not individually causing market disruption but were

²⁹⁸ Ibid.

²⁹⁹ Perlow, above n 166, 112.

³⁰⁰ The sensitive categories included items such as T-shirts, knitted shirts, knitted jerseys, men’s and women’s woven trousers, women’s blouses and men’s shirts (Ibid).

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

contributing to it.³⁰⁴ The EEC's views attracted strong reaction from Asian suppliers and consequently were not incorporated in the 1977 Protocol.³⁰⁵

The EEC was not deterred by this setback and imposed global ceilings on imports of sensitive products unilaterally.³⁰⁶ In doing so introducing global ceilings that covered bilateral quotas, the EEC obtained the "the best advantage both of the MFA and of GATT as these quotas are global and discriminatory being imposed only on imports from developing countries."³⁰⁷

Moreover, the EEC conducted an aggressive series of bilateral negotiations that were backed by the threat of market closure.³⁰⁸ The exporting countries, uncoordinated in their efforts to escape discriminatory treatment from the EEC, preferred the security of minimum market access and certainty that was granted by bilateral agreements as compared to the uncertainties of unilateral actions.³⁰⁹

The MFA II also introduced the concept of "reasonable departure."³¹⁰ This enabled member countries to negotiate bilateral agreements that were non-compliant with provisions of the original MFA.³¹¹ The departures were to be temporary and the MFA II participants were encouraged to return to the framework of the MFA within a short timeframe.³¹²

The 1977 Protocol was termed as "one of the most successful lobbying actions ever carried out by the protectionist lobby as a whole and the textile industry

³⁰⁴ Ibid.

³⁰⁵ See reaction by Hong Kong, Japan, India and South Korea on EEC's proposals GATT, 'Textiles Committee - Report on the Meetings of the Committee Held on 16-17 March; on 5-7 and on 24 July and on 5, 14 and 22 December 1977', Paragraphs 22, 27, 46 & 66 cited by Perlow, Ibid, 113.

³⁰⁶ UNCTAD, *International Trade in Textiles and Developing Countries*, UNCTAD Document TD/B/C2/192 dated 23 March 1978, 24; Grimwade, above n 275, 145.

³⁰⁷ UNCTAD (Ibid); Grimwade (Ibid).

³⁰⁸ Perlow writes that the EEC launched "a veritable blitzkrieg of bilateral negotiations" that comprised 32 negotiations within 6 weeks (see Perlow, above n 166, 113)

³⁰⁹ Perlow, Ibid; Bagchi, above n 151, 119.

³¹⁰ Landaw, above n 162, 211; Dickerson, above n 6, 338; Dickerson, above n 165, 415; Perlow, above n 166, 113.

³¹¹ Landaw, Ibid; Dickerson, Ibid; Dickerson, Ibid; Perlow, Ibid.

³¹² Dickerson, Ibid.

in particular.”³¹³ Although temporary in nature, the concept of “reasonable departure” attracted great criticism from the developing countries.³¹⁴ Essentially, this clause provided a “departure from a departure” – a way of waiving the provisions of an agreement which was itself a derogation from GATT principles.”³¹⁵

A positive aspect about the 1977 Protocol was that it resolved the controversy surrounding GATT safeguard actions employed by Canada and Australia.³¹⁶ The confusing interpretation of “additional trade measures” was resolved by specifying that for the textiles covered by MFA, the participants must exhaust all possibilities of relief under the MFA before resorting to outside measures.³¹⁷

Another notable occurrence during the MFA II was significant curtailment of the role played by the TSB because the importing nations had secured the authority to deviate from the principal obligations.³¹⁸ This relegated the TSB to the sidelines watching developed countries openly flout the very rules that they negotiated not too long ago.³¹⁹

1.4.4 MFA III

Even after enacting comprehensive restraints under MFA II, T&C imports continued to enter the EEC and the US markets at an increasing rate.³²⁰ At the same time domestic industry associations in the developed countries bluntly declared that “low cost imports undermined their production.”³²¹ In this backdrop came the eminent expiry of the MFA II in 1981.

³¹³ See *the Guardian*, 6 February 1978 and quoted in UNCTAD, above n 306, 24 and in Perlow, above n 166, 114.

³¹⁴ Dickerson, above n 6, 338.

³¹⁵ Keesing & Wolf, above n 182, 70.

³¹⁶ Bagchi, above n 151, 118.

³¹⁷ See Paragraph 9 of the 1977 Protocol.

³¹⁸ Bagchi, above n 151, 99; Perlow, above n 166, 114 & 115.

³¹⁹ Bagchi, *Ibid*; Perlow, *Ibid*.

³²⁰ The percentage share of Hong Kong, Taiwan and South Korea grew from 30% to 42% between years 1971 and 1979 (Landaw, above n 162, 211).

³²¹ Aggarwal, above n 2, 170.

Realising their weak position, the developing countries banded together and met at Bogota to coordinate their position for the next round of negotiations on extension or discontinuance of the MFA.³²² A declaration was issued (Bogota Declaration) that called for a “*gradual return to free trade in conformity with normal GATT rules and practices.*”³²³ The meeting in Bogota also led to the establishment of the *International Textiles and Clothing Bureau* (ITCB) that was to play a major role in integration of textiles trade into GATT.³²⁴

As a manifestation of their new found strength, the developing countries succeeded in getting the “reasonable departure” provision withdrawn³²⁵ from the renegotiated MFA III (which came into force on 1 January 1982 and lasted till 31 July 1986). The reasonable departure clause was replaced with the “anti-surge” provision that was deemed as less restrictive.³²⁶ The anti-surge provision provided for special restraints in the event of “*sharp and substantial increases*” in imports of the most sensitive products with underutilized quotas.³²⁷ Additionally, MFA III constricted the definition of market disruption by requiring proof of decrease in growth rate per capita consumption.³²⁸

At this stage China acceded to the MFA, while it was not a member of the GATT.³²⁹ China’s accession enabled the developed countries to formalise restraints on the Chinese T&C exports.³³⁰ For China, bilateral agreements were a lesser evil as compared to unilateral restraints.³³¹ Subsequent history shows that US restraints did little to deter Asian NICs and Chinese growth in T&C (this is explored in Chapters 2 and 4).

³²² Bagchi, above n 151, 122.

³²³ Ibid.

³²⁴ Ibid.

³²⁵ Dickerson, above n 6, 340.

³²⁶ Landaw, above n 162, 212; Dickerson, above n 165, 417 Dickerson, above n 6, 340.

³²⁷ Dickerson, Ibid, 340; Dickerson, Ibid, 417; Landaw, Ibid, 211-212.

³²⁸ Dickerson, Ibid, 340.

³²⁹ China was unable to join the GATT due to centralised economy (see comments and references in Dickerson, above n 165, 418-419).

³³⁰ Dickerson, above n 6, 340 (Ibid).

³³¹ Ibid, 340. By 1984, about 75% of Chinese T&C products were under quota restraints in the US (See Craig Giesse & Martin Lewin, ‘The MFA: Temporary Protection Run Amuck’, (1987) 19(1) *Law and Policy in International Business* 51, 123).

The role played by the US during MFA III deserves a special mention. Each time the MFA came up for renewal, the US government succumbed to the pressure tactics of the US industry interests (again this is an endorsement of the public choice theory and the Stolper-Samuelson theorem). During the MFA III period, the US expanded the scope of its restrictions and made more than a hundred consultation calls annually between 1983 and 1985.³³² The US also introduced tough new restrictions into the MFA III which were specifically meant to target Hong Kong, Taiwan and South Korea.³³³ Also, the US indentified circumvention and trans-shipment as a major issue undermining the US T&C industries, which the developing countries pledged to rectify.³³⁴

Despite taking these steps, the US industries continued with their lobbying efforts.³³⁵ These efforts culminated in promulgation of guidelines to establish a “presumption of market disruption”, restrictive ROO and a new textile-product classification system.³³⁶ The change of standards from “actual” and “measurable” market disruption to a “presumed” instance of market disruption undermined the legitimacy of the MFA.³³⁷ With these changes, unilateral restraints became easily justifiable contrary to the MFA definition of market disruption (which was based on actual and measurable market disruption rather than on “allegation, conjecture or mere possibility”).³³⁸ According to Craig Giesse and Martin Lewin, the true aim behind such

³³² Compared to this figure, the number of requests for consultations in 1981 and 1982 were 20 and 40 respectively (GAO, above n 264, 29); See also Dickerson, above n 165, 418.

³³³ See Paragraph 9 of the *Protocol Extending Arrangement Regarding International Trade in Textiles* (22 December 1981) (the “1981 Protocol”). This restriction enabled the US to limit import growth from Hong Kong, Taiwan and South Korea between 0.5%-2.0% annually. The effect of this was that “swing”, “carry forward” and “carryover” instruments were drastically reduced and by 1984, quotas were effectively in place on 95%, 92% & 90% of T&C imports originating from Hong Kong, South Korea and Taiwan respectively (Giesse & Lewin, above n 331, 121-122).

³³⁴ See the 1981 Protocol, Paragraphs 14 & 23. Circumvention is defined in Article 8 of the MFA and is concerned with quota evasion by routing or trans-shipping products through a third country.

³³⁵ Giesse & Lewin, above n 331, 123.

³³⁶ Ibid.

³³⁷ Ibid, 124-125.

³³⁸ See MFA, Annex-A, Paragraph 1; See also discussion in Giesse & Lewin, Ibid, 125.

regulations was “to curb specific textile trade rather than to prevent circumvention of bilateral agreements or eliminate loopholes.”³³⁹

The primary target of the new ROO and other restrictions was the “looping” trade of Hong Kong based knitwear manufacturers.³⁴⁰ Under this trade, the basic knitwear product was manufactured in China, the value addition and finishing was undertaken in Hong Kong.³⁴¹ The shift in origin meant that the product was classified as manufactured in China, thereby attracting quotas.³⁴² Additionally, the new ROO incorporating the “substantial manufacturing” standard was based on cost of materials, direct labour costs, manufacturing time and/or processing time.³⁴³ By introducing these complexities, the US imposed a significant burden, in terms of money and time, on the exporter as well as the US importers.

1.4.5 MFA IV

Facing constant pressure by the US T&C industry groups, the US trade representatives came to the negotiating table for MFA IV in 1986. MFA IV (which lasted from 1 August 1986 to 31 July 1991) was built upon the same level of restrictiveness as its predecessors.

³³⁹ Ibid, 134.

³⁴⁰ Ibid, 135; Bagchi, above n 151, 140-141.

³⁴¹ Giesse & Lewin write that looping operations added more value to the final product and required more technological inputs. The end result of such operations culminated in a greater physical change to the merchandise than simple knitting operations in China (Ibid, 135).

³⁴² The new restrictions cost Chinese T&C exporters US \$ 100 Million and Hong Kong exporters over US \$ 280 Million. When Hong Kong challenged these measures in the TSB, citing upsetting of “balance of rights and obligations under the Hong Kong-US bilateral agreement”, the TSB asked the US to restore the balance but the US openly flouted the recommendations of the TSB and continued with its policies (Ibid, 135-139).

³⁴³ The new ROO were also deemed to be contrary to MFA Articles 3:7, 5 and 9:1. Article 3:7 was violated when US imposed unilateral restraints in absence of market disruption. Article 5 envisaged reduction of trade barriers to promote trade and to this end it required importing countries to impose limits on T&C imports in “flexible and equitable manner.” This was violated by the unilateral restraints imposed by the US. Article 9:1 prohibited adoption of additional trade measures that could undermine the objectives of the MFA, keeping in mind that it provided a remedy for the importing country in the form of safeguards (Ibid, 132-134 and 139-140).

At this juncture, the diversification induced by quotas is visible again i.e. due to restraints on traditional T&C items, many developing countries shifted production over to the unrestrained categories such as synthetic fibres, ramie, silk and flax.³⁴⁴ Under pressure from the industry interests, the US felt necessary to control the inflow of such goods into its markets.³⁴⁵

MFA IV introduced unilateral restraints that could be imposed on uncontrolled products for up to one year if market disruption was proven and if no bilateral agreements between importing and exporting countries was reached within 60 days.³⁴⁶ LDCs were to receive significantly better treatment than the NICs by increasing their quotas as a percentage based on previous year.³⁴⁷ The anti-surge clause that was introduced in MFA III was retained.³⁴⁸ MFA IV also required exporting countries to accept lower rates of growth.³⁴⁹

The developed countries continued to urge developing countries to open their economies for trade on reciprocal basis but the developing countries maintained their right to close their markets under the infant industry³⁵⁰ provision permitted by GATT.³⁵¹ The MFA IV also retained the controversial MVP clause (this was ostensibly done due to cold-war realities but this explanation masked well the actual reason of protecting domestic T&C industries).³⁵²

³⁴⁴ Rivoli, above n 6, 135; Dickerson, above n 165, 419; Landaw, above n 162, 213-214.

³⁴⁵ See Article 24(i) of the 1986 Protocol of Extension of the MFA. The decision to restrain synthetic fibres such as ramie on grounds of market disruption was surprising given the fact that US industries did not manufacture this product. However, the industry interests stated that since ramie was an alternative to traditional fibres, it displaced market share of their products. Therefore the restraints should be expanded to include such synthetic fibres (see Dickerson, Ibid, 342; Dickerson, Ibid, 419; Rivoli, Ibid, 135; Landaw, Ibid).

³⁴⁶ See Articles 8 of the 1986 Protocol of Extension of the MFA; See also Dickerson, Ibid, 343.

³⁴⁷ See Article 13 of the 1986 Protocol of Extension of the MFA; See also Dickerson, above n 165, 420.

³⁴⁸ See Article 11 of the 1986 Protocol of Extension of the MFA; Dickerson, above n 6, 343.

³⁴⁹ See Article 9 of the 1986 Protocol of Extension of the MFA; Dickerson, Ibid, 344.

³⁵⁰ This refers to temporary protection (whether in the through tariffs or non tariff barriers) to assist establishment of an industry and encourage its competitiveness in the global market.

³⁵¹ Dickerson, above n 6, 344.

³⁵² See Article 12 of the 1986 Protocol of Extension of the MFA.

During MFA IV, the US (and Canada, to some extent) remained the leading users of unilateral restraints on imports that were considered to be negligible.³⁵³ In a major review of the MFA IV operations, the TSB bristled with criticism on the unilateral application of trade restraints by these two countries.³⁵⁴ The TSB stated that the US and Canada were “applying MFA IV more strictly than they applied MFA III” and that “restraints continue to be applied almost exclusively to products from developing countries” even though the MFA expressly recognizes the need for special treatment to be extended to the developing countries.³⁵⁵

The TSB was cautious in its appreciation for the reduced number of restraints placed by the EEC.³⁵⁶ The TSB observed that even though the EEC had reduced “the number of restraint agreements, reduced the number of restraints in all agreements and improved growth rates and flexibility provisions”, the total number of restraints continues to be high.³⁵⁷ The TSB concluded its assessment of EEC by declaring that “while improvements in EEC agreements made its application of MFA IV less restrictive than that of MFA III, this assessment is tempered by the restrictive terms of EEC agreements concluded under previous Protocols of Extension.”³⁵⁸ The TSB’s very scathing conclusion on the MFA was that the “objectives of achieving the reduction of barriers and the progressive liberalisation of world trade have not yet been achieved.”³⁵⁹

Interestingly, MFA IV was given a period of effectiveness of five years, to coincide with the much anticipated completion of the Uruguay Round of the

³⁵³ During the first two months of the renewed MFA, the US issued 24 consultations calls (see Giesse & Lewin, above n 331, 155).

³⁵⁴ GATT, ‘Report of the Textiles Surveillance Body to the Textiles Committee for the Major Review of the Operation of the Arrangement Regarding International Trade in Textiles’ (COM.TEX/SB/1490 dated 11 September 1989), Paragraphs 5.11, 5.29, 5.36 & 5.57. See also TSB comments on Norway’s agreements with Macao and South Korea (Paragraphs 5.75 & 5.76). The TSB stated that “the imminent increase in imports from Macao foreseen at the moment of negotiation of the agreement was not such as to pose a real risk of market disruption.”

³⁵⁵ Ibid, Paragraph 6.10 (d) & 6.12.

³⁵⁶ Ibid, Paragraphs 6.10 (c).

³⁵⁷ Ibid.

³⁵⁸ Ibid.

³⁵⁹ Ibid, Paragraphs 6.10(d)

multilateral trade negotiations.³⁶⁰ It was thought that at that time, the process of integration of textiles back into the traditional GATT regime would begin soon.³⁶¹ However, as the Uruguay Round discussions lingered on the MFA was extended three times between 1991-1994, finally coming to an end on 31 December 1994.³⁶²

1.4.6 Assessing the effects of MFA

In retrospect, the MFA was a compromise between the conflicting interests of T&C importing and exporting nations. Only a few participants were ever satisfied with the regime. The developed countries were not satisfied with the protection granted by the MFA, therefore, with every extension came more and more protection. The developing countries were on the receiving end of trade restraints. Lacking any serious leverage with the developed countries, most of the developing countries were forced into compliance with a simple fear that if compliance was not forthcoming, the developed countries would simply close-off their markets entirely.

The primary criticism of the MFA regime is that it removed a major sector of world trade from the GATT rules. By the removal of T&C from the GATT framework, discrimination in international trade was institutionalised. Other criticisms of the MFA are that it made quotas permissible and enabled usage of “market disruption” as a tool of protection that has been employed time and again in global T&C trade.

Over the years, the MFA came to represent a constant conflict between its advocates and its opponents. The pro-MFA camp maintained that the textiles sector was a special case and therefore, merited special consideration. The opponents argued that the problems associated with this particular sector have been exaggerated out of proportion and have been politicised as compared to the other sectors.

³⁶⁰ Dickerson, above n 165, 421.

³⁶¹ Ibid.

³⁶² Ibid; Bagchi, above n 151, 150.

Another criticism of the MFA is that it was exclusively designed to contain the imports originating from developing countries that entered the developed markets.³⁶³ The best example to support this contention is the fact that T&C flow between the developed countries was never brought within the framework of the MFA and continued to operate free of restraints e.g. for the entire period that the MFA was in operation, the T&C trade between developed countries, which accounted for 42.8% of total world trade in textiles and 35.1% of total world trade in clothing, was not subjected to quotas and remained free from any quotas.³⁶⁴

The rationale behind this selective application of quotas was that developing countries had an 'unfair' advantage over developed countries in terms of labour costs and hence it was justifiable for imposition of import restrictions on these countries.³⁶⁵ However, Japan was counted as an exception because it was deemed as a *supplier* country.³⁶⁶

Thus, it can be said that MFA was a unique international trade agreement that legitimised discrimination against the developing countries.³⁶⁷ Undoubtedly, the conduct of the developed countries during the MFA era acted as a catalyst in fomenting protectionism. Martin Wolf succinctly termed this as "a standing proof of the hypocrisy of developed countries and of their unwillingness to abide by the norms they have themselves declared."³⁶⁸

The MFA-era saw increased criticism from the developing countries (mainly exporters) that demanded elimination of the MFA regime and integration of T&C with the GATT framework. At this stage, the developing countries appear

³⁶³ Dickerson, above n 6, 347-348.

³⁶⁴ Ibid.

³⁶⁵ Tony Heron, 'The Ending of the Multifibre Arrangement: A Development Boon for the South?' (2006) 18(1) *the European Journal of Development Research* 1, 3-4.

³⁶⁶ Dickerson, above n 6, 348.

³⁶⁷ Heron, above n 365, 4.

³⁶⁸ Martin Wolf, *Handmaidens under Harassment – the MFA as an obstacle to Development* (London, 1986) 36.

to be united in their criticism of trade restraints on their T&C exports. However, this “unity” vanished with the full realisation of the changes that came with liberalising trade in the T&C sector (this will be discussed in Chapter 2). The end of the MFA era led to the next stage of multilateral trade dialogue that culminated in the Uruguay Round where T&C trade was amongst the foremost issue.

1.5 CONCLUSION

This chapter has highlighted what politically influential industry associations can achieve in terms of favourable trade policy and market protection measures. The question for discussion is, however, what does this protection actually accomplish? How effective this protection has been for the T&C industries of the developed countries in retarding inflow of competing imports? In the short term these measures surely protect local jobs, but the society as a whole bears the long term costs of trade protection.³⁶⁹

Giesse and Lewin succinctly summarise how quotas artificially raised prices for the US consumer:

“...the MFA quota regime and the US tariff system create consumer costs by limiting the available supply of imported clothing articles, thereby raising the price of the merchandise. As a result of increased import prices, some consumers switch their purchases to domestically supplied articles; as a consequence of higher demand for such products, domestic manufacturers can raise their prices as well. Consumers, therefore, pay a higher price for both the imported and domestically produced clothing items”³⁷⁰

The economic cost of protectionist policies in the US T&C import market has been estimated by various researchers. Whilst the results vary, the conclusion is similar i.e. to protect domestic industries means maintaining quotas which

³⁶⁹ Giesse & Lewin, above n 331, 156.

³⁷⁰ Ibid, 157 & 158

carries adverse consequences in money terms e.g. in 1996, according to the US International Trade Commission (USITC) estimates, annual cost of T&C import quotas ranged between US \$ 7-11 billion.³⁷¹

Using USITC estimates, Hufbauer and Elliot estimated that in 1990 the consumer cost of protecting an apparel job in the US was US \$ 138,666.³⁷² This figure in 2002, using conservative USITC figures, rose to US \$ 174,825 per American job saved.³⁷³

If viewed purely from a classical economic perspective, free or liberalised trade results in a wider consumer choice, increased supply of goods at lower prices and expanded purchasing power (see the Introduction for a brief discussion on various economic theories). Protectionist policies have the opposing effect of reduced supply, limited consumer choices and artificially inflated prices.

Therefore, the US public welfare could have been enhanced had the US not adopted policies of protecting local T&C industries. This view is confirmed by classical trade theories such as the theory of comparative advantage and factors proportions theorem (see the Introduction). If the US genuinely committed to free trade in all sectors of global trade (especially sectors that matter to developing countries/LDCs), then theory of comparative advantage and factors proportions theorem hold that US market would have been supplied with competitively priced T&C products from developing countries/LDCs much earlier.

One must query the long term benefits to the US T&C industries. Did the trade restraints help them survive longer? As the review of history in this chapter

³⁷¹ USITC, *Economic Effects of Significant U.S. Import Restraints* (2nd Update, 1999), Investigation No. 332-325, Publication No.3201, Washington DC, 29.

³⁷² Gary Clyde Hufbauer & Kimberly Ann Elliot, *Measuring the Cost of Protection in the United States*, Washington DC Institute of International Economics (1994), 13.

³⁷³ The USITC's worst-case estimate for job losses due to elimination of quotas in 2002 was 40,040 jobs, whilst the lowest estimate for economy wide costs was US \$ 7 billion (See Tables 3-1 and 3-5 in USITC, above n 371, 71).

demonstrates, no amount of protection has ever satisfied the industry groups in US or in other developed countries.

In retrospect, US industries knew they were losing comparative advantage not just due to rising labour costs but also because of a strong US currency, which made US exports less attractive to the global consumers barring a certain niche segment (same can be said of other EEC exporters). Therefore, imposing VERs, quotas and unilateral safeguards was not only in vain but it undermined a major area of multilateral trade by taking it outside of the GATT framework.

In the end, the rise of Japan, South Korea, Taiwan, Hong Kong, China and other Asian suppliers could only be delayed but not prevented. This trend begs the question were the policymakers in the US and Europe naive? The answer surely is in the negative. These policymakers knew that they could only buy time for their T&C industries so that a readjustment can be effected. Whether these industries availed this opportunity is a separate question, which is discussed in later chapters of this thesis. At this point we must keep in mind that liberalisation does not benefit everyone since some groups stand to lose against foreign competition (see discussion of the Stolper-Samuelson theorem in the introduction). These groups would always protest and act against any trade concession to foreign supplier which undermines their interests. And it was these very groups that pressurised and lobbied successive US governments against liberalising T&C trade.

The public choice theory effectively describes the behaviour of the US politician, lobby groups, industry associations and the unions. Successive US regimes from Kennedy to Nixon largely ignored greater public welfare and extended their support to a perennially unsatisfied T&C industry that constantly insisted for more protection. These industries were prepared to expend millions in lobbying and campaigning but were unwilling to compete with efficient overseas producers in a free trading environment.

The same pattern is visible in developing countries with major T&C industries such as India and Pakistan. Although, the priorities and issues in developing countries are different from developed countries, some commonality is visible in the conduct of the industry groups in developed and developing countries. Chapter 4 will discuss Pakistan as a case study of a developing country affected by the expiry of quotas in 2005 and will raise the issue of protectionism from a developing country perspective.

As far as quotas are concerned, T&C regulatory regimes not only limited exports of the developing countries/LDCs but also stunted their economic growth. The T&C is the only viable industry alternative for majority of the developing countries/LDCs. By limiting T&C imports through quotas, the developed countries not only prejudiced their domestic consumer welfare but also hindered the socio-economic development of the poorer nations.

History of regulation has also revealed the paradoxical nature of quotas and safeguards. While quotas generally restricted T&C imports, it also triggered product diversification, which offered increased economic opportunities to the diversifying producers. However, the benefits from this diversification were short-lived due to imposition of quotas by the developed countries (see discussion of MFA IV in this chapter) that effectively negated any potential dividends flowing from product diversification. In imposing quotas on new T&C products, the developed countries simply defeated the main aim behind the creation of the GATT.

A constant phenomenon that is noticeable throughout the modern history of T&C trade is the shift of comparative advantage. The shifts of comparative advantage in the T&C sector translates into the supplier with the lowest manufacturing costs eventually prevailing in the target market (absent any artificial restraints or trade barriers). Trade barriers and protectionist policies can only delay this process. The shift of comparative advantage in T&C is noticeable from Japan to Asian NICs, Hong Kong, China, India, Pakistan and

other Asian manufacturers. This is an ongoing process and forms the central premise behind this thesis.

CHAPTER 2

THE TRANSITION TOWARDS LIBERALISED TRADE IN TEXTILES & CLOTHING

2.1 INTRODUCTION

The *Agreement on Textiles and Clothing* (ATC)³⁷⁴ was a transitional, sector-specific arrangement that provided for a systematic phase-out of the MFA quotas over a ten year period, from 1 January 1995 to 31 December 2004.

At the end of this quota phase-out period, the T&C sector became fully integrated into the GATT framework. The implication of this integration meant that global T&C trade was no longer governed by any regime external to the GATT framework (as was the case with the MFA and its predecessors). Since the ATC formed part of the GATT framework, the WTO had the overall supervisory function (similar to other multilateral agreements negotiated in the Uruguay Round). Thus the ATC, unlike the MFA, bound all WTO members equally.

The quota phase out process under the ATC began with the coming into force of the Marrakech Agreement. The basic elements of the ATC can be summarised as follows:

- (a) Enhanced product coverage, encompassing yarns, fabrics, made-up textile products and clothing (Article 1:7 and Annex to the ATC). The Annex comprised a wide range of products that also included an entire section on T&C in the *Harmonized Description and Coding System* (the “HS Code”). Products containing textile materials as components such as umbrellas and soft luggage cases were also covered under the ATC;

³⁷⁴ The ATC was one of the multilateral trade agreements formed part of the *Agreement Establishing the WTO* (the “Marrakech Agreement”). See WTO, *the Agreement on Textiles and Clothing* (2005). Available online at: < http://www.wto.org/english/tratop_e/textile/textintro_e.htm > at 4 June 2010.

(b) Progressive integration of T&C products into GATT framework. The ATC integration process specified that in the first stage (beginning January 1995), WTO Members were required to integrate at least 16% of their 1990 imports of textiles and garments. In the second stage (beginning January 1998), a further 17% was integrated. In the third stage (beginning January 2002), a further 18% was integrated. The residual 49% was to be integrated automatically on the expiry of the ATC on 1 January 2005 (Articles 2:6 & 2:8);

(c) Progressive enlargement of existing quotas by increasing annual growth rates at each stage (Article 2:14) until their removal on 1 January 2005;

(d) Special safeguard mechanism to deal serious damage or threat of serious damage to domestic industries during the ATC transition period (Article 6);

(e) Establishment of the *Textiles Monitoring Body* (TMB) to supervise the implementation of the ATC and to ensure compliance with the ATC rules (Article 8); and

(f) Other provisions covering rules on circumvention of quotas (Article 5), administration (Article 2:17), treatment of non-MFA restrictions (Article 2:16) and commitments undertaken elsewhere under the WTO's agreements (Article 7).

The *Transition Safeguards* (TS) system in the ATC protected members against damaging surges in imports during the quota phase-out period i.e. the TS enabled imposition of safeguards on products that were subjected to quotas but were not yet integrated into the GATT framework (Articles 6:1 and 6:2). The ATC also provided, in explicit terms, that once a product was integrated,

the WTO Safeguards (under GATT Article XIX) would be the only available safeguards (Articles 2:19 and 2:20).

The TS differed from the MFA-era market disruption based safeguards. The MFA incorporated a standard based on substantially low prices of increased imports to attribute market disruption (refer to Annex A of the MFA). This was removed in the ATC, which prescribed a standard based on taking into account the totality of imports from all sources and attributing damage only to the source responsible for sharp and substantial increase in imports.³⁷⁵

Article 6:12 of the ATC also prescribed that quotas could only remain in place for a maximum of three years, or until the product in question was integrated, whichever came earlier. Additionally, Article 3 provided that Member States that had restrictions in place, which could not be justified under the GATT were required to either bring them into conformity or phase them out over the ten year transition period.

In addition to the integration process envisioned under the ATC, annual growth rates for remaining quotas were accelerated by the ATC (16% in the first stage of the ATC, 25% in the second stage and 27% for the final stage). The LDCs also enjoyed a one-stage advancement in the acceleration of quota growth. John Hall points out that the effect of these provisions in the ATC was that there were some exporting countries that experienced a rapid expansion in their access to quota-restricted markets and at the same time were protected from competitors who were less successful in obtaining quotas allocation.³⁷⁶

The ATC also provided for administration of quotas by the exporting countries and it prescribed that countries must consult with their exporting partners on

³⁷⁵ See Article 6:4 of the ATC. In determining serious damage, the same economic variables, as in the MFA, were considered. The procedures for taking action were also similar to the MFA i.e. consultations between the concerned countries and referral to the monitoring body.

³⁷⁶ John Hall, 'China Casts a Giant Shadow; the Developing World Confronts Trade Liberalization and the End of Quotas in the Garment Industry' (2006) 5 *Journal of International Business and Law* 1, 8.

any changes in the domestic rules and practices pertaining to T&C trade prior to their implementation.³⁷⁷

2.2 ASSESSING THE AGREEMENT ON TEXTILES & CLOTHING

During the Uruguay Round negotiations, T&C featured as a prominent issue. Developed countries expressed their reluctance in supporting integration of the T&C sector into the GATT e.g. the EU³⁷⁸ stated that until the conditions which necessitated the creation of specific T&C arrangements in the past were eliminated an “...ill-prepared return to the GATT rules would cause problems.”³⁷⁹

The EU’s view was that as long as the imbalance between rights and obligations specific only to the T&C sector were not remedied, abandoning the regime would only result in recurrence of past disorders.³⁸⁰ The EU declared that the MFA had “enabled a number of exporting countries to escape the harsh law of competition and to start production which they could not have had without access guarantees.”³⁸¹ Subsequent developments in global T&C trade have shown that EU’s comments were not entirely without merit (this issue will be further discussed in this chapter and later on in the thesis).

The quota phase out, like the textile regimes of the past, was not without controversy. For instance, the quota phase-out process was “back-loaded”,³⁸² meaning that 51% of the import categories were to be integrated during the ten year transition period in three stages, while the residue was to be integrated upon expiry of the ATC (see Articles 2:6 and 2:8). This was particularly true in

³⁷⁷ See Article 4:4 of the ATC.

³⁷⁸ The membership of the EEC had increased and by 1993 the European Union (EU) was formally established (incorporating new member states) by coming into force of the Maastricht Treaty on 1 November 1993. In the context of the international trade in textiles, the comments, statements and actions of the EEC (referred to in the previous chapter) are attributable to the EU as well.

³⁷⁹ GATT, Preparatory Committee, Record of Discussions (PREP.COM (86) SR/3 and PREP.COM (86) SR/3/Corr.1) 25-26 February 1986, 29.

³⁸⁰ Ibid.

³⁸¹ Ibid.

³⁸² Hall, above n 376, 8; See also WTO, ‘The Major Review of the Implementation of the Agreement on Textiles and Clothing in the Third Stage of the Integration Process’ (WTO Document G/L/725, dated 10 December 2004), Paragraphs 14, 16 & 19 (see also counter argument by the developed countries in Paragraph 21).

the case of the US where nearly 50% of the planned phase-outs occurred on 1 January 2005.³⁸³

This effectively meant that developed countries managed to delay liberalising of the most lucrative, competitive and sensitive sectors until the very end of the quota phase-out period.³⁸⁴ For example, none of the products liberalised in the first phase by the EU were under quotas.³⁸⁵ Laura Baughman and others point out that even though, liberalised share of clothing imports from non-NICs origins increased from less than 4% in Phase I to 6% in Phase II, more than 90% of clothing imports were actually liberalised late in Phases III & IV.³⁸⁶ Similarly, the US deferred integration of the 'most sensitive' products deemed as a threat to domestic producers to the end of the ten year integration period.³⁸⁷

Developing country members of the ITCB were particularly vocal against the quota system (see Chapter 1). These countries, in a submission before the WTO CTG, stated that little progress towards effective integration of the T&C sector through elimination of quotas had been made.³⁸⁸ The ITCB Members cited that out of a total of 937 quotas notified by the US on imports of T&C products from WTO Members under the MFA, by December 2004 it had eliminated only 11% of restricted quotas.³⁸⁹ Similarly for EU, the ITCB Members claimed that out of 303 quotas carried over by the EU from the MFA, 70% were still in place after Phase III of the ATC integration schedule.³⁹⁰

³⁸³ Carolyn L. Evans & James Harrigan, 'Tight Clothing: How the MFA Affects Asian Apparel Exports' (Working Paper No. 10250, National Bureau of Economic Research, 2004) 7.

³⁸⁴ Laura Baughman, Rolf Mirus, Morris E. Morkre & Dean Spinanger, 'Of Tyre Cords, Ties and Tents: Window Dressing in the ATC?' (1997) 20(4) *The World Economy* 407, 426, 428-429.

³⁸⁵ During the first phase of quota liberalisation, the clothing categories liberalised for imports accounted for roughly 1% in volume terms and less than 5% in value terms (Baughman et al, *Ibid*, 426).

³⁸⁶ *Ibid*.

³⁸⁷ *Ibid*, 429.

³⁸⁸ WTO, above n 382, Paragraph 16.

³⁸⁹ *Ibid*.

³⁹⁰ *Ibid*.

Developed countries responded by stating that the back-loading of ATC implementation was not a surprise since the ATC had precisely been “written that way.”³⁹¹ Developed countries claimed that that together with the integration plan, the negotiators had also included in the ATC the staged acceleration of existing annual growth rates.³⁹² The ITCB Members disputed the assertion by the restraining Members as though back-loading of quota elimination had been intended or provided for in the ATC.³⁹³

The ITCB Members rejected the argument claiming that increased growth rates under the ATC were not meant as a substitute for meaningful integration.³⁹⁴ The ITCB Members recalled TMB observation that growth-on-growth would not be a substitute for quota elimination.³⁹⁵

Also the enhanced product coverage under the ATC delayed actual liberalisation.³⁹⁶ On this issue, Bagchi comments that the total import volumes for liberalisation purposes were artificially inflated by including vegetable fibre products, MMF filament yarn, staple fibers, carpets, floor coverings, speciality fabrics, sacks and bags and other miscellaneous items borrowed from other Sections of the HS Code.³⁹⁷

This was done at the behest of US industry associations that insisted on including a broad range of products as part of the liberalisation under the ATC.³⁹⁸ The inflated universe of textiles products included products that were never part of the MFA quotas.³⁹⁹ These products were generally not restrained

³⁹¹ Ibid, Paragraph 21.

³⁹² Ibid.

³⁹³ Ibid.

³⁹⁴ Ibid.

³⁹⁵ Ibid.

³⁹⁶ Bagchi, above n 151, 241.

³⁹⁷ Ibid.

³⁹⁸ Dickerson, above n 6, 364 citing S. Khanna’s comments of terming non-MFA products included in the ATC liberalisation plan as “junk” (see S. Khanna, ‘The new GATT Agreement: Implications for the world’s textiles and clothing industry’ *Textiles Outlook International* (March, 1994), 24).

³⁹⁹ Dickerson, Ibid.

by the developed countries and even when restricted, the imports from the controlled countries were insignificant.⁴⁰⁰

By liberalising non-critical products at the beginning of the integration schedule and delaying liberalisation of the more lucrative T&C categories, the EU and the US effectively postponed the benefits of quota phase-out to the restrained countries and at the same time granted their industries more breathing space.⁴⁰¹ Baughman and others describe this as the “*most overt form of window dressing in the liberalisation process*” and that “*in terms of impact, liberalisation of these products is akin to liberalising trade in tea and coffee.*”⁴⁰²

Baughman and others also criticise the flawed standard of measuring liberalisation in the ATC:

To gauge liberalisation the ATC looks at imports whereas a superior indicator is domestic production. If an importer country does not produce a particular T&C product there is likely to be little or no resistance by its domestic industry to its liberalisation. The extent to which domestic producers are obliged to face (non-quota restrained) import competition is revealed by an index based on domestic production. *Apparently such an approach was never considered by ATC negotiators.* Second, the ATC compounds the measurement problem by expressing *the integration programme in terms of volume of trade rather than value of trade.*⁴⁰³ (emphasis added)

In the ATC, most T&C exporting countries voiced united disapproval over the “exceptional circumstances” provision. This provision prescribed minimum growth rates for quotas and permitted deviations from the minimum growth rates if imports potentially caused market disruption. This provision was

⁴⁰⁰ Bagchi, above n 151, 241.

⁴⁰¹ Baughman et al, above n 384, 411-412; Dickerson, above n 6, 364-365.

⁴⁰² Baughman et al, Ibid.

⁴⁰³ Ibid (emphasis added, footnotes omitted).

eventually excluded from the ATC and proved to be a significant improvement over the MFA regime. Similarly, due to united efforts and demands from the developing countries, the minimum viable provision (that had been frequently misused by the Nordic countries as an instrument of protectionism and market restrictions) was excluded from the ATC.

The application of the TS system under the ATC also merits some attention. In order to prevent the misuse of safeguards (similar to the MFA era), the ATC tightened the criteria for using safeguards and prescribed sparing use during the transition period.⁴⁰⁴ However, prolific application of the TS by the US from the outset of the ATC not only compromised the aim of sparing use but also reflected poorly on the US commitments of liberalising trade in T&C.⁴⁰⁵ Later on some developing countries (such as Costa Rica, India and Pakistan) confronted the US on the claims regarding serious damage and successfully resorted to the WTO DSB for adjudication.⁴⁰⁶ A major change noticeable in the ATC era was the use of TS by Latin American producers against imports from the Asian T&C exporters.⁴⁰⁷

This developing-to-developing country application of safeguards is the first indication of conflicting interests amongst the developing countries. Developing country use of the TS came as guarded markets of developing countries opened up to external competition.⁴⁰⁸ The conflicting interests amongst developing countries in later years of the ATC transition became more prominent (this issue will be discussed later in the chapter).

⁴⁰⁴ Safeguard actions under the ATC were only allowed when serious damage to the domestic producers had taken place or if there was an actual threat (see Article 6:2 of the ATC).

⁴⁰⁵ The US made 23 calls for consultations in 1995 out of which 8 actions were sustained by the TMB and 3 resulted in dispute settlement proceedings (Sun Jae Kim, Kenneth Reinert & G. Chris Rodrigo, 'The Agreement on Textiles and Clothing: Safeguard Action from 1995 to 2001 (Safeguards Regime of WTO)' (2002) 5(2) *Journal of International Economic Law* 445, 447).

⁴⁰⁶ See for instance the WTO Panel Report on *US – Combed Cotton Yarn* case (WT/DS/192/R dated 31 May 2001) involving Pakistan where the WTO DSB Panel concluded that the US had failed to establish the actual threat of serious damage to the domestic industry (see Paras. 7.137-141 of the Panel Report). The WTO Appellate Body upheld the Panel's finding and recommended that the US bring the safeguard measures into conformity with the ATC (Refer to the discussion of the *US – Combed Cotton Yarn* case in Kim, et al, above n 405, 450-453).

⁴⁰⁷ Bagchi, above n 151, 249; Kim et al, above n 405, 448.

⁴⁰⁸ Kim et al, Ibid, 446 & 449.

Another dimension that merits a critical look is the functioning of the TMB as the monitory and supervisory body of the ATC regime. The TMB differed from its predecessor (TSB) because the ATC (under which it was established) was applicable to all WTO members unlike the MFA (under which the TSB was set up) which was only applicable to its participants. The TSB had permanent memberships for the EU, Japan and the US and similar to the TSB, the developed countries insisted on parity in composition and eventually secured half of the TMB membership. The remaining half was distributed amongst the exporter countries along the same lines as the TSB. The aggravating factor was the inclusion of Canada as the fourth permanent member on the TMB – thus polarising the TMB membership with staunch supporters of textile protectionism whilst the much larger number of developing countries and the LDCs were squeezed into the remaining slots. This was neither balanced nor broadly representative.⁴⁰⁹

The TMB's working procedures were not without controversy either. Similar to the TSB, the TMB members were to act on *ad personam* basis in order to ensure neutrality and objectivity of the members.⁴¹⁰ The DSB also decided that since the TMB had a dispute settlement function, the requirements of conduct would also be applicable to the Chairman and the secretariat of the TMB.⁴¹¹

Unfortunately, before the TMB could gel as a coherent monitoring body, it was deluged by US safeguard actions (see above) and in the end the ideals of neutrality and objectivity were sacrificed at the altar of compromise. The requirement of achieving consensus in passing decisions of the TMB placed undue pressure onto the developing countries for effecting compromise since most of the actions were usually taken against them and the issue largely was

⁴⁰⁹ Bagchi, above n 151, 251.

⁴¹⁰ The working procedures of the TMB contained an undertaking that while discharging their functions, the members would not “solicit, accept or act upon instructions from governments.” (Ibid)

⁴¹¹ Bagchi, Ibid.

the conformity of the measures with the ATC provisions.⁴¹² In two instances, the TMB failed to reach consensus on occurrence of serious damage yet went onto find that there still was an actual threat of causing serious damage in the importing market. The inability of the TMB in achieving consensus leads to suspicions of trade-off between the members. Having agreed that there was no serious damage involved, some members were insistent on reaching a consensus on the lesser criteria of actual threat of serious damage.⁴¹³

The judicial function of the TMB was clearly prescribed in the ATC. However, the actual functioning of the TMB was more akin to the TSB (under the auspices of the MFA). This view is reinforced by the fact that the TMB recommended “further consultations” with a view to arriving at a mutual understanding where there was no bilateral agreements between parties. Ideally, the TMB should have ruled on the consistency of the measures in question brought before it. If it was unable to do so, then the parties could resort to legal remedies under the WTO. Arguably, the recommendations of further consultations in order to reach bilateral settlement were a reincarnation of the MFA and the TSB and did not serve to improve the situation.⁴¹⁴

Another instance of TMB falling short on its implementation function of the ATC was in reviewing the administrative arrangements of the EU and the US where the TMB found that some of the provisions did not fall within the parameters prescribed within Article 2:17 of the ATC or the consistency of these arrangements with the ATC was questionable. The TMB, instead of

⁴¹² Bagchi, *Ibid*, 252.

⁴¹³ Bagchi, *Ibid*.

⁴¹⁴ See the ‘Comprehensive Report of the TMB to the Council for Trade in Goods’, WTO Document G/L/179 dated 31 July 1997, Paragraph 91. This concerned the review under Articles 6.2 and 6.3 of the safeguard action taken by the US against imports from Costa Rica and Honduras. The TMB found that serious damage, as envisaged under these provisions, had **not been** demonstrated. The TMB, however, failed to reach consensus on the existence of **actual threat of serious damage**. The TMB, therefore, recommended that **further consultations** be held between the US and the parties concerned, with a view to arriving at a mutual understanding,. The TMB also recommended that these consultations should be held consistent with the ATC, in particular with Articles 6 and 4, and be concluded within 30 days, and that the parties should report to the TMB on the outcome of such consultations no later than at the end of that period. The TMB also noted that regarding the introduction of a safeguard measure, the ATC did not provide any indication with respect to the effective date of implementation of that measure.

calling upon the EU and the US to bring these in conformity with the ATC, merely expected “that all the provisions of these administrative arrangements, including those related to circumvention, would be implemented by the respective Members in conformity with the relevant provisions of the ATC.”⁴¹⁵

Sanjoy Bagchi is of the view that even though the US arrangements included an unrelated provision concerning circumvention (which was not part of Article 2 of the ATC) and imposition of “triple charges on quotas, as a deterrent to circumvention” (which is not provided in Article 5), the TMB did not declare these *ultra vires*. Bagchi further comments that, in these circumstances, no country eventually approached the TMB regarding the US ROO even where there was trade distortion and impaired access to market.⁴¹⁶

2.3 INTEGRATION INTO THE WTO/GATT FRAMEWORK

On 1 January 2005, trade in T&C was integrated into the WTO/GATT framework. This raises a number of questions on how Member States seek to protect their trade interests. Does the WTO/GATT framework provide an effective solution? This question has assumed more importance with states adapting to the realities of free competition in T&C trade.

As discussed in Chapter 1, an unintended effect of quotas under the MFA was that it restrained competitive suppliers and at the same time allocated quotas to other developing countries. These quotas provided an incubated environment for many developing countries (that possessed no indigenous cotton base but had abundance of cheap labour) to set up their own T&C industries.⁴¹⁷

This observation lends some credence to the view of the EU defending the MFA as the reason behind the existence of T&C in many poor countries.⁴¹⁸

⁴¹⁵ Ibid, Paragraph 269.

⁴¹⁶ Bagchi, above n 151, 253.

⁴¹⁷ Rivoli, above n 6, 152.

⁴¹⁸ GATT, above n 379, 29.

Many developing countries possessed little or no comparative advantage in manufacturing T&C, therefore, competed on the grounds of preferential treatment, low labour costs and proximity to the developed markets (these issues are explored in detail in Chapter 3).⁴¹⁹ These countries prospered under the system since it extended a surety of a guaranteed minimum market access to the EU/US.⁴²⁰ In the absence of such an incubated environment, these countries faced direct and open competition from comparatively more developed producers.⁴²¹ Thus, even within the developing world the end of quotas meant gains for some and loss for others.⁴²²

Tony Heron writes that “the developing country coalition helped to thwart a proposal put forward by the US to replace the MFA with a ‘global’ system of quotas for all T&C imports. Likewise, the developing countries were successful in resisting the attempt by the developed countries to establish a 15-year as opposed to a 10-year transition period for the phasing out of all quotas.”⁴²³

At this juncture, many developing countries began harbouring second thoughts on quota elimination.⁴²⁴ Even though, the concerted efforts of developing countries resulted in the ATC, the initial impression of many developing countries that ending of quotas would greatly benefit them was soon changed with the concerns that China would emerge as the dominant T&C exporter.⁴²⁵ While still under restraints (see Chapter 3 and 4 for detailed discussions), China possessed the industrial capacity to dominate global T&C

⁴¹⁹ Richard Appelbaum, Edna Bonacich & Katie Quan, ‘The End of Apparel Quotas: A Faster Race to the Bottom?’ (Paper 02, UCSB Center for Global Studies, 2005) 9-13; See generally ILO, above n 4; See generally Montfort Mlachila & Yongzheng Yang, ‘The End of Textiles Quotas: A Case Study of the Impact on Bangladesh’ (Working Paper 04/108, IMF, 2004).

⁴²⁰ Rivoli likens the quota system and the guaranteed minimum market access as “...foreign aid for dozens of small countries” (Rivoli, above n 6, 165).

⁴²¹ Heron, above n 365, 11-12.

⁴²² Ibid, 2.

⁴²³ Ibid, 5.

⁴²⁴ See discussion in Rivoli, above n 6, 164-172.

⁴²⁵ In 2002 (one year after Chinese accession to the WTO) China enjoyed 13.5% and 20.6% share of the global textiles and clothing exports respectively (see Heron, above n 365, 7-8); See also Hall, above n 376, 8.

trade, displacing other LDCs and developing countries.⁴²⁶ The issues pertaining to China and the impact on the global T&C trade will be explored later in the thesis.

The 'end is nigh' was trumpeted foremost by the WTO, which issued a case study to this effect. This report attracted sharp criticism from many WTO Members and the media as being one-sided and based on flawed methodology. The critics particularly pointed out to the unbalanced nature of the 'WTO report' reflected by the biased stance it took in favour of the beneficiaries under the MFA (and the purported losers of the ATC).⁴²⁷

Thus, with 1 January 2005 drawing near, both international T&C associations and US based lobby groups attempted to extend quotas.⁴²⁸ The US President George W Bush rejected the proposed extension, declaring that the US government will not support any extension of the quota system.⁴²⁹ Quotas were allowed to lapse.

The consequences of quota expiry forged an unlikely alliance between the industry associations of the developed countries and the LDC base producers. One example of this is the initiative taken by Mauritius, Nepal and Bangladesh in 2004 to call for an emergency WTO meeting to consider the "unintended

⁴²⁶ See for example ILO, above n 4, 8-10; See also Ashe Haté, Shisir Khanal, John Larsen, Paul Smart, Romina Soria, David Zanni, 'The Expiration of the Multi-Fiber Arrangement: An Analysis of the Consequences for South Asia' (Public Affairs 860: Public Affairs Workshop, International Issues, 2005) Robert M. La Follette School of Public Affairs, University of Wisconsin-Madison, 8-11, 22-23, 31; ATMI, 'The China Threat to World Textile and Apparel Trade' <http://cdnet.stpi.org.tw/techroom/report/advmat/china_textile.pdf> 6-7; For a discussion on how Chinese growth in T&C production benefits West African cotton producers see Claire Delpuch, 'EU and US safeguards against Chinese textile exports: What consequences for West African cotton-producing countries?' (MPRA Paper No. 2319, November 2007).

⁴²⁷ The report embarrassed the WTO Secretariat to such an extent that a proviso stating that "*WTO discussion Papers are presented by the authors in a personal capacity and should not in any way be interpreted as reflecting the views of the World Trade Organisation or its Members*" was added to the subsequent versions (See Third World Network, 'WTO Back-Tracking on Textile Study?' <<http://www.twinside.org.sg/title2/5695a.htm>> at 5 February 2008); (the much-maligned report was authored by Kyvik Nordås and is referred to in above n 2).

⁴²⁸ Jane Li, 'MFA Phase out – Impact on Chinese Workers' 52 (July-September 2004) *Asian Labour Update* (Asia Monitor Resource Centre) <http://www.amrc.org.hk/alu_article/multifibre_arrangement/mfa_phase_out_impact_on_chinese_workers> at 21 May 2010.

⁴²⁹ Li, *Ibid*; Hall, above n 376, 9.

negative consequences for vulnerable economies” from the phase out of the T&C quotas on 1 January 2005.⁴³⁰ While the Director General of the WTO seemed to support such a meeting, members did not reach consensus.⁴³¹

The consumers are major beneficiaries of quota expiration through low costs as a result of heightened competition amongst the producers of T&C.⁴³² However, a major concern for many developing nations is the erosion of their productivity and the ability to compete with China and India (holding advantages of production capacity, cheap labour costs, active state support and necessary infrastructure that allows them to offer full package services, quick processing of foreign orders and turnaround times).⁴³³

With the realisation that the end of quotas will not benefit all countries, many developing countries/LDCs issued a united call for promoting ‘fair trade’ in T&C.⁴³⁴ A major example of these united efforts against lifting of quotas is the *Istanbul Declaration Regarding Fair Trade for Textiles and Clothing* (the “Istanbul Declaration”) issued jointly by the US, Mexican and Turkish industry associations in March 2004.⁴³⁵ The Istanbul Declaration called for an extension of the quota restrictions until 31 December 2007 and recommended that during the interim period, “WTO members should undertake a full review of global textile

⁴³⁰ UNCTAD, ‘Assuring Development Gains from the International Trading System and Trade Negotiations: Implications of ATC Termination on 31 December 2004’(TD/B/51/CRP.1) (UNCTAD Trade and Development Board, Fifty First Session, Geneva 4-15 October 2004), 3.

⁴³¹ UNCTAD, *Ibid*; WTO News, ‘WTO DG Consults Members on Possible Emergency Meeting to Discuss Textiles and Clothing Adjustment Challenges’, WTO Press Release No. 384 dated 4 August 2004; See also Hong Kong Trade Development Council (HKTDC), ‘Developments in the Textiles and Clothing Trade: Impact of Quota Elimination from 2005’, 26 January 2005) <<http://www.tdctrade.com/econforum/tdc/tdc050103.htm>> at 6 December 2007.

⁴³² HKTDC estimates that in the US, the removal of quotas as well as import tariffs, would save US \$ 13 Billion in prices paid by the US consumers (See HKTDC, *Ibid*, Paragraph 4).

⁴³³ Hall, above n 376, 12-17; UNDP, ‘Adjusting to a New Era for Textiles and Clothing’, Asia-Pacific Human Development Report 2006, 85-87 & 89; Ira Kalish ‘Quotas End, Uncertainty Continues; Understanding the Impact of the Agreement on Textiles and Clothing’, Deloitte Research Study (2005), 1-5 & 6.

⁴³⁴ See for example the Global Alliance for Fair Textile Trade (GAFTT) <http://www.itkibusa.org/documents/GAFTT--GenevaStrategyMeeting--Oct42005--Declaration--oct05_000.pdf> at 6 May 2010.

⁴³⁵ See generally the Text of the Istanbul Declaration is available online at: <www.fairtextiletrade.org/istanbul/declaration.html> at 21 December 2007; Alternative text of the Istanbul declaration is available at <<http://www.ncto.org/quota/ldcdec.pdf>> at 8 June 2010; See also UNCTAD, above n 430, 3; Hall, above n 376, 9.

*and clothing production, export and market circumstances so as to determine whether to finalize the phase out process on January 1, 2008 or to develop an appropriate alternative arrangement.”*⁴³⁶

The Istanbul Declaration does not disguise its China-specific focus. Specifically, Paragraph 1 states that:

Circumstances associated with the textile and clothing quota integration process...changed dramatically since the adoption of the Uruguay Round and the initiation of the quota phase out process in 1995...the January 2002 admission of the People’s Republic of China into the WTO represents a substantial *and material condition not contemplated* when our countries agreed to the Uruguay Round timetable for the quota phase out. The fact that China will now be treated as a WTO member for purposes of the phase out has irrevocably altered the reasonable transformation of global production and sourcing patterns that the elimination of quotas had originally intended. (emphasis added)

Paragraph 2 further claimed that removal of quotas and would adversely affect “30 Million jobs” worldwide and would also result in monopolisation of the global textiles trade by a few countries. Additionally, Paragraph 3 of states:

...trade in this sector has been compromised by the use of trade distorting practices in a few dominant countries. These practices include deliberate currency undervaluation, state subsidies and the proliferation of non-performing loans and rebate schemes, among others. For example, such trade distorting practices have allowed China to drop prices for textile and apparel products by as much as 75 percent and have given China an *unassailable and unfair advantage* in world markets for textiles and clothing. (emphasis added)

⁴³⁶ See Istanbul Declaration (Ibid). Industry associations and trade groups in Europe, North America, and African countries supported the declaration (Hall, Ibid); see also ‘Istanbul Declaration Wins Endorsement from EUROCOTON’ <<http://www.itkibusa.org/eurocoton.pdf>> at 6 December 2007.

The sponsors of Istanbul Declaration conveniently ignored that China's accession to the WTO was a result of 15 years of painstaking negotiations covering every facet of China's entry into the WTO (including T&C).⁴³⁷ Therefore, it can be argued that the sponsors of the Istanbul Declaration knew the implications of China's accession to the WTO. It is disingenuous for these countries to claim that there was a "*substantial and material*" change in circumstances "*not contemplated*" when the Uruguay Round time table for the quotas phase out was agreed to.

The sponsors of the Istanbul Declaration also ignored the fact that China was not a member of the GATT/WTO when the ATC regime was concluded, and therefore Chinese T&C exports were subjected to substantial restraints.⁴³⁸

Furthermore, the sponsors failed to realise or admit that Chinese T&C faced trade restraints even after China joined the WTO in 2001 e.g. China's Accession Agreement included a special textile safeguard provision (available 7 years after accession i.e. until 31 December 2008) that permits the WTO members to curb imports from China in case of market disruptions caused by Chinese T&C exports.⁴³⁹ Some developing countries have already benefited from restrictions on Chinese T&C.⁴⁴⁰

⁴³⁷ China applied for admission to the GATT (WTO's predecessor) in 1986. The GATT formed a Working Party comprising all interested GATT Contracting Parties to examine this application and negotiate terms for China's accession. With the formation of the WTO in 1995 the trade negotiations were continued under the auspices of a successor WTO Working Party (similarly comprising of all interested WTO members (see Office of the United States Trade Representative (USTR), 'Background Information on China's Accession to the World Trade Organization' dated 11 December 2001 <http://www.ustr.gov/Document_Library/Fact_Sheets/2001/Background_Information_on_China's_Accession_to_the_World_Trade_Organization.html> at 18 December 2007; See generally Thomas Rumbaugh & Nicolas Blancher, 'China: International Trade and WTO Accession' (IMF Working Paper WP/04/36, March 2004).

⁴³⁸ Rumbaugh & Blancher, Ibid, Box.3, 11.

⁴³⁹ See generally WTO, Accession of the People's Republic of China ("China's Accession Agreement"), WTO Document WT/L/432 dated 23 November 2001; See also Paragraph 242 of the Report of the Working Party on Accession of China, WTO Document WT/MIN(01)/3 dated 10 November 2001; See also 'WTO Successfully Concludes Negotiations on China's Entry', WTO Press Release/243 (available online at http://www.wto.org/english/news_e/pr243_e.htm) at 5 November 2007; See also Rumbaugh & Blancher, Ibid, Box.2, 8.

⁴⁴⁰ For example, Pakistan (amongst other developing countries) managed to increase its apparel exports to the US market in all categories in which Chinese-origin products are under quotas (see Mansoor

Additionally, China's Accession Agreement incorporates a unique safeguard provision that enables a WTO member to restrain Chinese exports that causes market disruption.⁴⁴¹ This mechanism is available until 2013 and potentially serves to dilute China's "unassailable" advantage to some extent. This provision also gives countries, fearing overwhelming competition from China, some additional time to adapt.

Moreover, the argument forwarded by the sponsors of Istanbul Declaration justifying continued extension of quotas due to "trade distorting practices" (which includes subsidies) can be countered by the fact that China, under its WTO obligations, is transitioning from a strict state controlled economy towards a market economy.⁴⁴² Paragraph 15 of China's Accession Agreement provides the importing countries an additional alternative to impose anti-dumping duty on imports that are found to be damaging the local industries. Under this provision, any WTO members may invoke "non-market economy" provisions to determine dumping.⁴⁴³ Non-market economy provisions easily allow positive findings of dumping since domestic prices cannot be used as a reference point.⁴⁴⁴ This remedy is available until 2016 (i.e. 15 years after the date of accession)⁴⁴⁵ and provides both the developed and the developing countries with additional market protection alternatives.

The Istanbul Declaration was followed by the Brussels Communiqué in June 2004, issued by the *Istanbul Declaration Partners in the Global Alliance for Fair Trade in Textiles and Clothing*.⁴⁴⁶ Enjoying the support from T&C trade

Ahmad, *Surge in Apparel Exports to the US a Temporary Phenomenon*, (2007) The News <<http://www.thenews.com.pk/print1.asp?id=70287>> at 31 August 2007.

⁴⁴¹ This is referred to as the Transitional Product-Specific Safeguard Mechanism (See Article 16 of China's Accession Agreement).

⁴⁴² UNCTAD, above n 430, 10.

⁴⁴³ Rumbaugh & Blancher, above n 437, Box.2, 8.

⁴⁴⁴ Ibid.

⁴⁴⁵ See Paragraph 15 (d) of China's Accession Agreement.

⁴⁴⁶ NCTO, 'Textile and Clothing Trade Associations from 47 Countries Call for Emergency WTO Meeting to Address Crisis Associated with Expiration of textile and Apparel Quotas' (17 June 2004) <<http://www.ncto.org/newsroom/brussels02.pdf>> at 6 December 2007; UNCTAD, above n 430, Paragraph 7.

associations from 47 countries,⁴⁴⁷ the Brussels Communiqué emphasised adopting “effective remedies to all types of unfair trading practices employed by certain major supplying countries, including currency manipulation, state sponsored subsidies and state provided non-performing loans, among others.”⁴⁴⁸

Not all developing countries and private sector associations supported extending the ATC regime.⁴⁴⁹ Instead, these parties maintained that quotas have only served to stifle export potential of countries and sourcing products at higher prices for retailers.⁴⁵⁰ Accordingly, some developing countries, importers and retailers associations in the US, Canada and Europe welcomed the abolition of quotas and fiercely opposed any continuation of quotas in any form.⁴⁵¹ These countries strongly reacted to the Istanbul Declaration and the Brussels Communiqué by stating that “some people are afraid of competition but the fact is they have had 10 years to adjust.”⁴⁵²

Amongst developing countries, Turkey assumed the lead in calling for a “*Work Program...at the platform of the Council for Trade in Goods*” to review “*global textiles and clothing production, trade and market circumstances after the termination of the ATC.*”⁴⁵³ The Turkish proposals called for assessing the state of trade, prevalent market situation and investigating options for improving competitiveness of countries that relied heavily on the T&C sector.⁴⁵⁴ The proposals and gained popularity amongst many T&C exporters.⁴⁵⁵

⁴⁴⁷ NCTO, Ibid; UNCTAD, Ibid.

⁴⁴⁸ NCTO, Ibid.

⁴⁴⁹ UNCTAD, above n 430, 3-4.

⁴⁵⁰ Ibid, 4.

⁴⁵¹ See for example New York Times, ‘White House Shuns Role on Textile Quotas’, <<http://query.nytimes.com/gst/fullpage.html?res=9D03EFD61730F933A25755C0A9629C8B63&n=Top/Reference/Times%20Topics/Organizations/W/World%20Trade%20Organization>> at 6 April 2010

⁴⁵² New York Times (Ibid); UNCTAD, above n 430, 4.

⁴⁵³ WTO, ‘Issues Related to the Textiles and Clothing Sector: Communication from Turkey’, WTO Document G/C/W/573, 9 March 2007, Paragraph 1.

⁴⁵⁴ Ibid.

⁴⁵⁵ See ‘Initial submission on Post-ATC Adjustment-related Issues from Bangladesh, Dominican Republic, Fiji, Madagascar, Mauritius, Sri Lanka, and Uganda’, WTO Document, G/C/W/496, 30 September 2004; ‘Turkey’s Contribution to the Debate on Post-ATC Related-Issues’, WTO Document, G/C/W/497, 25 October 2004; ‘Tunisia’s submission’ WTO Document Job(05)/31, 11 March 2005; “Issues Related to Trade in Textiles and Clothing: The Perspective of Turkey on the Issues Involved”,

According to Turkey and supporters of the proposals, the termination of the ATC:

...failed to reach its basic aim of levelling playing field for all, as after the expiration of quotas, many developing countries have witnessed their market shares dwindle at unprecedented rates, resulting in closure or contraction of many firms and paving the way for increased unemployment in the sector. Thus, the distribution of the benefits of trade liberalization in these countries had...been uneven.⁴⁵⁶

This necessitated establishing a sector specific Work Program in order:

...to foster a broader understanding of the *unique needs of the textiles and clothing sector*; provide guidance for national and multilateral policies and measures to deal with related issues; and in this context, grant technical advice, practical assistance and support to developing countries; elaborate and implement integrated strategies from global to local level to adjust to new global realities.⁴⁵⁷

(emphasis added)

Turkey's proposals were clearly "China-specific" i.e. the effects of China's exports six months after abolition of quotas were cited as a major cause of concern reinforcing the need for a Work Program.⁴⁵⁸ Turkey also claimed that

WTO Document, G/C/W/522, 30 June 2005; 'Issues Related to the Textiles and Clothing Sector: Communication from Turkey', WTO Document, G/C/W/573, 9 March 2007. For similar proposals by Tunisia see ICTSD Bridges Weekly Trade News Digest, 'US to Impose Textiles Safeguards on China', Vol.9, No. 18, (18 May 2005) <<http://ictsd.org/i/news/bridgesweekly/6124/>>

⁴⁵⁶ WTO, 'Issues Related to the Textiles and Clothing Sector: Communication from Turkey', WTO Document G/C/W/549, 28 April 2006, Paragraph 4.

⁴⁵⁷ Ibid, III (A).

⁴⁵⁸ WTO, above n 461, Paragraph 9. Turkey states in Paragraph 7 of this submission that "according to some estimates, China's share of the EU market is expected to rise over one third. The respective figure is approximately 50 percent for the US market. This situation would come at the expense of other developing countries. As a result, China, already holding about on fifth of the global market in this sector, might have a 150 percent increase in its overall textile and clothing exports or nearly 50 percent of the world marketing in a very short span of time." Turkey further claimed in Paragraph 8 that "combined with sudden surge in imports from China the sharp declines in prices have been experienced

as a result of the increased competition following the demise of quota restraints:

...declines in price of textile and clothing have been accelerated. Should price declines continue, it would result in further deterioration in developing countries' terms of trade. This situation poses great challenges in terms of sustainable development and on the conditions for fair competition.⁴⁵⁹

Turkey made express reference to the China-specific restraints and stated that it had concerns over the "adequacy" of these initiatives given the "production and export potential of China in textile and clothing."⁴⁶⁰

In a bid to justify a sector-specific Work Program, Turkey reiterated its earlier proposals. Turkey placed reliance on time elapsed since termination of the ATC, claiming that it provides a "reliable and adequate amount of data on which a thorough analysis can be built."⁴⁶¹ The stated aim behind the Work Program was to:

...provide the WTO members with tangible and dependable data demonstrating...the effects of the quota phase out on production, investment and trade in the textiles and clothing sectors. It will supply a more cross-cutting thematic discussion by putting forth the accurate analysis of the current circumstances. Policy options, technical advice and practical assistance granted in scope of the Work Program will be of great help to many countries that are in need of well-established readjustment strategies.⁴⁶²

in the first quarter of 2005. The volume of t-shirt imports originating from China has risen by 187 percent and the prices have decreased by 36 percent in the EU market."

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid, Paragraph 10.

⁴⁶¹ WTO, above n 455, Paragraph 4.

⁴⁶² Ibid.

The outline for the floated by Turkey covers the history of T&C trade, trade and competitiveness before and after termination of the ATC, prospective developments in the T&C sector and policy options for developing countries to deal with challenges posed by free trade in textiles.⁴⁶³ Turkey's proposals also envision a greater role of international organisations like the World Bank (WB) and International Monetary Fund (IMF) for "diversification of economies relying heavily on the textiles and clothing sector."⁴⁶⁴

Turkey further floated its proposals in March 2007 during Non-Agricultural Market Access (NAMA) negotiations aimed at reducing tariff and non-tariff barriers for industrial products.⁴⁶⁵ Turkey proposed tariff "harmonisation" in the T&C sector based on a Uruguay Round-era agreement on "harmonising" chemical tariffs as precedent.⁴⁶⁶ The Turkish proposal essentially calls for separate sectoral negotiations for T&C products within the NAMA talks which would allow the WTO members to negotiate different treatment for T&C products as compared to other products that would be covered under the general formula of tariff reductions.⁴⁶⁷

According to Turkey's proposals, all producers would have to be part of the sectoral initiative for it to be beneficial for "all developing countries."⁴⁶⁸ Unlike other sectors in NAMA, where the aim of negotiations is to achieve deep uniform cuts in tariffs or even elimination of tariffs, Turkey's proposals allow some type of textiles to be protected from full application of NAMA tariff cuts whilst some products would be subjected to deeper cuts (more than the tariff

⁴⁶³ WTO, above n 455, 'Outline for the Work Program', (II) A.

⁴⁶⁴ Ibid, Paragraph 1.

⁴⁶⁵ See Turkey's 2007 proposals referred to in WTO, above n 453 & 455; See also ICTSD Bridges, 'New Proposals But No Results in NAMA Negotiations' Year 10, No.2 (March-April 2006) 14; ICTSD Bridges, 'Turkey Proposes 'Reverse' Sectoral Initiative on Textiles', Year 10, No.2 (March-April 2006) 14.

⁴⁶⁶ WTO, Ibid; ICTSD Bridges, Ibid; See also Fibre2Fashion, 'Switzerland: Turkey Decision to Separate Textiles from NAMA Draws Flak', (30 March 2006) <http://www.fibre2fashion.com/News/textile-news/newsdetails.aspx?news_id=14816> at 29 May 2010. This agreement was known as the *Chemical Tariff Harmonisation Agreement* (CTHA).

⁴⁶⁷ NCTO, 'Textile Trade Associations Endorse Turkey's Proposal for Separate Textile Negotiations within WTO NAMA Talks', 23 March 2005, <<http://www.ncto.org/newsroom/032306sectoral.pdf>> at 21 May 2010.

⁴⁶⁸ Fibre2Fashion, above n 466.

cut formula).⁴⁶⁹ WTO Director-General, Pascal Lamy, expressed his “surprise” with regard to this proposal and termed it as a “new animal – a NAMA minus – in a negotiation where we have always structured the thing so that there may be NAMA-plus.”⁴⁷⁰

Establishing a T&C specific Work Program under the WTO auspices was a highly controversial proposal and it revealed deep divisions amongst the developing countries.⁴⁷¹ Turkey strongly maintained that the proposed textile study should not be viewed as a threat to the multilateral trading system and would not carry adverse consequences for any WTO member.⁴⁷² Industry associations in developed and developing countries supported the Turkish proposals.⁴⁷³ Those countries that benefited from preferential access to the developed markets and who viewed any tariff cuts suspiciously (since this could affect the value of their preferences) were particularly supportive.⁴⁷⁴ Any cuts in global tariffs could leave their products uncompetitive in the global market.⁴⁷⁵

Turkey’s proposals of selective tariff cuts led to intense lobbying by industry associations in developed countries (particularly in the US).⁴⁷⁶ While the US and Japan tacitly supported the proposals, the EU preferred a more direct approach by advocating a standard sectoral agreement that aims at reducing textiles tariffs to near zero level.⁴⁷⁷

⁴⁶⁹ ICTSD Bridges, above n 465, 14; Fibre2Fashion, Ibid.

⁴⁷⁰ ICTSD Bridges, Ibid; Fibre2Fashion, Ibid.

⁴⁷¹ ICTSD Bridges Weekly Trade News Digest, ‘China Calls Turkish Proposal Unacceptable’, Vol.9, No.26 (20 July 2005) <<http://www.ictsd.org/weekly/05-07-20/wtoinbrief.htm>> at 28 November 2009; See also ICTSD Bridges Weekly Trade News Digest, ‘Developing Country Textiles Demands Clash at Goods Council’, Vol.9, No.22 (22 June 2005) <<http://www.ictsd.org/weekly/05-06-22/wtoinbrief.htm>> at 28 November 2009.

⁴⁷² WTO News, ‘Goods Council Approves Waiver for Mongolia, US’, 9 July 2009 <http://www.wto.org/english/news_e/news07_e/good_counc_9july07_e.htm> at 28 November 2009.

⁴⁷³ Jordan, Mauritius, Mongolia, Kenya, Sri Lanka and Tunisia have expressed support for the initiative. These countries are concerned about increased competition from better placed competitors in the global textiles market (ICTSD Bridges, above n 465, 14).

⁴⁷⁴ ICTSD Bridges, above n 465, 14 (Ibid); Fibre2Fashion, above n 466.

⁴⁷⁵ ICTSD Bridges, Ibid; Fibre2Fashion, Ibid.

⁴⁷⁶ ICTSD Bridges, Ibid.

⁴⁷⁷ ICTSD Bridges, Ibid.

The main opponents of Turkey's proposal were major T&C exporters previously constrained by quotas.⁴⁷⁸ Their argument is that T&C are collectively treated as industrial goods at the WTO level and therefore, should not be treated as an exception to world trade.⁴⁷⁹ In their view, specialised agencies such as the World Bank and IMF are the appropriate organisations that are best able to deal with post-ATC adjustment issues.⁴⁸⁰

Understandably, China termed these proposals as "one-sided" and "unacceptable."⁴⁸¹ China maintained that by employing dubious figures and hasty generalisations, it was being made a scapegoat.⁴⁸² China also noted that Turkey's own textiles exports grew in several markets and had become the second largest textile exporter to the EU with 14% market share.⁴⁸³

China forcefully objected to any continued work in the CTG along the lines of the Turkey's proposed 'Work Program', contending that the quota system was discriminatory and had in the past affected the Chinese people.⁴⁸⁴ China further stated that WTO's job is to promote competition, not to stabilise market prices.⁴⁸⁵ Brazil, Chile, Hong Kong, India and Pakistan all supported China in opposing special measures for particular industries and undermining the integration of textiles into the WTO framework.⁴⁸⁶

Turkey's proposals and the resulting furore revealed conflicting interests within developing countries/LDCs (who were previously united in calling for an end to the quota system). The essence of this conflict is whether T&C is a 'unique' industry and whether it merits a distinct trading regime?

⁴⁷⁸ Michiko Hayashi, above n 2, 9.

⁴⁷⁹ Ibid, 9-10.

⁴⁸⁰ Ibid, 9-10.

⁴⁸¹ ICTSD Bridges, above n 471.

⁴⁸² Ibid.

⁴⁸³ Ibid.

⁴⁸⁴ ICTSD Bridges, above n 471.

⁴⁸⁵ Ibid.

⁴⁸⁶ ICTSD Bridges, Ibid; Fibre2Fashion, above n 466.

The use of the expression “unique needs of the textiles and clothing sector”⁴⁸⁷ in Turkey’s submissions before the WTO CTG indicates that, in spite of quota elimination, there are still countries who insist that the T&C sector is ‘unique’ and has its own particular dynamics. This insistence not only goes against the efforts of integrating T&C trade into the WTO/GATT framework but also implies that certain countries are still willing to maintain a system that is essentially artificial and discriminatory mainly because that is the only way their T&C industries can thrive.

Turkey’s submissions before the WTO CTG also cite that increased competition in the quota free era meant substantial decline in prices which would eventually result in “further deterioration in developing countries’ terms of trade.”⁴⁸⁸ Turkey’s claim (and that of its supporters) that this would pose a challenge in terms of sustainable development and on conditions of fair competition in global textiles trade implies that certain countries are only willing to compete in the global T&C market if prices are artificially determined by quotas and preferential trade rather than by market forces where, obviously, China and a few other nations hold the advantage.

2.4 CONCLUSION

A noticeable trend in post-expiry debate on quotas (examined above) is that countries that possess a cotton base and comparatively better developed T&C manufacturing infrastructure like China, India and Pakistan have generally opposed Turkey’s proposals. These countries were willing to compete in a quota-free market (although both Pakistan and India attempted to take the bilateral FTA route as well).⁴⁸⁹ On the other hand stand countries that apprehend dominance of China and a few other nations in global T&C trade, if there is no sector-specific arrangement governing T&C trade.

⁴⁸⁷ WTO, above n 456, Paragraph 1.

⁴⁸⁸ Ibid, Paragraph 9.

⁴⁸⁹ See for example Dawn, ‘Pakistan seeks UK help for FTA with EU’ (23 March 2010) <<http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/business/13+pakistan-seeks-uk-help-for-fta-with-eu-330-za-04>> at 21 May 2010; see also Rivoli, above n 6, 158-161; see also New Europe, ‘Pros and Cons of Promoting India-EU textiles trade’ (4 November 2006) <<http://www.neurope.eu/articles/66532.php>> at 21 May 2010.

In a sensitive sector such as T&C there cannot be a “one size fits all” solution. The solution to the problems of the T&C sector (whether real or imagined) are further complicated by conflicting socio-economic and political concerns. These concerns take many forms e.g. which nation’s economy should gain at another’s expense? To what extent can policymakers of the developed countries justify trade policies that shield their domestic industries from effects of increased imports? What is the extent of the developed countries obligations to assist developing countries in their economic growth?

In addition to the above, there are political concerns such as opening or restricting domestic markets of developed countries to imports from developing countries and the ramifications it carries. Other problems associated with this sector are social issues of human and labour rights, employment of women and labour working conditions. Since T&C is a global industry, the policies made and maintained by governments have far reaching consequences in human terms. In this regard, a critical question is that which nation’s workers, with few employment alternatives available to them, should gain or lose their employment at the expense of others i.e. should workers in the US lose their jobs so that individuals in Vietnam or India can be employed? These questions and concerns have underpinned all regimes that have existed in the Post-World War II period to the end of the ATC.

After the integration of the T&C trade into the WTO system, the question now is how conflicting interests would be balanced in an area of world trade that holds critical importance for developing countries? Trade in T&C in the quota free era is in a constant state of flux. The results, facts and statistics available after five years of quota-free trade are mixed. This area is expected to undergo numerous changes as countries scramble in a bid to adapt themselves to the changing trade environment. The following two chapters highlight major issues affecting global trade in T&C and the performance, effects and changes in the period after the elimination of quotas.

CHAPTER 3

ISSUES AFFECTING GLOBAL TEXTILES & CLOTHING TRADE

3.1 INTRODUCTION

"...textile jobs are not going to China; textile jobs are just going, period."

(Pietra Rivoli)⁴⁹⁰

Since expiry of quotas, there has been constant growth in global T&C trade accompanied by a noticeable shift in trading patterns. According to WTO statistics, the combined global T&C exports increased from US \$ 453 billion in 2004 to US \$ 479 billion in 2005.⁴⁹¹ By 2008, global T&C exports increased to US \$ 612.1 billion (which amounted to 3.9% of world merchandise trade).⁴⁹²

Compared with other sectors of global trade, T&C ranks below in terms of share in global exports.⁴⁹³ However, these statistics obscure the real importance of global T&C trade for developing countries/LDCs. For such countries, T&C remains a critical source of employment, socio-economic growth and industrial development.

As the history demonstrates, this sector has been subject to extensive regulation through quotas and unilateral restraints for many decades. After expiry of quotas, developing countries/LDCs experienced considerable difficulties in transitioning back to a liberalised trading regime.

⁴⁹⁰ Rivoli, above n 6, 142.

⁴⁹¹ WTO, International Trade Statistics 2005, <http://www.wto.org/english/res_e/statistics_e/its2005_e/its05_merch_trade_product_e.pdf> at 25 June 2010; See also WTO International Trade Statistics 2006, above n 4.

⁴⁹² WTO, International Trade Statistics 2009, above n 4.

⁴⁹³ According to WTO International trade statistics 2009, the share of Iron and steel, Chemicals, office and telecom equipment, automotive products in world merchandise trade for year 2008 were 3.7%, 10.9%, 9.9% and 7.8% respectively (Ibid).

Chapter 2 discussed the mixed developing country reactions following quota expiration (a far cry from the time the ATC was concluded). The ATC was initially hailed as a major breakthrough for developing countries/LDCs since these countries unanimously viewed quotas as an impediment to growth of their T&C industries. Chapter 2 also highlights the effects pre-quota expiry predictions had on some developing countries/LDCs. The very thought of a few countries (especially China) dominating the world T&C market resulted in general panic. The main concern was that China's growth could greatly affect their exports and industrial growth.

In reality, the predicted apocalypse did not transpire. Some of the perceived victims actually performed quite well after quotas expired, while some of the predicted beneficiaries only managed lacklustre growth or even declines in some segments of the T&C trade.⁴⁹⁴ However, there is no denying the fact that several countries did experience negative trends in their T&C manufacturing and exports, as per the predictions. Some of these exporters started experiencing declines in their exports even before expiration of quotas (the performance of main Asian exporters will be examined in Chapter 4).

Predicting post-ATC trends and possible ramifications on different economies is difficult due to various factors and contingencies involved. The sensitive and unpredictable nature of T&C trade, combined with the crucial importance this sector carries for developing countries/LDCs, means that for many countries future adjustment planning is a complicated proposition.

With Chapters 1 & 2 providing the necessary historical background, Chapter 3 examines major issues affecting global T&C trade. This lays the foundations

⁴⁹⁴ Hayashi, above n 2, 2; See generally Munir Ahmad, 'Trade in Textiles and Clothing – Reflections from an Asian Perspective' (2nd Asian Textile Conference, New Delhi, 18-19 January 2007). <<http://www.itcb.org/Documents/ITCB-MI54.pdf>> at 22 January 2008; See also Munir Ahmad, 'Textiles and Clothing: Challenges in the New Phase', Paper presented at the Geneva dialogue on Trade Policy, held by UNDP Asia Trade and Investment Initiative and the South Centre, Yverdon-les-Bains, 30 September 2005) <<http://www.itcb.org/Documents/ITCB-MI50b.pdf>> at 22 January 2008.

for Chapter 4, which examines the performance of major Asian producers during the transition period and after elimination of quotas.

3.2 ISSUES IN TEXTILES & CLOTHING TRADE

Assessing the post-ATC impact of quotas is made difficult by the varied effects quotas carried for countries.⁴⁹⁵ Some products and countries were highly restricted by quotas, which affected the quantity of specific categories of textiles products they could export.⁴⁹⁶

For many developing countries/LDCs, the receipt of quotas was critical in the export production of T&C.⁴⁹⁷ This is highlighted by the shift in production patterns as countries reached their quotas on designated products.⁴⁹⁸ As a product attracted quotas, manufacturers were either induced into upgrading their infrastructure to produce higher value-added products (as was the case with Asian NICs) or simply shift to less restrained categories.⁴⁹⁹ Since developing countries/LDCs often allocated quotas on the basis of past export performance, this further induced manufacturers to tap into unrestricted markets (even when doing so would not be profitable) in order to increase quota allotment from previous years.⁵⁰⁰

⁴⁹⁵ Richard P. Appelbaum, 'Assessing the Impact of the Phasing out of the Agreement on Textiles and Clothing on Apparel Exports on the Least Developed and Developing Countries', (Paper 05, University of California Santa Barbara (UCSB) Center for Global Studies, 2004) 10.

⁴⁹⁶ Ibid.

⁴⁹⁷ Typical factors involved in global textile production and export include labour costs, quality of products, productivity of the producer, time-to-market, reliability of the producer to meet foreign orders and the ability to offer full-package production to foreign buyers (Ibid, 6).

⁴⁹⁸ Weaver & Winakur, above n 235, 321; Appelbaum, Ibid.

⁴⁹⁹ Quotas often encouraged industrial upgrade in various quota-restrained countries by moving from low quality, mass produced clothing products to the higher quality value added production that were less quota restrained. Hong Kong, Taiwan and South Korea are examples of producers that have ventured successfully into the higher quality value added segment (see Appelbaum, Ibid, 6-7). At the same time some producers that experienced quick growth in clothing exports, attracted substantial quota restrictions in certain categories e.g. in 2001, 53.1% of the US \$ 24.4 billion clothing exports from Asia to the US market was constrained under quotas, including 58.9% of China's US \$ 6.2 Billion in exports. On the other hand, only 14% of exports from the Caribbean producers, 13.4% of sub-Saharan AGOA exports and 0.5% of NAFTA origin exports to the US were constrained (Source: Nathan Associates, 'Changes in the Global Trade Rules for T&C: Implications for Developing Countries' (20 November 2002), Figure 4

<[http://www.nathaninc.com/NATHAN/files/ccPageContentdocfilename145825705546TCB_Textiles_\(final\).pdf](http://www.nathaninc.com/NATHAN/files/ccPageContentdocfilename145825705546TCB_Textiles_(final).pdf)> at 21 January 2008); See also Appelbaum, above n 2, 12.

⁵⁰⁰ Appelbaum, above n 495, 6.

The allocation of quotas in developing countries increased the cost of production and became a cost of doing business.⁵⁰¹ Imposition of quotas by developed countries resulted in “quota rent”⁵⁰² which was captured by the exporters that were allocated the quota.⁵⁰³ These quotas were sold and the rent accrued to the party that had the right to sell the quota (which may be the government of the exporting country or an exporter itself).⁵⁰⁴ In relation to unrestricted goods, quotas caused the quantity of restricted products to increase resulting in a price increase.⁵⁰⁵

Another effect of the quota system was that many countries gained access to markets, which they otherwise would not have achieved on a competition basis.⁵⁰⁶ Therefore, one possible after effect of quota elimination would be consolidation of production into larger companies and smaller number of supplying countries because of the economies of scale that can be achieved.⁵⁰⁷

In addition to the consolidation of production, the ending of quotas would also affect sourcing patterns of large retailers and manufacturing brands based in developed countries.⁵⁰⁸ These large corporations dominate distribution in the clothing segment of developed countries (which is the largest in the world and absorbs about a third of all imports).⁵⁰⁹ The strategy pursued by these large

⁵⁰¹ Ibid, 7.

⁵⁰² MSN Encarta defines quota rents as “profits made by companies that are allocated the rights to import goods that are subject to quotas and are therefore artificially scarce.” ITC Online defines this as “the increase in profits that accrue to an import dealer (under an import quota) or an exporting firm (under an export quota or voluntary restraint agreement). Quota rents result from the effect of a quota in raising prices in the importing country above the competitive equilibrium level as market supply is reduced.”

⁵⁰³ Appelbaum, above n 495, 7.

⁵⁰⁴ Ibid, 7.

⁵⁰⁵ See generally Sanjay Kathuria, Will Martin & Anjali Bhardwaj, ‘Implications for South Asian Countries of Abolishing the Multifibre Arrangement’ (Policy Research Working Paper 2721, World Bank, 2001) referred to by Appelbaum, Ibid, 7.

⁵⁰⁶ Pre-hearing brief by Laura Jones, Executive Director of United States Association of Importers of Textile and Clothing (USA-ITA) to USITC Investigation 332-448, ‘Textile and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the US’ (Washington DC, USITC, 22 January 2003); Kalish, above n 433, 9.

⁵⁰⁷ USITC, Ibid; Kalish Ibid, 9.

⁵⁰⁸ Appelbaum et al, above n 419, 7-8.

⁵⁰⁹ Haté et al, above n 426, 29.

retail corporations after quota expiry involves streamlining their sourcing process by procuring only from select countries.⁵¹⁰

In case of clothing trade after quotas, the USITC correctly predicted in 2003 that China would become the “supplier of choice” for US retailers because “of its ability to make almost any type of textile and clothing product at any quality level at a competitive price.”⁵¹¹ The USITC further stated that other “second-tier” suppliers would be looked upon by major foreign retailers to meet “those needs that are not met by the first-tier suppliers.”⁵¹²

Since quotas guaranteed a minimum market access, many producers that did not possess comparative advantage competed solely on the basis of lower wages and reduced cost of production.⁵¹³ Immediately after ending of quotas, these producers further reduced wages in order to stay competitive.⁵¹⁴ This weakened labour standards and carries profound socio-economic repercussions for workers surviving on already low wages (This issue will be further discussed in this chapter and in Chapter 4).

Another illustration of the varied effects of the quota system is the restrictive effect on countries possessing comparative advantage. This created ‘niche’ opportunities for generally less developed economies, which took advantage of the restrictions imposed upon the comparatively more developed producers.⁵¹⁵ Therefore, once these ‘advantageous’ restrictions were eliminated, these countries faced severe competition from the established producers in the sector that were previously restrained under quotas. Thus,

⁵¹⁰ Haté et al, Ibid; Appelbaum, above n 495, 7.

⁵¹¹ USITC, above n 506, xi & xii.

⁵¹² Ibid.

⁵¹³ Appelbaum et al, above n 419, 9-13; See generally Montfort & Yang, above n 419.

⁵¹⁴ Appelbaum, Ibid; Oxfam, ‘Stitched Up: How Rich-Country Protectionism in Textiles and Clothing Trade Prevents Poverty Alleviation’, Oxfam Briefing Paper No.60 (2004) http://www.oxfam.org.uk/what_we_do/issues/trade/downloads/bp60_textiles.pdf at 24 May 2010.

⁵¹⁵ Heron, above n 365, 2.

quota expiry produced both 'winners' and 'losers' within the ranks of developing countries/LDCs.⁵¹⁶

The main effects trade liberalisation after quotas are felt by various domestic groups both in the developed and the developing world. The gains arising from free (or freer) trade are not equally distributed amongst various segments of the population and some groups incur significant losses.⁵¹⁷ The Stolper-Samuelson theorem is one theory that attempts to identify and predict the winners and losers when any economy is liberalised (see the Introduction).

Briefly, the Stolper-Samuelson theorem surmises that import protection increases real income of owners of the economy's relatively scarce factors at the cost of owners of the relatively abundant factors, who experience a fall in their real income under protectionist policies.⁵¹⁸ Therefore, the owners of the scarce factors would oppose trade liberalisation while the owners of abundant factors would likely be in favour of free trade policies.⁵¹⁹

In other words, T&C industries in developed countries will oppose trade liberalisation whilst industries that can benefit from supply of cheap labour and/or raw materials will be in favour of trade liberalisation. An excellent example highlighted by Rivoli is the competing stance of the US textiles industry versus the US retail industries.⁵²⁰

Thus for many T&C manufacturers in developed countries, the end of quotas may act as the proverbial final nail in the coffin. However, developed countries continue to retain their ability to innovate through superior research and development. Therefore, developed countries may continue to retain

⁵¹⁶ Ibid, 2.

⁵¹⁷ Moshe Hirsch, 'International Trade Law, Political Economy and Rules of Origin; A Plea for a Reform of the WTO Regime on Rules of Origin' (2002) 36 (2) *Journal of World Trade* 171, 172.

⁵¹⁸ Stolper & Samuelson, above n 111, 66; Hirsch, Ibid.

⁵¹⁹ Stopler & Samuelson, Ibid; Bhala, above n 8, 65-66.

⁵²⁰ See generally Rivoli, above n 6, 111-118, 122-127, 135-138, 148-152, 158-161.

comparative advantage in some specialist segments of T&C industries such as technical textiles, industrial textiles and niche value clothing.

Several analysts have commented on the utility of quotas for developed countries e.g. Richard Appelbaum considers protection of jobs in the importing countries to be the very reason for the existence of quotas.⁵²¹ However, Pietra Rivoli points out that it is erroneous to think that US textiles jobs are being lost to China, which actually lost almost ten times more jobs during the 1995 to 2002 period.⁵²² Rivoli writes that job losses in the Chinese textiles sector were the most severe amongst any of its industries.⁵²³ The reason cited by Rivoli is rapid advancement in industrial technology and increased labour productivity.⁵²⁴

The US textile industry view was that it was a 'pawn' in the trade off for concessions in other areas prioritised by the US government during the Uruguay Round.⁵²⁵ This view is mirrored by Hoekman and Kostecki who write that there was "An implicit link was established between the demands by the US and the EU to address issues such as services and TRIPs in the Uruguay Round, and the desire of many developing countries to see an improvement in the market access conditions for their manufactured exports, in particular clothing."⁵²⁶

This argument is not without merit since ending the long struggle of developing countries to get rid of quotas meant accepting demands of

⁵²¹ Appelbaum cites IMF-World Bank figures which estimate that 19 million jobs in developing countries may have been lost due to quota restrictions under the MFA. These figures further cite that the export revenue loss to developing countries and LDCs due to quotas alone is around US \$ 22.3 Billion and that protecting one job in the Industrialised countries causes 35 jobs to be lost in developing countries (See Appelbaum, above n 495, 7).

⁵²² Rivoli, above n 6, 142.

⁵²³ Ibid.

⁵²⁴ Ibid.

⁵²⁵ Dickerson, above n 6, 363.

⁵²⁶ Hoekman & Kostecki, above n 3, 229.

developed countries in exchange for substantial new obligations in intellectual property rights and services.⁵²⁷

Prior to quota expiry, the following were cited as “mitigating” factors in global T&C trade:⁵²⁸

- Eliminating quotas will increase the importance of geographical proximity (enabling quick turnaround and reduced delivery times) to the EU/US markets, especially in clothing. This will increase the attractiveness and **importance of regional trading blocs** such as ASEAN, NAFTA, EU and CAFTA .⁵²⁹
- **Favourable tariff treatment** will play an important role in quota free trading environment since the end of quotas shifts the regulatory burdens onto tariffs.⁵³⁰ This bolsters the importance of preferential trade agreements especially FTAs and GSP schemes.
- With the phasing out of quotas, the importing countries (especially the EU and the US) may **increase use of anti-dumping measures** as a market control mechanism. Historically, developed countries have been heavy users of anti-dumping measures in the past.⁵³¹ Usually, most developing countries/LDCs accept anti-dumping duties as *fait accompli* rather than

⁵²⁷ Munir Ahmad, above n 494, 2.

⁵²⁸ Appelbaum, above n 495, 12-14; Appelbaum, above n 2, 16-17.

⁵²⁹ Rubens Ricupero, ‘Will All Developing Countries Benefit Equally From Textiles and Clothing Liberalization?’ presentation to the EU Directorate General on Trade, prepared for the Conference on ‘The Future of Textiles and Clothing trade After 2005’ (Brussels, 5-6 May 2003) <<http://trade-info.cec.eu.int/textiles/documents/109.doc>> at 31 January 2008; See also H.A. Khan, ‘Will the Benefits of Quota Elimination Be Spread Evenly? Strategies for Industrial Restructuring’ presentation to the EU Directorate General on Trade, prepared for the Conference on ‘The Future of Textiles and Clothing trade After 2005’ (Brussels, 5-6 May 2003) <<http://trade-info.cec.eu.int/textiles/documents/149.doc>> at 31 January 2008.

⁵³⁰ Appelbaum, above n 2, 17.

⁵³¹ From 1994 to 2001, the EC (predecessor of the EU) initiated 64 anti-dumping actions in the textiles sector, 57 of which were targeted against T&C exports of developing countries (ITCB, ‘Anti-Dumping Actions in the Area of Textiles and Clothing: Developing Members’ Experiences and Concerns’, ITCB Submission to the WTO Negotiating Group on Rules (February 2003); See also H.E.K.M Chandrashekhar, presentation by the Chairman of the ITCB to the to the EU Directorate General on Trade at the Conference on ‘The Future of Textiles and Clothing trade After 2004’ (Brussels, 5-6 May 2003) <<http://trade-nfo.cec.eu.int/textiles/documents/142.pdf>> at 31 January 2008.

challenge the measure in the WTO DSB (this issue will be further explored in Chapter 5).

- China's dominant position in manufacturing T&C manufacturers attracted country-specific **safeguard** provisions designed to protect the importing economy from possible "market disruptions."⁵³² Chinese T&C exports faced TS until 2008 (see Chapters 4 and 6 for further discussions). China remains under the Product Specific Safeguards (PSS) until 2013. After quota expiry, the TS on Chinese exports allowed some countries to stay artificially competitive (see Chapter 4 for case studies).
- With the **gradual fading of the T&C industries in developed countries** and the consequent decline in their influence, **large retailers in importing countries** have emerged as **key players** in the developed economies. These retailers were predicted to pursue long term relationships with major suppliers.⁵³³ As quotas expired, the balance shifted in favour of large multinationals that operate factories under contracts with retail corporations.⁵³⁴ The predicted effect of this was that retail corporations would begin to source exclusively from selected Asian producers, thereby eliminating smaller competitors (such as clothing manufacturing centres in the Caribbean Basin).⁵³⁵ This could polarise T&C production in the hands of a few giant corporations operating at global level.⁵³⁶

The above factors affecting the level of competition alongside other pertinent policy issues would be further explored in this chapter. The actual effects on countries after five years without quotas (as evident by the available statistics, analyses and academic literature) will be covered in Chapter 4.

⁵³² Appelbaum, above n 2, 17.

⁵³³ Peter McGrath, Chairman of the Board of USA ITA (US Association of Importers of T&C) testimony before the USITC (see USITC, above n 506).

⁵³⁴ Appelbaum, above n 495, 14.

⁵³⁵ Tony Heron, 'An Unravelling development Strategy? Garment Assembly in the Caribbean Basin after the Multifibre Arrangement' (2006) 25 (2) *Bulletin of Latin American Research* 264, 276; See also Appelbaum, Ibid.

⁵³⁶ Heron, Ibid; Appelbaum, Ibid.

3.2.1 The Impact of Rules of Origin

3.2.1.1 Overview

In international trade, countries often deliberately structure their policies that divert trading gains away from their rivals and in favour of their allies.⁵³⁷ Foreign trade policies are often discriminatory and are based on considerations other than economics.⁵³⁸ The underlying rationale of discriminating between trading partners is based on foreign economic policy reasoning: *the benefits of free trade are not to be accorded to all states*.⁵³⁹

Therefore, in order for a “discriminatory” trade regime to operate, a differentiating mechanism is required to identify the origin of the products entering into the commerce of a country.⁵⁴⁰ Such a mechanism is commonly referred to as the Rules of Origin (ROO). Countries that maintain a discriminatory trade regime employ ROO to treat similar imported goods differently.

Thus, ROO enables the importing country to determine the origin of a product. Once the origin of an imported product is known, the importing country can apply any country or sector-specific treatment on the imported product (which may range from preferential treatment such as reduced tariffs or restrictive treatment such as quotas, increased tariffs or antidumping duties). ROO are a necessary instrument of preferential trade but are vulnerable to protectionist misuse.

ROO are generally classified into preferential and non-preferential rules. Preferential ROO are employed to determine if a product originates from a preference receiving country or a trading area. If a product originates in a

⁵³⁷ John Coyle, ‘Rules of Origin as Instruments of Foreign Economic Policy: An Analysis of the Integrated Sourcing Initiative in the US – Singapore free Trade Agreements’ (2004) 29 *The Yale Journal of International Law* 545, 546.

⁵³⁸ Ibid.

⁵³⁹ Hirsch, above n 517, 176.

⁵⁴⁰ Hirsch, Ibid, 171; Joseph LaNassa III, ‘Rules of Origin and the Uruguay Round’s Effectiveness in Harmonizing and Regulating them’ (1996) 90 *American Journal of International Law* 625.

preference receiving country or trading area, it qualifies to enter the importing country on better terms than competing products from other exporters. Since preferential ROO enable countries to discriminate between similar products from different countries,⁵⁴¹ the recent proliferation of preferential trading agreements (considered further below) has increased critical focus on ROO.

Non-preferential ROO are used for purposes such as enforcement of product and country-specific trade restrictions that increase the cost of or restrict or prevent entry into market (examples of restrictive trade practices that require application of non-preferential ROO are quotas, countervailing duties, VERs, anti-dumping duties, country of origin marking requirements, drawback programs and economic sanctions).⁵⁴²

In the absence of an effective ROO regime, imported goods from non-member states could enter the commerce of a country through another member country with lowest tariff and be re-exported to other countries that are members of a free trade. With passage of time, this trade pattern forces countries with higher tariff levels to lower their tariffs so that the lower tariff levels maintained by other states can be matched. However, the varying trade tariffs, induces the free trade area members to adopt unified external tariffs i.e. to form a customs union.⁵⁴³ The operation of ROO acts as a deterring factor by not allowing duty free movements of products manufactured in the non-member states among the member states of the free trade area.⁵⁴⁴

⁵⁴¹ On the GATT exception for RTA's see GATT Article XXIV that allows formation of Free Trade Areas and Customs Unions as long as the duties and "other regulations of commerce" applied by the members are not more restrictive than those applied prior to formation of the free trade area (LaNassa, Ibid, 626)

⁵⁴² Hirsch, above n 517, 176.

⁵⁴³ Ibid.

⁵⁴⁴ Kala Krishna & Anne Kruger, *Implementing Free Trade Areas: Rules of Origin and Hidden Protection* (Jim Levinson, Alan Deardroff and Robert Stern, Eds.) in *New Directions in International Trade* (Ann Arbor, University of Michigan Press, 1995), 149, 150-151 cited by Hirsch, Ibid.

The practice of routing exports through a preference receiving country by a non-preference receiving country is generally referred to as ‘trade deflection’⁵⁴⁵ and it is exactly this practice that the preferential ROO are designed to counter.⁵⁴⁶

3.2.1.2 Rules of Origin in International Textiles & Clothing Trade

In the context of the T&C sector, trade deflection occurs when a corporation engages in minimal processing or assembly of clothing products in a preference receiving country in order to take advantage of the trade preferences.⁵⁴⁷ Trade deflection is one the major reasons that has made the clothing industry “footloose”⁵⁴⁸, a term used to describe a situation where producers from non-recipient countries specialising in clothing assembly rather than manufacturing, set up “export platforms” to take advantage of preferential treatment accorded to preference receiving countries.⁵⁴⁹ Temporarily, this may bring investment to a poor country. However, the same investors shift their operations to another country if there is any change in external policies (such as ending of quotas) or if there are better terms of preferential access available elsewhere.⁵⁵⁰ This issue would be further explored in this chapter at a later stage.

Determining origin of T&C products is not particularly difficult if products are completely manufactured in one country. However, given the modern realities of production (particularly clothing), where multiple processes (including the finishing operations such as, stitching, labelling and packaging) take place in different countries as part of the Outward Processing Programmes (OPP),

⁵⁴⁵ Denis Audet, ‘Smooth as Silk? A First Look at the Post MFA Textiles and Clothing Landscape’ (2007) 10 *Journal of International Economic Law* 267, 275.

⁵⁴⁶ LaNassa, above n 540, 627

⁵⁴⁷ Ibid.

⁵⁴⁸ Heron, above n 365, 16; Nordås, above n 2, 1.

⁵⁴⁹ Heron, Ibid; Nordås, Ibid.

⁵⁵⁰ Heron, Ibid.

ROO aid in identifying the “originating state” for the purposes of extension or non-extension of preferential treatment.⁵⁵¹

Generally, the principle of “last substantial process” or “sufficient working or processing” is applied to determine the origin of the product entering a preference extending country.⁵⁵² The “last substantial transformation” test requires that for an origin to be attributed to a particular country, it must undergo a substantial transformation in such a manner that it becomes a “new and different article...*having a distinctive name, character or use.*”⁵⁵³ Therefore, the test attributes origin to the country where the product went through last substantial transformation process. For non-preferential purposes, the US employs this principle to determine the origin of goods.⁵⁵⁴ This test is considered to be flexible since it allows courts or customs authorities to “look beyond the form of transaction” to determine if a substantial transformation actually occurred.⁵⁵⁵

According to Joseph LaNassa, this flexibility is also “the biggest drawback...because it can lead to unpredictable, seemingly arbitrary results that undermine the certainty that firms require for strategic planning.”⁵⁵⁶ Moshe Hirsch agrees with this view and comments that the “last substantial process” is “vague and leaves wide discretion to national customs

⁵⁵¹ Jacques Bourgeois, ‘Rules of Origin: An Introduction’ in Edwin Vermulst, Paul Waer and Jacques Bourgeois (eds.), *Rules of Origin in International Trade* (Ann Arbor University of Michigan Press, 1994) 1, 4-5 referred to by Hirsch, above n 517, 177.

⁵⁵² Hirsch, *Ibid.* However, the “last substantial process” is used mostly in the non-preferential context, whereas the term “sufficient working or processing” is mostly applied in connection with preferential agreements. This usage has been highlighted by Paul Waer, ‘European Community Rules of Origin’ in Vermulst et al, above n 551, 85, 146 referred to by Hirsch, *Ibid.*

⁵⁵³ (Emphasis added). This definition of the “last substantial transformation” is discussed in the US case of *Anheuser-Busch Association Vs. United States* 207 U.S. 556,562 (1908) which in turn quotes another US case *Hartranft Vs. Wiegmann* 121 U.S. 609,615 (1887) (See LaNassa, above n 540, 629).

⁵⁵⁴ LaNassa, *Ibid.*

⁵⁵⁵ The courts or the customs authorities normally also consider other factors in reaching a determination of origin. These factors may include inquiring whether the change of article from a producer good to a consumer good occurred? Was there any value addition at the end of the process? The complexity of transformation process and if there was any change in the tariff classification? (See discussion in C. Edward Galfand, ‘Heeding the Call for a Predictable Rule of Origin’, (1989) 11 *University of Pennsylvania Journal of International Business Law* 469, 480).

⁵⁵⁶ LaNassa further cites “inconsistent applications, lack of certainty, discretionary nature and high costs of the resulting origin determinations” as additional disadvantages associated with the last substantial transformation test (LaNassa, above n 540, 630-631).

authorities.”⁵⁵⁷ Therefore, there are three additional tests that may be used to avoid the unpredictability and uncertainty of this test. First, the “domestic content” or “*ad valorem* percentage” or the “value added” test requires either minimum percentage of local value added content from a preference receiving country or a maximum percentage of content originating from a non-preference receiving country.⁵⁵⁸ Second, the “specified process” test or the “technical” test or the “list process” test involves specifying process operations that a product has to undergo in the preference receiving country in order for origin to be conferred upon it.⁵⁵⁹ Third, the “tariff shift” test requires that the product undergoes transformation in the originating state such that it brings about its tariff classification under the Harmonized Commodity Description and Coding System (the “HS Code”).⁵⁶⁰

It is also worth noting that the above-mentioned tests can also be used for determining substantial transformation.⁵⁶¹

3.2.1.3 Criticism

The major criticism against ROO is that they erect trade barriers towards non-member states of a free trade area and are a measure to attract investment into the markets of a free trade area.⁵⁶² For this reason, ROO are often criticised as being “underpinned by domestic trade policy considerations.”⁵⁶³

⁵⁵⁷ Hirsch, above n 517, 177; LaNassa, Ibid, 629-630.

⁵⁵⁸ Asif Qureshi & Roman Grynberg, ‘Preferential Rules of Origin and WTO Disciplines with Specific Reference to the US Practice in the T&C sectors’ (2005) 32(1) *Legal Issues of Economic Integration* 25, 28; Moshe Hirsch, ‘Rules of Origin as Trade or Foreign Policy Instruments? The European Union Policy on Products Manufactured in the Settlements in the West Bank and the Gaza Strip’ (2002-03) 26 *Fordham International Law Journal* 572, 574, 576; See also Hirsch, Ibid; LaNassa, Ibid, 631.

⁵⁵⁹ Qureshi & Grynberg, Ibid; Hirsch, Ibid; Hirsch, Ibid; LaNassa, Ibid, 634

⁵⁶⁰ Qureshi & Grynberg, Ibid; Hirsch, Ibid; Hirsch, Ibid; LaNassa, Ibid, 635.

⁵⁶¹ Antoni Esteveadeordal, ‘Negotiating Preferential Market Access’ (2000) 34(1) *Journal of World Trade* 141, 147.

⁵⁶² See for example Robert Lawrence, ‘Regionalism and WTO: Should the Rules be Changed?’ in Jeffrey Schott (Ed.), *The World Trading System: Challenges Ahead* (Washington DC, Institute of International Economics, 1996) 41, 52.

⁵⁶³ Qureshi & Grynberg, above n 558, 29.

In international clothing trade, ROO acts as a deliberate trade barrier, with the aim to maintain the consumption of local inputs in clothing manufactures.⁵⁶⁴ Simultaneously, the access of the clothing manufacturers to suppliers based in non-contracting countries is restricted by enacting trade policies (incorporating restrictive ROO).⁵⁶⁵ This incentivises clothing manufacturers in developing countries to use inputs from preference-extending countries to manufacture clothing.⁵⁶⁶ By maintaining ROO as a basis of discriminating between like products of different origin, developed countries do not extend preferential treatment to clothing manufactured from yarns and fabrics, which originate in non-contracting countries.⁵⁶⁷ Hirsch surmises that the rationale behind this policy is to “compensate” local manufacturers for potential losses that may be incurred as a result of trade liberalisation towards contracting countries.⁵⁶⁸

In addition to the above, ROO are also a factor that attracts investment into the markets of contracting countries.⁵⁶⁹ In the context of T&C trade, this occurs when manufacturers shift entire production lines from a non-preference receiving country to a preference receiving country in order to comply with the restrictive ROO.⁵⁷⁰ Therefore, as ROO become more restrictive, the incentive to relocate production to a preference receiving country increases as well.⁵⁷¹ Case studies, as a part of Chapter 4, will further discuss this in light of recent developments after elimination of quotas.

Another criticism levelled against ROO is that it degenerates into a tool of protectionism. The oft-applied test of “last substantial transformation” and its inherent flexibility renders it susceptible to interest groups with protectionist leanings.⁵⁷² In the past, the US interpreted its ROO differently for different

⁵⁶⁴ Audet, above n 545, 276.

⁵⁶⁵ Hirsch, above n 517, 178-179.

⁵⁶⁶ Ibid.

⁵⁶⁷ Ibid.

⁵⁶⁸ Ibid, 178.

⁵⁶⁹ Ibid, 179.

⁵⁷⁰ Ibid.

⁵⁷¹ Ibid, 179,

⁵⁷² LaNassa, above n 540, 631.

purposes e.g. “threading is substantial transformation if it means GSP benefits will be denied but not if it means that a quota will be inapplicable.”⁵⁷³ N. David Palmeter comments that in clearly defining what entails “last substantial transformation” the “only consistency” is the “policy that results either in higher duties or in fewer imports.”⁵⁷⁴ Likewise, LaNassa states: “the standard of last substantial transformation can easily be converted into a fact-intensive, time-consuming search for the most significant processing that raises the cost of determining origin, makes the standard more restrictive and complex...”⁵⁷⁵

Furthermore, the process of determining the extent of the inputs (such as yarns and fabrics) in the manufactured clothing product, is often so complicated and expensive that suppliers prefer not to avail the preferential treatment regimes.⁵⁷⁶ For instance, under the 2002 *US-Caribbean Trade Partnership Act* (CBTPA), the yarn forward requirement must first be satisfied in order for clothing to be imported into the US.⁵⁷⁷ The “yarn forward” test required that both the fabric and the yarn from which the clothing product was made should be of US origin.⁵⁷⁸ Moreover, the cutting, dyeing and finishing of the fabric must be cut in the US.⁵⁷⁹ However, clothing may be cut in the Caribbean if US made thread is used to stitch the components together.⁵⁸⁰ Additionally, the “yarn forward” test further stipulates that clothing that are knit to shape may

⁵⁷³ N. David Palmeter, ‘Rules of Origin or Rules of Restriction? A Commentary on a New Form of Protectionism’ (1987) 11 *Fordham International Law Journal* 1, 4.

⁵⁷⁴ Ibid.

⁵⁷⁵ LaNassa cites as example the 1984 adoption by the US Customs Service of a two-part test for determining the origin of textile goods made from inputs from more than one country in an attempt to prevent manufacturers from avoiding quotas by routing finished products through a third country in order to claim origin of that country or availing preferential treatment. This two part test covered “textiles and textile products country of origin” (19 C.F.R. § 12.130(b)) and stated that a “textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.” This test was deemed to be more restrictive than the standard last substantial transformation test because it required “creation of a new and different article and substantial manufacturing or processing operations” (see LaNassa, above n 540, 631).

⁵⁷⁶ Audet, above n 545, 276.

⁵⁷⁷ Rivoli, above n 6, 118.

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibid.

⁵⁸⁰ Ibid.

be made from fabric made in a Caribbean country if the fabric was made from US origin yarns and the import levels are below certain limits.⁵⁸¹

The application of US ROO illustrates the confusion that producers encounter. The complexity and cumbersome nature of ROO is further highlighted by Oxfam International:

Complexity is a heavy burden on producers, who have to make decisions about which imports to use in the face of often quite different rules for different markets. Administrative costs are another problem. Exporters have to provide documentation on the location of a good's production, the number of machines used, the workers employed, and the production process used; manufacturers have to submit to on-site visits and inspections to verify the documentation. Even in relatively well-off countries, the administrative costs can be high: approximately 3 per cent of the total value of the product. In poorer countries, they are likely to be much higher. It is a paradox that rules which are supposed to encourage the economic development of the poorest countries may actually deter investment through their complexity. Simpler rules of origin would require less documentary proof and therefore place less of a burden upon LDC exporters, helping these countries to realize greater benefits from trade preferences.⁵⁸²

These complex rules reinforce the view that ROO serves as an instrument of protectionism instead of promotion of free trade.⁵⁸³ The myriad web of rules weaved by developed countries means that similar clothing products originating in different countries would often be treated differently. According to Jagdish Bhagwati and Arvind Panagariya, this culminates in a “spaghetti

⁵⁸¹ Ibid.

⁵⁸² Oxfam, above n 514, 22-23.

⁵⁸³ Ibid.

bowl” of rules and “arbitrary definitions of which product comes from where and a multiplicity of tariffs depending on source.”⁵⁸⁴

One may query that if ROO are such a major cause of complications in international trade then should it not be regulated within the WTO/GATT framework? The answer to this query is “yes.” However, the 1994 *WTO Agreement on Rules of Origin* (the “1994 ROO Agreement”) and the *Common Declaration with regard to Preferential Rules of Origin*, only provides a minimal regulatory framework.

Qureshi and Grynberg point out that Article 1 (1) of the 1994 ROO Agreement in its application provides for express exclusion of preferential ROO and only applies to non-preferential ROO.⁵⁸⁵ This conflicts with two other provisions in the 1994 ROO Agreement⁵⁸⁶ i.e. Article 2 (b) which provides that ROO are not to be “used as instruments to pursue trade objectives directly or indirectly” and Article 2 (c) which states that:

“...rules of origin shall not themselves create *restrictive, distorting, or disruptive effects on international trade*. They shall not pose unduly strict requirements or require the fulfilment of a certain condition not related to manufacturing or processing, as a prerequisite for the determination of the country of origin.” (emphasis added)

It appears that the only two provisions that prohibit use of ROO as a protectionist tool, in reality, are not applicable to preferential ROO and are only restricted in application to non-preferential ROO.⁵⁸⁷ Qureshi and Grynberg further point out that Article XXIV of GATT, which covers formation

⁵⁸⁴ Jagdish Bhagwati & Arvind Panagariya, ‘Bilateral Trade Treaties Are a Sham’, Council on Foreign Relations (13 July 2003), http://www.cfr.org/publication/6118/bilateral_trade_treaties_are_a_sham.html at 11 March 2008 cited by Oxfam, above n 514, 22.

⁵⁸⁵ Qureshi & Grynberg, above n 558, 29.

⁵⁸⁶ Hirsch, above n 517, 183.

⁵⁸⁷ Ibid; see also Qureshi & Grynberg, above n 558, 30.

of preferential agreements, is also silent on ROO.⁵⁸⁸ Moreover, according to Hoekman and Kostecki, ROO have been “problematical mostly in the context of *preferential trade agreements...where WTO rules do not apply*. This...reflects the fact that many countries did not want to see constraints imposed on their policy freedom with regard to...the mechanics of trade preferences for developing countries.”⁵⁸⁹

India pursued a notable challenge against the US application of ROO covering T&C products in the non-preferential context.⁵⁹⁰ Briefly, India’s claim was that Sections 334 & 405 of the Uruguay Round Agreements Act (URAA) of the US (that provided legal basis for the ‘fabric formation’ rule according to which fabrics and some other articles were deemed to be originating from the country where the fabric was woven, knitted or otherwise formed) was violative of Articles 2(b), 2 (c) & 2 (d) of the 1994 ROO Agreement.⁵⁹¹ The Indian claim was that US was employing ROO not to pursue legitimate trade purposes but rather for shielding domestic industries from import competition.⁵⁹² India further claimed that the impact of US ROO was of “restrictive, distorting or disruptive effect” and were unduly strict and discriminatory in nature.⁵⁹³

The WTO Panel rejected India’s contention and declared that India had failed to substantiate the allegations it had made.⁵⁹⁴ The WTO Panel stated that the WTO members not only had considerable discretion in determining criteria which grants origin to a particular imported product but also enjoyed the same level of discretion in modifying such criteria or apply different criterion to different products.⁵⁹⁵ The Panel also confirmed that WTO members may employ ROO as an instrument for realising their protectionist trade policies

⁵⁸⁸ Qureshi & Grynberg, Ibid, 30

⁵⁸⁹ Hoekman & Kostecki, above n 3, 104 (emphasis added).

⁵⁹⁰ Panel Report, *US - Rules of Origin for T&C Products*, WTO Doc WT/DS243/R (20 June 2003) (“US – ROO”).

⁵⁹¹ Ibid, 8-15 referred to by Qureshi & Grynberg, above n 558, 30.

⁵⁹² Qureshi & Grynberg, above n 558, 30 (Ibid).

⁵⁹³ Ibid.

⁵⁹⁴ US – ROO, above n 590, Paragraph 3.87.

⁵⁹⁵ Ibid, Paragraphs 6.24 & 6.25.

where such protectionist policy is authorised to the extent of that authorisation alone.⁵⁹⁶

Theoretically, the impact of restrictive ROO is more pronounced on clothing-reliant LDCs because they often lack complementary textiles industries. The only advantage enjoyed by the LDCs is in terms of cheap labour and preferential entry through GSP schemes operated by developed countries. This is where textiles industries of developed countries step in. By requiring LDCs to source their inputs in exchange for preferential entry, the textiles industries both keep their industries running and rely on inexpensive labour to process their textiles into clothing.

ROO has in the past constrained developing countries/LDCs that did not possess a supportive parallel textiles industry. For instance, Hayashi points out that some Asian manufacturers were constrained to source their fabrics from the EU in order to avail non-reciprocal preferential treatment for their clothing exports.⁵⁹⁷ Due to strict limits on meeting ROO requirements 50% of clothing products made from knitted or crocheted fabrics from Indonesia, Philippines, Sri Lanka, Thailand and Vietnam availed preferential treatment under the EU GSP programme in 2005.⁵⁹⁸ The figure was less than 30% for clothing articles based on woven-fabrics.⁵⁹⁹

Moreover, ROO are a complex and abstract phenomenon that entails high compliance costs especially for poor LDCs and developing countries.⁶⁰⁰ According to Bhala, this high compliance cost “may approach the margin of preference, cut into that margin, or even dwarf it.”⁶⁰¹ This trend is termed as

⁵⁹⁶ Ibid, Paragraph 6.90 referred to by Qureshi & Grynberg, above n 558, 31.

⁵⁹⁷ Hayashi, above n 2, 16.

⁵⁹⁸ Ibid.

⁵⁹⁹ Ibid, 17.

⁶⁰⁰ For example the US-Singapore Free Trade Agreement contains close to 250 pages of complicated rules for determining origin (Oxfam, above n 514, 22).

⁶⁰¹ Raj Bhala, ‘The Limits of American Generosity’ (2006) 29 *Fordham International Law Journal* 299, 382.

“missing preferences” and Oxfam International succinctly summarises this in the following words:

The smaller and poorer a country is, the less able it is to establish a supporting textile industry that would enable it to meet the conditions to get duty free access to rich country markets. These countries are therefore penalized by “missing preferences” to an even greater degree than the average developing country.⁶⁰²

Another criticism of the ROO that constrains clothing manufactures in developing countries/LDCs is the varying eligibility criterion of the ROO regimes of the EU and the US.⁶⁰³ In practice this means that an exporter has to satisfy the US criteria for entering the US market and the EU criteria for the EU market.⁶⁰⁴ This multiplies the problems of understanding and compliance for the producers in developing countries/LDCs. Bhala comments that many producers, after conducting a cost-benefit analysis, decide not to avail preferential access.⁶⁰⁵

Therefore, after quota expiry, ROO are an important factor that will continue to have a marked impact on T&C exports from developing countries. This factor, along with an ineffectual WTO regime on ROO, means that WTO Members will continue to wield unfettered discretion in using ROO to protect their industries. This inevitably results in the use of ROO for protectionist purposes. However, if constructed properly ROO can serve as an instrument of growth as well. Chapter 4 will highlight some of the positive results achieved by developing countries/LDCs where reform of ROO was undertaken by developed countries.

⁶⁰² Oxfam, above n 514, 21.

⁶⁰³ Bhala, above n 601, 383.

⁶⁰⁴ Ibid, 382-383.

⁶⁰⁵ Ibid, 383; see also Bob Fisher, ‘Preference Erosion, Government Revenues and Non-Tariff Barriers’ (2006) 29 (10) *The World Economy* 1377, 1379.

3.2.2 Profits and Pitfalls of Preferential Trade

3.2.2.1 Overview

The US and the EU are the two major importers of T&C products - collectively accounting for 40.7% global textiles and 69.3% global clothing imports in 2008-2009.⁶⁰⁶ As a result, exporters compete heavily for access to these lucrative markets. Market access in these markets is regulated by a number of measures such as tariff barriers and rules of origin. In this regard, the role played by the preferential trade agreements (PTAs) vis-à-vis quotas and tariffs merits close review.

Generally, PTAs incorporate ROO that exempt T&C products from quotas and other tariff restrictions if these were made from inputs manufactured by the importing countries. ROO's are also incorporated within the Generalised System of Preferences (GSP) Programmes operated by most developed countries.⁶⁰⁷ The genesis of a GSP system, representing a generalised, non-reciprocal, preferential trade regime, is originally based on a 1971 Waiver of MFN Obligation (under GATT Article I: 1) by the GATT Contracting Parties for ten years.⁶⁰⁸

The 1971 Waiver enabled developed countries to extend preferential tariff treatment to products originating from certain developing countries without having to do the same to similar products from other Contracting Parties. During the Tokyo Round of Multilateral Trade Negotiations in 1979, the GATT Contracting Parties went beyond a temporary ten year waiver and adopted the *Decision on Differential and More Favourable Treatment, Reciprocity and Fuller*

⁶⁰⁶ WTO, above n 4.

⁶⁰⁷ UNCTAD, 'Generalized System of Preferences: List of Beneficiary Countries', UN Doc. UNCTAD/ITCD/TSB/Misc.62 (22 June 2001).

⁶⁰⁸ GATT, 'Generalised System of Preferences' (GATT Doc. L/3545 dated 25 June 1971); see also Bernard Hoekman & Çağlar Özden, 'Trade Preferences and Differential Treatment of Developing Countries: A Selective Survey' World Bank Policy Research Working Paper 3566 (Washington, DC), 6-7.

Participation of Developing Countries (commonly referred to as the 'Enabling Clause').⁶⁰⁹

The Enabling Clause transformed the 1971 Waiver into a more permanent feature by allowing the GATT Contracting Parties to extend preferential tariff treatment to developing countries by operating GSP schemes, notwithstanding the MFN obligation under GATT Article I: 1.⁶¹⁰ The Enabling Clause also allowed preferential treatment for developing countries in the area of non-tariff measures.⁶¹¹ Additionally, the Enabling Clause also introduced the concept of graduation whereby developing countries would be expected to accept greater obligations under the GATT as their economic conditions improved.⁶¹² Therefore, once beneficiary countries have attained a specified level of economic development they graduate from a country's GSP programme.

The Enabling Clause was subject of dispute settlement proceedings in 2003-04 between EU and India. The case, which is popularly referred to as the *EC – Tariff Preferences*, discussed a number of issues pertaining to GSP schemes. Whilst a detailed analysis of the case detracts from the aim of this thesis, the basic aim behind the Enabling Clause is to extend “special and differential treatment” to the developing countries and LDCs. The question for determination in this case may be summarised as *can developed countries discriminate between developing countries for the purposes of preferential treatment?* In other words, are benefits of GSP schemes available for *all* developing countries or do the GSP- extending countries retain discretion in designating beneficiaries of the GSP treatment?

In responding to this issue, the Appellate Body noted that “[p]aragraph 2(a)... does not explicitly authorize or prohibit the granting of different tariff

⁶⁰⁹ GATT, ‘Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries’ (GATT Doc. L/4903 dated 28 November 1979); Hoekman & Özden, *Ibid*, 6.

⁶¹⁰ GATT, *Ibid*, Paragraph 1.

⁶¹¹ *Ibid*, Paragraph 2 (b).

⁶¹² *Ibid*, Paragraph 7.

preferences to different GSP beneficiaries." However, the Appellate Body stated, "It is clear from the ordinary meanings of 'non-discriminatory' that preference-granting countries must make available identical tariff preferences to all similarly-situated beneficiaries."⁶¹³

The Appellate Body further explained that it does not mean that the use of the term 'non-discriminatory' should be interpreted to require that preference-granting countries provide 'identical' tariff preferences under GSP schemes to 'all' developing countries.⁶¹⁴

The Appellate Body concluded its analysis by commenting that since the needs of developing countries are varied and non-homogenous, a GSP scheme may be 'non-discriminatory' even if 'identical' tariff treatment is not accorded to 'all' GSP beneficiaries.⁶¹⁵ The Appellate Body further stated that in granting such differential tariff treatment, the preference-granting countries are required to ensure that identical treatment is available to all similarly-situated GSP beneficiaries that have the 'development, financial and trade needs' to which the treatment in question is intended to respond.⁶¹⁶

This case created uncertainty for both the US and the EU GSP schemes since the challenges raised by India could potentially undermine a series of non-reciprocal preferential trading programmes. For instance, the US generally does not provide GSP benefits to T&C but the US extends duty-free access to T&C from beneficiary countries under the non-reciprocal preference programmes such as the African Growth and Opportunity Act (AGOA), the Caribbean Basin Trade Partnership Act (CBTPA)⁶¹⁷ (which was an expansion

⁶¹³ WTO AB Report, *EC - Tariff Preferences*, (WT/DS246/AB/R), Paragraph 154.

⁶¹⁴ Ibid, Paragraphs 155-156.

⁶¹⁵ Ibid, Paragraphs 165.

⁶¹⁶ Ibid, Paragraphs 173-174.

⁶¹⁷ The CBTPA continues till 30 September 2010 or until FTA as described in US legislation enters into force between the US and a CBTPA beneficiary country (see USTR, 'Caribbean Basin Initiative' <<http://www.ustr.gov/trade-topics/trade-development/preference-programs/caribbean-basin-initiative-cbi>> at 26 May 2010).

of the erstwhile CBI), the Andean Trade Preference Act (ATPA).⁶¹⁸ Overall, the US extends duty free treatment to T&C exports from most Latin American and African countries as well as Jordan and Israel, while exports from Asian countries and Turkey are given the standard MFN treatment.⁶¹⁹

Similarly, the EU maintains a series of GSP schemes that provides preferential market access to T&C exports on non-reciprocal basis e.g. the *Euro-Mediterranean Association Agreements* between the EU and Mediterranean rim countries,⁶²⁰ the *African Caribbean Pacific (ACP)*, the *Everything But Arms (EBA)* Initiative which eliminates quotas and tariffs on all imports into the EU from 49 LDCs, with the exception of arms and ammunition.⁶²¹ Additionally, Turkey's T&C exports enjoy duty free entry under its Customs Union Agreement with the EU.⁶²²

3.2.2.2 Preferential treatment in Textiles & Clothing Trade

In the quota free era, the importance of PTAs and GSP schemes is a subject of debate. An official EU analysis dated prior to the expiry of quotas predicted significant erosion in utility and importance of preferential access for countries that were highly dependent on PTAs and GSP treatment.⁶²³ This analysis also

⁶¹⁸ The ATPA was amended and its scope was expanded by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) in 2002. This agreement expired on 31 December 2006.

⁶¹⁹ Some traditional handicraft textiles products are eligible for GSP treatment if the GSP beneficiary signed an agreement with the US subject to provision of certification of the items being handmade products of the exporting country. The US has signed such agreements with Afghanistan, Botswana, Colombia, Egypt, Guatemala, Jordan, Macao, Malta, Morocco, Nepal, Pakistan, Peru, Romania, Thailand, Tunisia and Uruguay. This arrangement enables the US to extend duty free treatment to such products (refer to <<http://usinfo.state.gov/gi/Archive/2005/Jul/01-523855.html>> (30 June 2005); See also USTR, 'US Generalized System of Preferences Guidebook', Executive Office of the President, Washington, D.C., January 2006); See also Hayashi, above n 2, 2.

⁶²⁰ These countries include Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Algeria (See: http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/mediterranean_partner_countries/r14104_en.htm) at 26 May 2010.

⁶²¹ See generally for an overview <http://ec.europa.eu/trade/issues/global/gsp/eba/index_en.htm> at 23 January 2008.

⁶²² See Turkey : Customs Unions and Preferential Arrangements, <http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/customs_unions/article_414_en.htm> at 23 January 2008.

⁶²³ EU Directorate General on Trade, 'Evolution of Trade in Textile and Clothing trade World-Wide-Trade Figures and Structural Data' Background Papers, prepared for the Conference on 'The Future of Textiles and Clothing trade After 2005' (Brussels, 5-6 May 2003) 1 <<http://trade-info.cec.eu.int/textiles/documents/102.doc>> at 27 January 2010.

stated that exporters dependent on quotas will become increasingly vulnerable in the post-ATC period.⁶²⁴

However, later analyses (conducted after the expiry of quotas) have taken a mixed view. Denis Audet sees PTA as being “a necessary but insufficient condition to promote trade flows and qualitative transformation in textile and clothing production.”⁶²⁵ Contrary to Audet’s view, a study by ILO ascribes more importance to PTAs and regional trading blocs by terming these measures “a precondition for survival” in the post-ATC period.⁶²⁶ On the whole, preferential trade programmes have not resulted in outright benefits for developing countries/LDCs.⁶²⁷ This is primarily because extending tariff preferences does not necessarily mean that developing countries have benefited from these.⁶²⁸

PTAs/RTA’s in the past have served to consolidate assembly and finishing operations, particularly in the case of clothing production e.g. NAFTA enabled Mexico to expand its level of activities from basic sewing and stitching to undertake “full-package” operations involving textile production, cutting, trimming, laundering and distribution in the clothing supply chain.⁶²⁹ This “full-package” service offers a number of advantages including “backward” linkages,⁶³⁰ technology transfers, skill upgrading at the direct production level and general improvement in manufacturing standards.⁶³¹ This attracts leading brand name companies looking for timely delivery of orders at a competitive cost.⁶³²

⁶²⁴ Ibid, 1.

⁶²⁵ Audet, above n 557, 275.

⁶²⁶ ILO, above n 4, 34.

⁶²⁷ Fisher, above n 605, 1378.

⁶²⁸ Ibid.

⁶²⁹ Gary Gereffi, David Spener & Jennifer Bair, *Free Trade and Uneven Development, The North American Clothing Industry after NAFTA* (Philadelphia: Temple University Press, 2002) 10.

⁶³⁰ “Backward linkages” refers to the source of required inputs for any stage along the production-marketing-distribution chain. Locating segments of the supply chain within the same locality carries immense benefits for the local economy since this leads to creation of ancillary economic opportunities as well as diversification of the community’s productive infrastructure (Ibid).

⁶³¹ Ibid.

⁶³² Ibid.

Another example is that of Turkey and its customs union with the EU which has enabled Turkish T&C producers to access the EU market. However, despite the integration process into the larger markets under the aegis of PTAs that Mexico and Turkey concluded with the EU and the US respectively, both of these countries are not necessarily protected from external competition emanating from Asian T&C producers.⁶³³

This is illustrated by Munir Ahmad who analysed the short-term trade figures after quota elimination. Ahmad observes that Asian producers have actually increased their market shares of the US market against countries like Mexico and other Caribbean nations that experienced decline in the US market in spite of enjoying proximity and preferential access.⁶³⁴ Chapter 4 further analyses trade statistics and figures, taking into account five year performance of major T&C exporters after quotas expiry. These figures go beyond Ahmad's analysis and are helpful in assessing the actual benefit behind tariff preferences.

PTAs may continue to play an important role especially for developing countries/LDCs as they compete against China and other Asian suppliers.⁶³⁵ Although preferential arrangements act as a catalyst for creating production and trade opportunities, the ability to attract foreign retailers, entrepreneurial

⁶³³ Audet, above n 545, 275.

⁶³⁴ ITCB, 'Developments in Textiles and Clothing Trade, Post the ATC – Modellers off mark; EU/US Trade Policy Remains the Predominant Influence' (Panel Discussion: Textile and Clothing, One Year of Evidence organised by Asia-Pacific Trade and Investment Initiative, UNDP) (Hong Kong, 16 December 2005) 9, 11 & 14; Ahmad, above n 494, 2-3; Munir Ahmad, 'Textile and Clothing Trade Post the Quota Regime; An Essential Agenda for Sustaining Clothing Exports of Developing Economies' (UNCTAD Meeting on Strengthening the Participation of Developing Countries in Dynamic Sectors in World Trade: Trends, Issues and Policies) (Geneva, 9 February 2005) 3-6.

⁶³⁵ See for example performance of Honduras (an impoverished Central American state that has recently witnessed political upheaval). Honduras is the third largest market for US textile mill products (US exports were \$1.4bn in 2008) and the largest DR-CAFTA (Dominican Republic - Central American Free Trade Agreement) supplier to the US. As one of the five signatories of the DR-CAFTA, around 98% of Honduras clothing exports are destined for the US market, where most benefit from geographical proximity, duty and quota free market access based on their fibre content and the Preferential ROO. Honduras exports to the US rose by 3.7% in 2008 to \$2.604 Billion. However, due to economic downturn and competition from China, Vietnam and Bangladesh, by mid-2009, Honduran clothing exports to the US fell by 4.9% to US \$2.4Billion (See Just-Style, 'Honduras clothing industry says business as usual' (23 July 2009) < http://www.just-style.com/comment/honduras-clothing-industry-says-business-as-usual_id104815.aspx> at 27 May 2010).

expertise, standards of innovation and geographical proximity are key factors that have to be combined with a PTA in order to reap potential trade opportunities to the maximum.⁶³⁶

Moreover, developing countries/LDCs cannot overly rely on preferential programmes because of the inherent uncertainties affecting investment and sourcing decisions.⁶³⁷ Trade preferences are often temporary, unilateral and are subject to expiration or withdrawal by the preference-extending country.⁶³⁸ Therefore, there is an understandable reluctance amongst the investors to invest on the sole basis of preferential treatment.⁶³⁹ This is because an abrupt withdrawal of such preferences can lead to a steep drop in productivity, revenues and employment levels especially in an export dependent area such as clothing manufacturing.⁶⁴⁰

Thus, the policy challenge for many developing countries is that in the quota free environment, is concluding a PTA/RTA the right approach for staying viable, profitable and competitive? In response, Tony Heron assesses the prospects for smaller developing countries in the quota free era and raises a very relevant point that sheds light on the true nature of PTAs. He writes that the general presumption in lifting of quota restrictions was that it would enable developing countries to increase their competitiveness by sourcing their inputs (such as yarns and fabrics) from more competitive sources.⁶⁴¹ This presumption is certainly true in the case of countries that are not dependent on PTAs.⁶⁴² However, it is of little importance to countries that have concluded PTAs with many developed countries (for instance the DR-CAFTA or CBTPA countries with the US) and are bound under the restrictive ROO to source their

⁶³⁶ Audet, above n 545, 275.

⁶³⁷ Fisher, above n 605, 1379.

⁶³⁸ Ibid.

⁶³⁹ Ibid.

⁶⁴⁰ Ibid.

⁶⁴¹ Heron, above n 365, 14.

⁶⁴² Ibid.

inputs from US producers, failing which their products would not qualify for duty free access into the US.⁶⁴³

This point made by Heron raises a unique policy challenge. The PTAs are designed to benefit not only the recipient of preferential treatment but are also tailored to satisfy the interests of domestic producers based in the preference extending country.⁶⁴⁴ Thus, the Caribbean becomes a venue where US firms have access to low wage assembly operations for clothing and which also doubles up as a 'captive' market for US origin inputs.⁶⁴⁵ Therefore, by entering into PTAs, developing countries/LDCs assume the risk of being bound to source their inputs from developed countries that do not always offer the most competitive rates.⁶⁴⁶ Conversely, if developing countries source their inputs from other countries, the final clothing products do not qualify for duty free access or tariff relief.⁶⁴⁷

Furthermore, the proliferation of Regional Trade Agreements (RTAs) also has the potential of affecting preferential trade.⁶⁴⁸ Under the RTA model, the contracting states agree to mutual trade on a quota-free and duty-free basis for a wide range of products after lapse of an initial period.⁶⁴⁹ RTAs and FTAs, such as NAFTA, represent a growing trend where developing countries/LDCs countries no longer deem GSP eligibility as sufficient for maintaining market access to the developed economies and desire to become a permanent member of a regional trading bloc.⁶⁵⁰ According to Bob Fisher, "This trend makes questionable the continued value of preferential agreements to countries that

⁶⁴³ Ibid.

⁶⁴⁴ This is officially acknowledged by the US Government as an aim behind the GSP Schemes (see e.g. USTR Resource Center, 'GSP: Critical to the United States and Developing Countries' (December 2009) <<http://www.ustr.gov/about-us/press-office/fact-sheets/2009/december/gsp-critical-united-states-and-developing-countries>> at 26 May 2010.

⁶⁴⁵ Heron, above n 365, 14.

⁶⁴⁶ Ibid.

⁶⁴⁷ Heron, above n 535, 275.

⁶⁴⁸ Richard Pomfret, 'Is Regionalism an Increasing Feature of the World Economy?' (2007) 30 (6) *The World Economy* 923.

⁶⁴⁹ Fisher, above n 605, 1380 (Box.1).

⁶⁵⁰ Ibid.

might otherwise seek reciprocal, comprehensive and permanent arrangements.”⁶⁵¹

Some critics deride the long term utility and the positive effects of GSP schemes over the last three decades. One WTO report states that GSP schemes have not encouraged growth in merchandise exports of developing countries e.g. developing countries managed to increase their share in the global merchandise trade from 20% in 1973 to only 28% in 1997 (after twenty five years.).⁶⁵² Even this unimpressive growth has been lopsided with larger developing countries like Brazil, China and India snatching a larger share under developed countries GSP schemes.⁶⁵³

Even amongst the LDCs, the growth has been uneven e.g. between 1980 and 1997, the LDCs’ share of world trade declined from 0.8% to 0.51% with African LDCs bearing the brunt of this decline as against relatively better performance of Asian LDCs such as Laos, Cambodia and Bangladesh.⁶⁵⁴

According to William Cline, the main reason why GSP schemes failed to truly benefit developing countries/LDCs is the non-inclusion of substantial preferential treatment in the areas critical to the economic development of the recipient countries such as agriculture and T&C.⁶⁵⁵ This is a critical factor in

⁶⁵¹ Ibid.

⁶⁵² Developing countries that have relied extensively on trade in primary products have continually experienced declining share in the world trade market (with the exception of Chile). However, developing countries that had diversified into manufacturing have experienced an increase in their shares (WTO, Committee on Trade and Development, Note by Secretariat: Participation of Developing Countries in World Trade: Recent Developments and the Trade of Least Developed Countries, WT/COMTD/W/65 (15 February 2000), Paragraphs 3 & 4).

⁶⁵³ For example, 55% of preference-receiving imports into the EU under its GSP scheme were from China (31.8%), India (10.3%), Brazil (6.8%) and Thailand (6.5%). By contrast, LDCs accounted for only 1% of preference-receiving imports under the EU Programme. Similarly, under the US GSP Programme, 62% of preference-receiving imports originate from Brazil (14.4%), Thailand (16.5%), Indonesia (12.7%), the Philippines (10.8%) and India (8.2%) (see William R. Cline, *Trade Policy and Global Poverty* (1st ed. Center for Global Development, Institute for International Economics, 2004) 69-71).

⁶⁵⁴ WTO, Sub-Committee on Least Developed Countries, Note by the Secretariat: Market Access for Exports of Goods and Services of the Least Developed Countries: Barriers and Constraints WT/COMTD/LDC/W/11/Rev.1 (14 December 1998), Paragraph 4; WTO, above n 652, Paragraph 14.

⁶⁵⁵ Cline, above n 653, 68 & 73.

determining success of GSP or preferential treatment extended to developing countries/LDCs.

Generally, the utility of preferential treatment is eroded by the gradual reduction of the applicable tariff levels to near-zero levels as a result of the multilateral trade liberalisation process at the WTO level.⁶⁵⁶ As a result, the difference between GSP or preferential tariff rates and the generally applicable tariff rates have been reduced to marginal levels.⁶⁵⁷ These developments mean that global tariff levels in other merchandise sectors (excluding T&C) are approaching near zero level.⁶⁵⁸ Therefore, once administrative and other associated costs are calculated into the equation, the benefit from preferential treatment under GSP can be negligible.⁶⁵⁹

Kevin Moss builds up on this point and writes that that after T&C quotas expired, GSP schemes have not significantly helped developing countries/LDCs in increasing their T&C exports.⁶⁶⁰ The reason, according to Moss, is that developing countries still face tariff rate equivalents that are about five times higher than tariff rate equivalents for all other manufactured goods.⁶⁶¹

Moss alludes to an UNCTAD report which states that the GSP schemes of the US, EU and other developed countries have in the past carried only a short term renewable mandate.⁶⁶² This caused uncertainty about continued

⁶⁵⁶ Kevin Moss, 'The Consequences of the WTO Appellate Body Decision in the EC – Tariff Preferences for the African Growth Opportunity Act and sub-Saharan Africa' (2006) 38 *New York University Journal of International Law and Politics* 665, 672.

⁶⁵⁷ Ibid.

⁶⁵⁸ Ibid, 675; Cline, above n 653, 74.

⁶⁵⁹ Moss, Ibid.

⁶⁶⁰ Ibid, 673.

⁶⁶¹ A tariff rate equivalent translates the protective effect of quotas, subsidies and/or other non-tariff trade restrictions into tariff equivalents (Ibid).

⁶⁶² Ibid, 675; Note by UNCTAD Secretariat, 'Quantifying the Benefits Obtained by the Developing Countries from the Generalised System of Preferences', UNCTAD/ITCD/TSB/Misc.52 (7 October 1999), paragraph 18 <<http://www.unctad.org/en/docs/poitcdtsbm52.en.pdf>> at 26 May 2010.

preferential incentives in the medium to long term, which discourages long-term investment in developing countries/LDCs.⁶⁶³

Moss further observes that in the past twenty years or so, the GSP-extending countries have begun targeting designated developing countries for preferential access greater than that offered under the standard GSP schemes.⁶⁶⁴ These preferential access schemes are based on considerations such as cultural ties,⁶⁶⁵ post-cold war geo-political scenario⁶⁶⁶ and even combating narcotics.⁶⁶⁷ Other examples include EU's EBA, Canadian 2003 LDC Market Access Initiative and the US AGOA that were aimed at offering imports from these countries increased market access for their products.⁶⁶⁸

3.2.2.3 US AGOA

The US AGOA is a good example of a GSP scheme that builds upon existing tariff preferences offered by the US to African countries.⁶⁶⁹ Moss writes that the effect of benefits available under AGOA effectively meant that for beneficiary countries the removal of quotas (under the ATC) was fast forwarded by five years.⁶⁷⁰

Whether AGOA has truly benefitted T&C trade of the African LDCs will be further investigated in Chapter 4 in light of available statistics. Bhala writes that the strict "yarn forward" rule (which is incorporated into the US AGOA)

⁶⁶³ UNCTAD, Ibid.

⁶⁶⁴ Moss, above n 656, 676.

⁶⁶⁵ EU's Lome Convention and its successor, the Cotonou Agreement were largely motivated due to EU's cultural ties with African, Caribbean and Pacific (ACP) beneficiary states (see generally Nsongurua Udombana, 'A Question of Justice: The WTO, Africa and Countermeasures for Breaches of International trade Obligations' (2005) 38 *John Marshall Law Review* 1153).

⁶⁶⁶ The US CBI offered preferential tariff treatment to 24 Caribbean and Central American countries and was intended as a countermeasure against spreading of communism in the region (see generally Michael Dypski, 'The Caribbean Basin initiative: An Examination of Structural Dependency, Good Neighbor Relations and American Investment' (2002) 12 *Journal of Transnational Law and Policy* 95, 100.

⁶⁶⁷ For example EU's controversial GSP Programme under the Drug Window extended to twelve countries deemed to be undertaking anti drug operations. T&C imports from these nations were accorded favourable tariff treatment. This GSP Programme was subject of a legal challenge in the WTO DSB by India in the *EC – Tariff Preferences* case (discussed above).

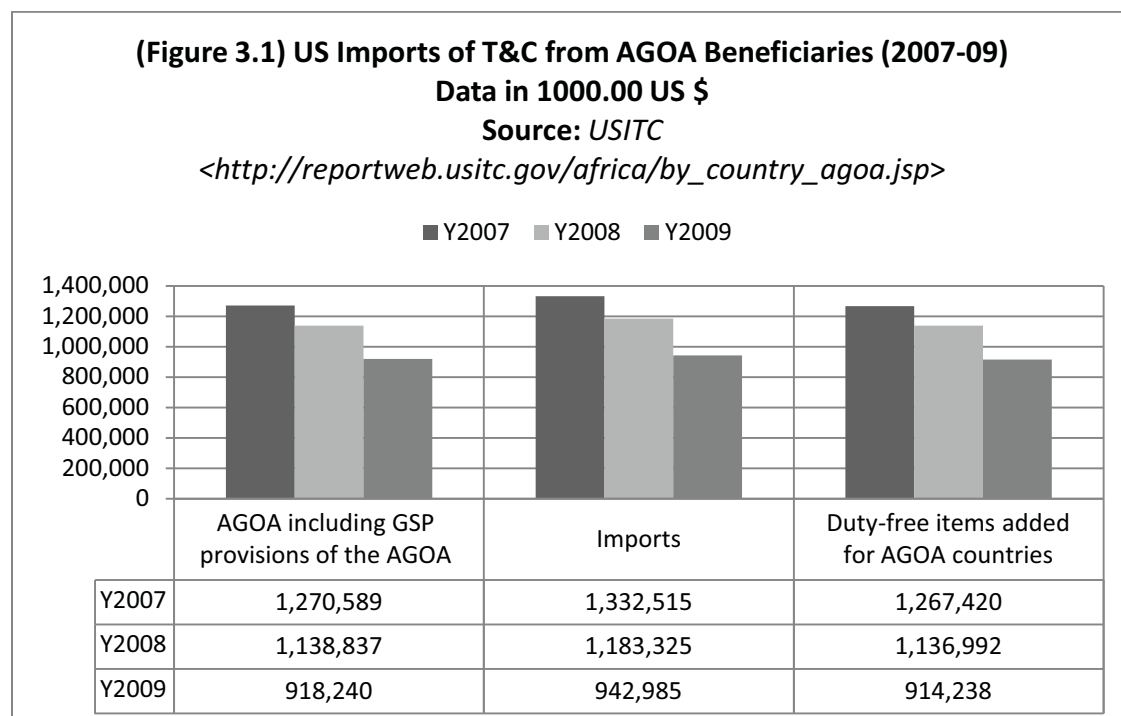
⁶⁶⁸ Moss, above n 656, 676.

⁶⁶⁹ Ibid, 676-677.

⁶⁷⁰ Ibid, 678; see also USTR, Comprehensive Report on US Trade and Investment Policy Towards Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act I (2005), 5.

actually has a negative effect on African producers targeting the US clothing market.⁶⁷¹ This is because it dissuades African manufacturers from sourcing their inputs from the more cost-effective suppliers.⁶⁷²

Therefore, instead of sourcing affordable inputs for manufacturing of clothing products, AGOA beneficiaries are constrained to consider factors such as origin of yarn or thread used in the fabric instead of the price and quality.⁶⁷³ If any of the inputs are not of US origin then “any hope of duty-free, quota free treatment from the United States is lost.”⁶⁷⁴



A temporary measure of relief provided within AGOA allowed inputs used in clothing to come from another AGOA beneficiary country.⁶⁷⁵ This is referred to as the “third country” fabric rule and brought some much needed flexibility into the AGOA scheme by allowing “lesser developed” countries to use inputs

⁶⁷¹ Bhala, above n 601, 381.

⁶⁷² Ibid.

⁶⁷³ Ibid, 379.

⁶⁷⁴ Ibid.

⁶⁷⁵ Ibid, 380.

from any country.⁶⁷⁶ This measure expired on 1 October 2007 and due to the unclear and vague future of this rule, there was a marked decline in AGOA T&C exports to the US after the expiry of this rule.⁶⁷⁷ This is demonstrated by Figure 3.1 which shows the decline of US T&C imports from AGOA over 2007–2009 period. The official US figures also show that US imports of T&C from AGOA beneficiaries fell by 19% between January–December 2009.⁶⁷⁸

Even though, AGOA permitted “regional cumulation” (allowing use of inputs originating from another beneficiary country in the same region into the final clothing product without affecting the eligibility for preferential treatment) the actual effects were far from encouraging.⁶⁷⁹ Regional cumulation has been criticised as a “flawed trade instrument” by Oxfam International in a report which further states that “there is no development rationale for promoting *regional* rather than *global* cumulation.”⁶⁸⁰ Oxfam International further comments that AGOA:

“...contains imperfect rules on cumulation. The Act stipulates that clothing exported from African countries to the USA must use either US or African fabrics to qualify for AGOA benefits, notably discriminating against fabrics produced in Asia.”⁶⁸¹

⁶⁷⁶ Defined by Section 3108 of the *AGOA Acceleration Act, 2004* as a country that had a per capita GNP of less than US \$ 1500/- in 1998 as measured by the International Bank for Reconstruction and Development. All AGOA beneficiary countries that have a preferential access for T&C qualify as a “lesser developed”. The notable exceptions are Mauritius and South Africa (Hayashi, above n 2, 16); Hayashi further cites figures from the US Department of Commerce, Office of T&C that showed increase in AGOA T&C exports from US \$ 975 Million in 2001 to US \$ 1.5 Billion in 2005 (Hayashi, above n 2, 16).

⁶⁷⁷ USTR, above n 670, 4.

⁶⁷⁸ US Department of Commerce, ‘U.S. Trade with Sub-Saharan Africa, January–December 2009’ <http://www.agoa.gov/build/groups/public/@agoa_main/documents/webcontent/agoa_main_002917.pdf> at 26 May 2010.

⁶⁷⁹ Bhala, above n 601, 380.

⁶⁸⁰ Oxfam, above n 514, 21.

⁶⁸¹ Ibid, 22.

Citing the example of Mauritius, Oxfam International relies on a World Bank study⁶⁸² to claim that Mauritius would have experienced an increase by 36% between 2001 and 2004 under the AGOA, instead of 5% if the restrictive ROO were not in place.⁶⁸³ According to economic projections in this World Bank study, made prior to the lifting of quotas in T&C trade, it was estimated that with the lifting of quotas on Mauritius' competitors, "its exports will be about 26 percent lower than they otherwise would have been. But if AGOA is modified to eliminate the rules of origin requirement, the decline in exports would be 18 percent."⁶⁸⁴

Another criticism of AGOA is related directly to the expiration of T&C quotas. Quota expiry effectively takes away the very reason that preferential trade regimes and GSP schemes operate.⁶⁸⁵ This criticism is validated in the case of clothing exports from African LDCs to the US market under AGOA. After lifting of quotas, the purpose behind extending "extra assistance" to African LDCs is made redundant. The case studies in Chapter 4 would further examine the actual effects on T&C exports from African countries since the expiry of quotas. This will assess the veracity of these projections as well as assess whether preferential access to the US worked in favour of the African LDCs or was it counterproductive due to the restrictive ROO.

3.2.2.4 EU EBA

Similar to the US preferential schemes, the EU also operated a number of preferential treatment schemes in recent years. Many of these schemes have lapsed.⁶⁸⁶ However, EBA initiative still continues.⁶⁸⁷ The EBA initiative extends

⁶⁸² See generally Aaditya Mattoo, Devesh Roy & Arvind Subramanian, 'The Africa Growth and Opportunity Act and its Rules of Origin: Generosity Undermined?' (2002) *World Bank Policy Research Working Paper 2908* (Washington DC).

⁶⁸³ Oxfam, above n 514, 22; Mattoo et al, Ibid, 14.

⁶⁸⁴ Mattoo et al, Ibid, 14.

⁶⁸⁵ Moss, above n 656, 683.

⁶⁸⁶ The previous GSP scheme had five components that included schemes to reward countries for fighting drug production, as well as for enforcing labour and environmental standards. Under the new EU GSP scheme there are three schemes instead of five i.e. (1) General scheme: product coverage increases from about 6900 to about 7200 which will incorporate 300 additional products mostly in the agriculture and fishery sectors for developing countries; (2) GSP-Plus: Scheme aimed for especially vulnerable countries with special development needs which will cover around 7200 products that may

duty free access for all T&C imports from the LDCs.⁶⁸⁸ Similar to the US “yarn forward” rule to determine preferential treatment, the EU applies the “double transformation” test.⁶⁸⁹ This test requires that yarns (which may or may not be imported) must be transformed into fabrics and fabrics, in turn, have to be transformed into clothing.⁶⁹⁰ This test imposes an unduly heavy burden on LDCs that do not possess a supporting textiles industries operating in parallel to their clothing industries.⁶⁹¹

Again the similarity between US and EU policy is noticeable. In order to ease the inherent rigidity of domestically sourcing inputs within countries that lack complementary textiles industries, the EU policy also provided for regional cumulation.⁶⁹² This enabled clothing producers such as Bangladesh or Sri Lanka to use inputs from other countries in the region such as India, Pakistan or other ASEAN countries.⁶⁹³

The qualification on the regional cumulation was that the required transformation must occur in the imported inputs along with fulfilment of other requirements for duty free access to be granted under the EBA.⁶⁹⁴ Ratnakar Adhikari and Chatrini Weeratunge point out that even with the added flexibility in sourcing of inputs, developing countries/LDCs were

enter the EU duty free. The eligibility criteria involves ratification and effective application of 27 key international conventions on sustainable development, human rights, labour standards and good governance; and (3) EBA: which continues in its application (ICTSD Bridges Weekly Trade News Digest, ‘EU Adopts New GSP Scheme’, Vol.9, No.23 (29 June 2005) <<http://www.ictsd.org/weekly/05-06-29/story4.htm>> at 26 March 2008).

⁶⁸⁷ EC, ‘Generalised System of Preferences: Everything but Arms’ <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms/index_en.htm> at 29 May 2010.

⁶⁸⁸ Ibid.

⁶⁸⁹ See for example discussion by Mathias Knappe, ‘Exporting Textiles & Clothing: What’s the Cost for LDCs?’ (International Trade Centre, International Trade Forum – Issue1/2005) <<http://www.tradeforum.org/news/fullstory.php/aid/837>> at 29 May 2010.

⁶⁹⁰ Oxfam, above n 514, 23 (Box 4).

⁶⁹¹ Knappe, above n 689.

⁶⁹² Ratnakar Adhikari & Chatrini Weeratunge, ‘Textiles & Clothing Sector in South Asia: Coping with Post-quota Challenges’, South Asian Yearbook 2006, 125 (Box 1); Hayashi, above n 2, 16; See also Oxfam, above n 514, 23 (Box 4).

⁶⁹³ Ibid.

⁶⁹⁴ Adhikari & Weeratunge, Ibid; Hayashi, above n 2, 16; Oxfam, above n 520, 23 (Box 4).

unable to increase their utilisation rate under the EBA preferences.⁶⁹⁵ This was possibly due to the high cost of compliance or buyers in the EU insisting on certain terms of inputs that deprived the clothing producers of choice of suppliers.⁶⁹⁶

Hayashi writes that an overwhelming majority of African LDCs do not qualify for EU EBA preferences simply because they are unable to satisfy the restrictive standards.⁶⁹⁷ Again, the major reason behind this inability to benefit from the EBA is that African LDCs lack the capacity to produce necessary inputs to complement their clothing industries.⁶⁹⁸ Hence, African LDC clothing exports are mostly destined for the US market.⁶⁹⁹

Similar to African LDCs, the Asian LDCs concentrating on clothing exports to the EU, also faced difficulties in the past in complying with the scheme requirements e.g. only 30% of Bangladeshi exports in woven-fabric clothing, which requires higher skills and technological investment, entered the EU-market on duty-free terms in 2005 as opposed knitted and crocheted fabrics for which the rate was 80%.⁷⁰⁰ Oxfam International quotes a representative of Bangladeshi clothing manufacturers that gives a glimpse of the problems faced by clothing manufacturers:

On the face of it, we have preferential market access to EU, but in reality half of our products don't get it. The principles of EBA and GSP are good rhetoric and very helpful in painting a benign façade on EU, but their conditionalities are harsh – they expect us to reach the same level of industrial development as China and Taiwan before we can fully benefit as an LDC. Well, if we could do it, we won't be counted as LDCs anymore and won't remain eligible. It's a case of damned if we

⁶⁹⁵ Adhikari & Weeratunge, Ibid.

⁶⁹⁶ Ibid.

⁶⁹⁷ Hayashi, above n 2, 16.

⁶⁹⁸ Ibid.

⁶⁹⁹ Ibid.

⁷⁰⁰ Ibid.

do and damned if we don't. With the changes apprehended post-MFA, it may very well be the end of EU as a market for us.⁷⁰¹

These were the problems that Bangladesh faced in years after quotas expired. Bangladesh was also one of the countries predicted as casualties of the quota elimination process. In light of the continued assistance from the EU⁷⁰² and the resilience of Bangladeshi manufacturers, Bangladesh has not only survived the immediate post-ATC period but, five years after quotas, has recorded impressive growth rates (this will be further discussed in Chapter 4 in light of available statistics and trade figures).

Another example of an Asian LDC, where “double transformation” nullified tariff preferences, is Sri Lanka. Sri Lanka made a formal request in 2004 to the EU for increased GSP treatment for its clothing products on the basis of improved labour standards and compliance with ILO labour conventions.⁷⁰³ Despite enjoying enhanced tariff treatment as compared to the standard GSP tariffs, Sri Lankan exports were not able to fully utilise the preferential tariff treatment due to the strict application of the “double transformation” rule.⁷⁰⁴ This is further highlighted in Chapter 4 in light of available statistics from the EU and the US market for years 2000-07. Furthermore, EU has temporarily withdrawn Sri Lanka's GSP-recipient status following human rights issues in Sri Lanka.⁷⁰⁵ Chapter 4 will also look at the available statistics that may have affected Sri Lankan export performance as a result of this development.

⁷⁰¹ Ghulam Faruq, Vice President of the Bangladesh Garment Manufacturers Export Association and Chairman of SQ Sweaters Ltd. quoted by Oxfam, above n 514, 19 (Box 2).

⁷⁰² In addition to extending the GSP treatment for Bangladeshi T&C products, the EU also extends technical assistances to Bangladesh in various trade-related aspects from the European Commission (EC) and the EU member states (Rubayat Jesmin, ‘Maximizing the potentials of Bangladesh's export to the EU market’ (2008) 6(3) *Asia Europe Journal* 519, 520 & 528).

⁷⁰³ Adhikari & Weeratunge, above n 692, 125 (Box 1).

⁷⁰⁴ Ibid.

⁷⁰⁵ EC, ‘EU temporarily withdraws GSP+ trade benefits from Sri Lanka’ (Press Release, Brussels, 15 February 2010) <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=515&serie=316&langId=en>> at 26 June 2010; See also EC, ‘Commission statement on Sri Lanka GSP+ report’ (Press Release, Brussels, 19 October 2009) <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=466&serie=275&langId=en>> at 26 June 2010.

Due to the rigid requirements of the EU GSP scheme, LDCs often criticised ineffectiveness of the GSP structure. As a result, the EU adopted a new GSP structure for the period 2006-2015. This was described as “simpler and fairer” as compared to the previous regime.⁷⁰⁶ The hallmark of the new GSP policies is the improved graduation system.⁷⁰⁷ This system is intended to shift focus on to the LDCs and developing countries that need the GSP benefits more than other countries.⁷⁰⁸ The new GSP scheme completed its first cycle of implementation (from 1 January 2006 to 31 December 2008).⁷⁰⁹ The current cycle of the GSP scheme began from 1 January 2009 and will last until 31 December 2011.⁷¹⁰

The aim of the reforms is for redirecting trade preferences away from large developing Asian economies towards more vulnerable developing countries.⁷¹¹ By way of illustration, under the first cycle of implementation of the new EU GSP scheme, China has graduated for 80% of its exports (even though it remains a GSP beneficiary) and the Indian textiles exports are ineligible to receive GSP treatment, whilst its clothing exports to the EU would continue to benefit from GSP benefits.⁷¹²

A mid-term review of the new EU GSP scheme acknowledges that “possibilities of regional cumulation in the underlying rules of origin” would be one of the factors that could determine the success of the new EU GSP regime.⁷¹³ The mid-term review also mentions consideration of reforming EU

⁷⁰⁶ EC, ‘European Member States Back New EU Generalised System of Preferences’ (Brussels) 23 June 2005, <http://ec.europa.eu/trade/issues/global/gsp/pr230605_en.htm> at 26 March 2008; See also ICTSD Bridges Weekly Trade News Digest, ‘EU Adopts New GSP Scheme’, Vol.9, No.23 (29 June 2005) <<http://www.ictsd.org/weekly/05-06-29/story4.htm>> at 26 March 2008.

⁷⁰⁷ According to the new scheme “Groups of products from beneficiary countries which in a given sector amount for more than 15% of EU imports from GSP countries are *graduated* and cease to benefit from preferential access. In the case of textiles the *graduation threshold is set at 12.5%, as it is for clothing*” (ICTSD Bridges, Ibid).

⁷⁰⁸ EC, above n 706; ICTSD Bridges, Ibid.

⁷⁰⁹ See generally WTO, ‘Generalised System of Preferences: Communication from the European Communities’, WTO Document WT/COMTD/57 (28 March 2006).

⁷¹⁰ See the mid-term evaluation of the EU’s GSP Scheme (CARIS, ‘Mid-term Evaluation of the EU’s Generalised System of Preferences’ <http://trade.ec.europa.eu/doclib/docs/2010/may/tradoc_146196.pdf> at 26 June 2010.

⁷¹¹ ICTSD Bridges, above n 686.

⁷¹² Ibid; see also Hayashi, above n 2, 17.

⁷¹³ CARIS, above n 710, 13.

ROO as an important element of the new EU GSP scheme⁷¹⁴ e.g. the CARIS report after conducting economic analysis states that:

...richer countries are more likely to utilise preferences. Predictably, the size of the preference margin available for exporting increases the probability of preference utilisation. However, improving rules of origin and export procedures in export countries also has a positive impact on the ability of these countries to utilise preferences.⁷¹⁵

Therefore, the main purpose behind the EU GSP schemes such as EBA is undermined if the poorer nations are unable to utilise preferential treatment for their T&C exports to the EU.

3.2.2.5 Post-ATC preferential treatment of Textiles & Clothing

Whilst the EU and the US provide illustration of reluctant expansion in market access for T&C products of developing countries/LDCs, Canada has attracted praise by Oxfam International as the only developed country “to have met its Doha promise on duty-free, quota-free access for LDC textile and clothing exports.”⁷¹⁶

Under its 2003 ‘Market Access Initiative’ all T&C imports from LDCs receive preferential entry terms if it is entirely made in LDC (with no value added requirement for the last stage of production) or if it meets the 25% content requirement (which entails addition of at least 25% of value in the final stage of production but with no double transformation requirement).⁷¹⁷ The Canadian scheme also contains no restriction on origin of inputs i.e. the fabrics and yarns may be sourced from suppliers other than Canada.⁷¹⁸

⁷¹⁴ Ibid, 74 & 81.

⁷¹⁵ Ibid, 83.

⁷¹⁶ Oxfam, above n 514, 23 (Box 4).

⁷¹⁷ Ibid.

⁷¹⁸ Audet, above n 545, 278.

Since the introduction of a liberalised GSP scheme, many LDCs have benefited immensely (in particular Bangladesh and Cambodia).⁷¹⁹ The liberalised ROO that enabled cumulation of content from any LDC or GSP recipient resulted in increase of LDC clothing exports from US \$ 110 Million to US \$ 298 Million in 2003.⁷²⁰ Keeping in view the lack of LDC capacity to produce textiles inputs, large developing countries such as India and China have also benefited indirectly since Asian LDCs source their fabrics and other necessary inputs for their clothing exports from these countries.⁷²¹

The negative consequence of this liberalisation process predictably came from the Canadian industry interests who claimed unfair competition from the low cost producers in developing countries.⁷²² However, the Canadian government initiated policies to offset the losses suffered by the Canadian manufacturers.⁷²³ Denis Audet highlights lessons learnt from the Canadian experience:

“...the implementation of liberal rules of origin requires a comprehensive approach to ensure that the domestic processing industry also benefits from trade liberalization programmes through: (i) access to duty free inputs; (ii) an adjustment programme to improve production efficiency; and (iii) unemployment coverage for displaced workers.”⁷²⁴

The positive effects of the Canadian ROO are highlighted by the WTO import figures for Canada in the years 2007-2008 (See Table 3.1).

(Table 3.1) Developing Countries/LDCs, Percentage of Market Share in Canadian Import of Clothing (2004-2008)					
Source: WTO, International Trade Statistics 2005-2009					
Origin	2004	2005	2006	2007	2008
China	35.4	46.8	50.3	53.5	53.9

⁷¹⁹ Ibid.

⁷²⁰ Ibid.

⁷²¹ Ibid.

⁷²² Ibid.

⁷²³ Ibid.

⁷²⁴ Ibid.

Bangladesh	6.7	6.1	6.4	5.8	6.4
India	6.0	5.7	5.2	4.5	3.9
Mexico	5.2	4.7	4.4	3.8	3.5
Cambodia	2.0	1.8	1.9	2.4	2.9
Vietnam	1.1	1.7	1.9	2.2	2.7
Indonesia	1.9	1.9	2.0	2.0	1.9
Turkey	1.6	1.6	1.5	1.4	1.3
Thailand	2.1	1.9	1.7	1.4	1.2
Pakistan	1.3	1.2	1.2	1.1	1.1
Sri Lanka	1.1	0.9	0.8	0.7	0.7

Whilst these figures show continuous growth of Chinese clothing exports to Canada in the post-ATC period, these figures also highlight growth in market share of LDCs such as Bangladesh, Cambodia and Vietnam. These figures attest to the positive effect that realistically constructed GSP policies can have on T&C exports of developing countries/LDCs. The growth is evident for the three Asian LDCs after the new Canadian GSP scheme came into force in 2003.

The Canadian GSP structure is a blue-print for the US and the EU policymakers, if they are truly committed in helping the poor countries. The Canadian experience and its positive effects on LDC exports, demonstrate that GSP schemes, along with PTAs, would continue to affect trade flows of T&C in the post-ATC period.

Even though the EU and US policies have generally been criticised as ineffective, there are some T&C exporter countries that have benefitted immensely from GSP treatment in the post-ATC period. However, this has been possible only after combining preferential treatment with other factors such as capacity building, low-wages, quality of products and active marketing. The case studies in Chapter 4 would further elaborate on this issue.

3.2.3 Impact of Tariff Barriers and NAMA Negotiations

3.2.3.1 Overview

In the past, the T&C sector has attracted an unusually high tariff rate imposed by developed countries e.g. the average post-Uruguay Round tariffs on T&C

products in the US was 14.6%, 9.1% in the EU and 7.6% in Japan.⁷²⁵ By contrast, the average industrial tariffs in these developed countries were 3.5%, 3.6% and 1.7% respectively.⁷²⁶

In the post-ATC period, employing high tariffs on T&C products has become an important policy instruments for developed countries.⁷²⁷ There is little likelihood of these tariffs coming down even if the ongoing NAMA negotiations move ahead successfully.⁷²⁸ One alternative around high tariff barriers is for the importing developed countries to provide preferential treatment under a GSP scheme (examined above as a major issue affecting the T&C trade) or concluding a FTA. However, even after preferential treatment is extended in the form of GSP, PTAs or under FTAs the export performance of the recipient exporting countries have been mixed (discussed in the preceding section and is further highlighted by the case studies in Chapter 4).

The ongoing NAMA negotiations carry far reaching consequences on the future of trade in T&C in the post-elimination era. Briefly, these negotiations are held under the aegis of the Doha Round of multilateral trade negotiations and aim to reduce or eliminate tariff and non-tariff barriers for all industrial products (including T&C) worldwide.⁷²⁹ The primary sponsors for the NAMA negotiations are developed countries. However, developing countries retain an interest in the outcome of the talks, especially in sectors of particular interests to them such as textiles, clothing, footwear and fisheries.

Generally, a common concern amongst developing countries with NAMA negotiations is that ambitious tariff cuts will lead to reductions in applied rates and consequent loss of tariff protection.⁷³⁰ Tariff reductions under NAMA

⁷²⁵ Adhikari & Yamamoto, above n 6, 195 citing Michiko Hayashi, 'Weaving a New World: Realizing Development Gains in a Post-ATC Trading System', UNCTAD Series on Assuring Development Gains from the International Trading System and Trade Negotiations (UN, New York and Geneva).

⁷²⁶ Adhikari & Yamamoto, Ibid.

⁷²⁷ Ibid.

⁷²⁸ Adhikari & Yamamoto, above n 6, 195 (Ibid).

⁷²⁹ ILO, above n 4, 34.

⁷³⁰ Hayashi, above n 2, 10.

would also mean that developing countries would cease using tariffs to shield their developing industries from foreign competition.⁷³¹

Additionally, in the context of T&C, Chapter 2 highlights the division within the ranks of developing countries where a group of countries have formed a lobby to call for a separate sectoral negotiation on T&C with a capped average tariff rate of 15%.⁷³² This reflects the reduced chances of a substantial and meaningful reduction of tariffs on T&C products in the ongoing NAMA negotiations.⁷³³

Furthermore, the US textiles interests lobbied extensively against agreeing to any tariff reductions in this sector in absence of a sector-specific T&C arrangement, failing which "...foreign exporters will receive greater competitive opportunities in the U.S. market than the U.S. textile industry will receive in foreign markets under the general formula of proposed tariff cuts. Such an outcome then will result in less than full reciprocity..."⁷³⁴

The focus of the bogged-down NAMA negotiations centres on a "Swiss" tariff formula which envisions reduction of higher tariffs more than lower tariffs with the objective of harmonisation of all tariffs.⁷³⁵

The complications in the NAMA negotiations stem from the calls by some developing countries that tariffs should not be cut on certain products (which include T&C).⁷³⁶ Their concern is that tariff elimination or reduction will erode

⁷³¹ Ibid.

⁷³² Adhikari & Yamamoto, above n 6, (endnote 7) 227.

⁷³³ Ibid.

⁷³⁴ NCTO, 'US House of Representative Calls for USTR to Adhere to Textile Negotiating Objectives in WTO Talks – Appropriate Committee Mandates Report on Progress of Textile Negotiations' (29 June 2006) <<http://www.ncto.org/newsroom/pr200610.asp>> at 1 April 2008.

⁷³⁵ ILO, above n 4, 34; see also WTO, 'Market Access Negotiations: The December 2008 NAMA modalities text made simple' <http://www.wto.org/english/tratop_e/markacc_e/guide_dec08_e.htm> at 29 May 2010.

⁷³⁶ ICTSD Bridges Weekly Trade News Digest, 'New NAMA Text Urges Members to Examine Tradeoffs between Formula, flexibilities', Vol.12, No.5 (13 February 2008), <<http://www.ictsd.org/weekly/08-02-13/story2.htm>> at 1 April 2008.

whatever is left of their preferential margin extended to them under the GSP schemes operated by developed countries.⁷³⁷

Hoekman and Prowse comment that complying with the conditions of GSP entails costs that further reduce the actual value of preferences and therefore, any tariff elimination or reduction will further affect gains by the LDCs.⁷³⁸ Mustafizur Rahman and Wasel Bin Shadat explain the issue of preference erosion by citing the example of the Asia-Pacific LDCs that are heavily reliant on labour intensive sectors.⁷³⁹ Amongst these sectors, T&C is of particular importance since it accounts for about two-thirds of total commodity exports of these countries.⁷⁴⁰

Therefore, any erosion in the preference margin, critical for maintaining exports from the T&C sector of these countries, would have adverse, long-term socio-economic implications.⁷⁴¹ Concerned with preference erosion, the LDCs are calling on developed countries for reforming their preferential ROO in more LDC-friendly terms especially in relation to the sectors important for LDCs.⁷⁴²

3.2.3.2 Impact of NAMA Negotiations

The potential impact of NAMA Negotiations has produced an interesting analysis e.g. Rahman and Shadat point out that preference erosion is only an issue for developing countries/LDCs where countries are the actual recipients of trade preferences for their T&C exports as opposed to countries that do not

⁷³⁷ Munir Ahmad, 'Impact of Origin Rules for Textiles and Clothing on Developing Countries', ICTSD Issue Paper No.3 (December 2007) 39; Hayashi, above n 2, 11; ILO, above n 4, 34; Audet, above n 545, 280.

⁷³⁸ Bernard Hoekman & Susan Prowse, 'Economic Policy Responses to Preference Erosion: From Trade as Aid to Aid for Trade' (2005) (Revised version) Presented at the International Symposium on 'Preference Erosion: Impacts and Policy Responses', Geneva (13-14 June 2005) 5.

⁷³⁹ Mustafizur Rahman & Wasel Bin Shadat, 'NAMA Negotiations in the WTO and Preference Erosion: Concerns of Bangladesh and Other Asia-Pacific LDCs' (2006) 7(2) *South Asia Economic Journal* 179, 181.

⁷⁴⁰ Ibid.

⁷⁴¹ Ibid.

⁷⁴² Ibid, 195.

receive such preferential treatment for similar exports.⁷⁴³ For example, for an Asian LDC such as Bangladesh that specialises in clothing, preference erosion due to tariff reduction under NAMA for its clothing exports in the US market is not an issue.⁷⁴⁴ This is because the US does not normally grant trade preferences to T&C products (with the exception of African LDCs under AGOA and CBI countries under CBTPA), therefore, clothing from Bangladesh is not covered under the US-GSP programme.⁷⁴⁵

Continuing with their example of Bangladesh, Rahman and Shadat comment that any reduction in US tariffs as a result of NAMA negotiations would increase competitiveness of Bangladeshi clothing products against CBTPA and AGOA exporters.⁷⁴⁶ This is because after tariff reductions the preferential benefits enjoyed by the CBI and AGOA beneficiaries would be eroded.⁷⁴⁷ This illustration demonstrates the multiple offsetting effects of tariff reduction under NAMA and its potential impact on global T&C trade in the post-ATC period where loss of market share due to preference erosion could be off-set by enhanced competitiveness in another market.

Notwithstanding the potential of access to new markets as an indirect consequence of NAMA tariff liberalisation, some developing countries/LDCs are calling upon developed countries to avoid large slash in tariffs so that the margin of trade preference currently enjoyed by these countries can be maintained.⁷⁴⁸

As with all issues pertaining to trade in goods, there are conflicting positions on preference erosion as well. Bob Fisher states that "...reducing or eliminating developing country tariff preferences would have a very small impact on

⁷⁴³ Ibid, 188-189.

⁷⁴⁴ Ibid.

⁷⁴⁵ Ibid. The predominant destination for Bangladeshi clothing exports is the EU since Bangladesh was a recipient of preferential access benefits under the previous EU-GSP scheme and continues to avail preferential access under the new EU-GSP scheme as well.

⁷⁴⁶ Ibid, 189.

⁷⁴⁷ Ibid.

⁷⁴⁸ Audet, above n 545, 280.

developing countries overall, and that the gains to be had from *broad WTO trade liberalisation would offset losses on particular products.*"⁷⁴⁹

Analyses downplaying the impact of preference erosion cite that non-reciprocal tariff schemes have resulted in few benefits to developing countries and that too in few sectors such as fisheries, agriculture and textiles.⁷⁵⁰ The proponents of this view argue that any potential impact would be spread over a phased period of time.⁷⁵¹ Moreover, the concerned LDCs are only benefiting from the GSP schemes on a limited scale due to the effect of stringent ROO and because of supply side constraints such as poor human capital, limited trade facilitation measures, poor infrastructure, high cost of inputs and limited access to financing.⁷⁵² Therefore, preference erosion is not a major concern for most developing countries.⁷⁵³

However, for poor countries that have organised entire sectors (as is the case with T&C) on the basis of preferential market access schemes, preference erosion is a major issue that cannot be taken lightly or ignored.

3.2.3.3 Calls for a sector-specific agreement

Considering the impact of preference erosion and loss of market share to China, many developing countries/LDCs voiced their support for a separate sector-specific tariff reductions as opposed to the generally accepted approach in NAMA negotiations.⁷⁵⁴ However, what these countries seem to ignore is that, ultimately, NAMA negotiations have to cover trade in other sectors as well as the T&C sector. The main rationale behind the call for sector-specific tariff is that this would enable developing countries/LDCs to retain

⁷⁴⁹ Fisher, above n 605, 1380 (emphasis added).

⁷⁵⁰ Adhikari & Yamamoto, above n 6, 202-203; Rahman & Shadat, above n 739, 191.

⁷⁵¹ Adhikari & Yamamoto, Ibid; Rahman & Shadat, Ibid.

⁷⁵² Fisher, above n 605, 1382; Adhikari & Yamamoto, Ibid; Rahman & Shadat, Ibid.

⁷⁵³ Fisher, Ibid; Philippe Legrain, 'Why NAMA Liberalisation is Good for Developing Countries' (2006) 29(10) *The World Economy* 1349, 1359.

⁷⁵⁴ Ahmad, above n 737, 39; WTO, Negotiating Group on Market Access, 'Towards NAMA Modalities', WTO Document Job(06)/200 (22 June 2006).

preferential access to developed countries. This allows them to compete against more established exporters.

The LDCs, in particular, have an important stake in the outcome of the negotiations since clothing manufacturing undertaken in these countries is often done on the premise of exploiting preferential market access to developed countries. Naturally, these countries are found to be actively involved in NAMA negotiations e.g. The African LDC group in NAMA negotiations has sought phased tariff cuts in the tariffs maintained by the US and the EU in the T&C sector over a period of 15 years (which is three times longer than the standard period).⁷⁵⁵

This proposal aims to extend the period during which the LDC exports to the US and the EU markets would continue to receive a significant preference-margin as compared to other competitors.⁷⁵⁶ Many developing countries are understandably opposed to an extended transition period or reduced cuts in tariffs since this affects their exports to the US and the EU markets.⁷⁵⁷

3.2.3.4 Reduced government revenues

Another concern for the developing countries/LDCs is that reducing tariffs (or eliminating them altogether) negatively affects government revenues in already cash strapped nations.⁷⁵⁸ For developing countries/LDCs, keeping their fiscal limitations in mind, tariffs represent not only a source of revenue

⁷⁵⁵ ICTSD Bridges Weekly Trade News Digest, 'LDCs Outline Priorities, As WTO Members Try Once Again for Doha Deal' Vol.12, No.7 (5 March 2008) <<http://www.ICTSD.org/weekly/08-03-05/story1.htm>> at 1 April 2008; see also WTO, 'Treatment of non-Reciprocal Preferences for Africa', WTO Document TN/MA/W/49 (21 February 2005).

⁷⁵⁶ ICTSD Bridges, Ibid.

⁷⁵⁷ NAMA 11 Group is particularly opposed to reduced tariff cuts and longer implementation period. These countries include Argentina, Venezuela, Brazil, Egypt, India, Indonesia, Namibia, the Philippines, South Africa and Tunisia (see ICTSD, 'Industrial Goods Dependent on Agriculture Breakthrough, Says NAMA Chair' <<http://ictsd.org/i/publications/6339/>> at 29 June 2010); see also ICTSD Bridges Weekly Trade News Digest, 'With Talks At Impasse, NAMA Chair Suggests Tradeoffs Between Formula, Flexibilities' Vol.12, No.8 (5 March 2008) <<http://ictsd.org/i/news/bridgesweekly/11056/>> at 29 June 2010.

⁷⁵⁸ Fisher, above n 605, 1383; Legrain, above n 753, 1358.

but also an instrument of industrial policy.⁷⁵⁹ Developing countries are understandably concerned especially since the end of quotas and the increased competition in T&C trade affected their exports (further examined in Chapter 4).

The fear of reduction in revenue inflows is a major barrier to the fuller participation by developing countries/LDCs in the NAMA process. This is best illustrated by IMF comments that “Trade tax revenue typically constitutes between one-quarter and one-third of total tax revenue in low- and middle-income countries, and only a negligible share in high income countries.”⁷⁶⁰ Developed countries are keen in promoting across the board tariff reductions since this opens up the developing economies that are often shielded behind high tariffs.

Whilst detailed analysis of tariffs vis-à-vis trade liberalisation falls outside the scope of this research, one view is stated that increasing the tax base can offset potential fall in revenue collection.⁷⁶¹ However, this measure may only be effective in some countries dependent on the local socio-economic conditions. Therefore, this issue remains one of the factors that may indirectly affect global trade in T&C, especially for countries reliant on importing yarn and fabrics. Thus, as tariff barriers are reduced clothing manufacturing nations gain

⁷⁵⁹ Ha-Joon Chang, ‘Why Developing Countries Need Tariffs? How WTO NAMA Negotiations Could Deny Developing Countries’ Right to a Future’ (2005) 15 <<http://www.uneca.org/ATPC/documents/WhyDevCountriesNeedTariffsNew.pdf>> at 21 April 2008. Chang states that the poorer the country, higher the share of tariff revenue in total revenue tends to be and that even after two decades of liberalisation, tariffs still account for 15% of government revenues on average in developing countries.

⁷⁶⁰ The comments by IMF came soon after quota expiry in 2005 (see IMF, ‘Dealing with the Revenue Consequences of Trade Reform’, (Background Paper for Review of Fund Work on Trade) (15 February 2005) 3, <<http://www.internationalmonetaryfund.org/external/np/pp/eng/2005/021505.pdf>> at 24 June 2010).

⁷⁶¹ Benin, Cote d’Ivoire, The Gambia, Malawi, Zambia and Pakistan have in the past managed to maintain or increase tax revenues while reducing tariffs. Pakistan is cited as an example of a low-income country by IMF that “reduced tariffs, while maintaining tariff revenue and boosting total tax collections.” Pakistan experienced a growth in PKR from 65 Billion in 2000-2001 to PKR 115 Billion in 2004-2005. While customs duties have risen from 16.6% to 19.5% of total revenues collected (Source: Fisher, above n 605, 1386 (Box 4) citing Pakistan’s Central Board of Revenue and Thomas Baunsgaard & Michael Keen, ‘Tax Revenue and (or?) Trade Liberalization’ IMF Working Paper WP/05/112 (2005); see also IMF, above n 760, 17).

increased access to cheaper textiles inputs because of reduced costs resulting from tariff reductions.

Downplaying the issue of reduced revenues, Philippe Legrain comments that the this problem “should not be overstated” and that “...if the least-developed countries are only asked to bind their tariffs in the Doha Round and do not have to make cuts in their actual tariff rates, they will not face any loss of tariff revenue. That would leave only a few middle-income countries affected – and they are more than capable of finding alternative revenue sources such as value-added tax or sales tax.”⁷⁶²

Legrain’s comment is in stark contrast to Ha-Joon Chang’s opinion that developing countries/LDCs “may not be necessarily required to cut industrial tariffs in the current round of NAMA negotiation, but, they are expected to substantially increase the proportion of tariffs that are bound, a process that is likely to involve at least some tariff cuts and, that will leave them vulnerable to pressure for further cuts in subsequent rounds.”⁷⁶³

The afore-mentioned issues are closely linked to the issue of “preferred” and the “non-preferred” countries.⁷⁶⁴ The preferred countries enjoy preferential access to the EU and the US markets, whilst the non-preferred countries do not enjoy the same level of preferential treatment.⁷⁶⁵ The US, with limited exceptions such as the AGOA and the CBTPA, does not grant preferential treatment to T&C products. The EU, on the other hand, extends some preference in MFN duties to T&C from developing countries under its GSP scheme.⁷⁶⁶ This inequality in market access affects the Asian developing countries the most since these are “non-preferred” countries according to the

⁷⁶² Legrain, above n 753, 1358.

⁷⁶³ Chang, above n 759, 16; Bound Tariffs is the tariff level notified to the WTO for a product which a country commits not to exceed in its applied tariffs.

⁷⁶⁴ Hayashi, above n 2, 12.

⁷⁶⁵ Ibid.

⁷⁶⁶ Ibid.

US system and are “preferred” countries only in the EU if they qualify for GSP scheme.⁷⁶⁷

Therefore, for the Asian “non-preferred” exporters, the NAMA negotiations represent a way forward in addressing this inequality in market access.⁷⁶⁸ Keeping in mind that GATT has generally resulted in low industrial tariffs for other sectors, any reductions in tariffs on T&C is one positive outcome that some Asian developing countries/LDCs may obtain from NAMA negotiations.⁷⁶⁹ However, the same cannot be said for African and Caribbean exporters who are concerned, in light of their limited comparative advantage and industrial capacity, about increased competition and preference erosion as tariff levels go down. Thus, the outcome of NAMA negotiations will have far-reaching consequences on global trade in T&C.

The issue of trade liberalisation forms the central premise of this thesis. Later chapters will demonstrate why T&C liberalisation is actually in the long-term interests of the poorer LDCs.

3.2.4 The Impact of Non-Tariff Barriers

3.2.4.1 Overview

In addition to tariffs, Non-Tariff Barriers (NTBs) are another important issue that merits consideration in the post-ATC period. NTBs impede exporter’s market entry through a wide range of factors involving complicated and rigid regulatory barriers.⁷⁷⁰ Complying with these internal regulations is costly both in terms of time and money.

The NTBs may comprise issues such as customs regulations, non-uniform classification of similar products, ROO, technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS), competition rules, import licensing

⁷⁶⁷ Ibid, 12-13.

⁷⁶⁸ Ibid, 13.

⁷⁶⁹ Ibid.

⁷⁷⁰ UNCTAD, above n 430, 13.

requirements, certification formalities, packaging, marking and labelling requirements, excise and export taxes on certain textiles products (particularly on yarns, fabrics and other inputs for manufacturing clothing products), excessive pre-shipment inspection requirements.⁷⁷¹ The specific problem associated with NTBs is that the unilateral imposition of these measures by developed countries on T&C imports from developing countries/LDCs especially are often employed to realise political rather than economic aims.

Government regulatory policies and industry standards have the dual potential of facilitating trade by specifying product characteristics in order to improve usability, while advancing public interest by prescribing health safety parameters. Conversely, these policies can also serve as a façade for protectionism. Since tariffs cannot act as complete barriers to market entry (unless they are prohibitively high),⁷⁷² complex regulatory policies and stringent standards entailing high compliance costs can be the “perfect” tool for protecting local industries that face competition from imports, all the while maintaining an aura of legitimacy.

3.2.4.2 Non-Tariff Barriers and trade

In the post-ATC period, NTBs are most likely to be the successors of VERs, quotas and tariffs as the most commonly used mechanism for market control.⁷⁷³ Richard Baldwin comments:

Citizen concern and industrial efficiency demand product norms, and a typical rich nation will have tens of thousands of standards and regulations. Most are highly technical, and a large fraction covers intermediate inputs—products unknown to most voters. Owing to their technical complexity and political invisibility, product norms are often written, directly or indirectly, by domestic firms to which they apply.

⁷⁷¹ UNCTAD, Ibid; Hayashi, above n 2, 14.

⁷⁷² Adhikari & Yamamoto, above n 6, 199.

⁷⁷³ Adhikari & Yamamoto, Ibid; see generally Keith E. Maskus, John S. Wilson & Tsunehiro Otsuki, ‘Quantifying the Impact of Technical Barriers to Trade: A Framework for Analysis’, World Bank Policy Research Working Paper No. 2512 (30 November 1999).

Quite naturally, these firms write the norms in a way that favors [*sic*] their varieties or at least disfavors [*sic*] foreign varieties.⁷⁷⁴

Despite the fact that governmental NTBs are largely protectionist in nature, these measures are comparatively more certain as compared to private standards, which may vary and could prove more costly.⁷⁷⁵ These private standards (often maintained by large retail corporations) constitute NTBs that may incorporate private standards on labour and the environment.⁷⁷⁶ These standards may be imposed on producers based in developing countries/LDCs as a pre-condition of production orders.

Whilst the positive aspect of these standards is appreciable, these standards nevertheless contribute to raising the production costs of manufacturers, especially where compliance with varying standards of more than one foreign buyer is concerned.⁷⁷⁷ Therefore, the manufacturers based in developing countries (particularly those engaged in clothing manufacturing and processing) must either adapt to the human development and environmental standards for each of their foreign clients or impose the most stringent buyer's standards in order to stay in business.⁷⁷⁸ Either of these choices results in increased cost of production, which affects the competitiveness of the producers.⁷⁷⁹

Reliability and availability of data on NTBs compounds the problem for exporters.⁷⁸⁰ Therefore, disputes filed with the WTO DSB as well as the notifications of NTBs made during the NAMA negotiations are relied upon by countries seeking to address this issue.⁷⁸¹

⁷⁷⁴ Richard E. Baldwin, 'Regulatory Protectionism, Developing Nations, and a Two-Tier World Trade System' Graduate Institute of International Studies, Geneva, Brookings Trade Forum, 237, 241.

⁷⁷⁵ Adhikari & Yamamoto, above n 6, 199.

⁷⁷⁶ Ibid, 199-200.

⁷⁷⁷ Ibid, 200; see also Hayashi, above n 2, 14.

⁷⁷⁸ Ibid.

⁷⁷⁹ Ibid.

⁷⁸⁰ Fisher, above n 605, 1389.

⁷⁸¹ Ibid.

Labelling and marking requirements has attracted some response from developed countries (primarily because these countries are the destination of choice for T&C exports from developing countries). The US, for instance, proposed harmonisation in labelling requirements that would include information on country of origin, fibre content, consumer safety information and care instructions.⁷⁸² Whereas, the EU also put forward a number of proposals that include agreement amongst the NAMA negotiating group on the inclusion of information for labelling purposes as well as simplification of certification requirements and conformity of procedures.⁷⁸³

3.2.4.3 Non-Tariff Barriers specific dispute resolution

A major initiative taken in connection with NTB and NAMA Negotiations is the proposal by the African Group, Canada, European Communities, LDC Group, NAMA-11 Group of Developing Countries, New Zealand, Norway, Pakistan and Switzerland to establish a NTB-specific dispute settlement system independent of the standard WTO dispute settlement mechanism (also referred to as the “horizontal mechanism”).⁷⁸⁴ The aim of establishing a dedicated dispute settlement process was to reduce the risk of NTBs becoming an obstacle to free flow of goods between countries as well as facilitation of an effective resolution of NTB related disputes.⁷⁸⁵

⁷⁸² WTO, ‘Negotiating Text on Textiles, Clothing, Footwear and Travel Goods Labelling Requirements: Communication from the United States’, WTO Document TN/MA/W/A8/Add. 14 (15 May 2006).

⁷⁸³ WTO, ‘Negotiating Text on Textiles, Clothing, Footwear and Travel Goods Labelling Requirements: Communication from the European Communities’, WTO Document TN/MA/W/11/Add. 7 (27 April 2006); see also WTO, ‘Market Access for Non-Agricultural Products; Communication from the European Communities, Mauritius, Sri Lanka and the United States’, WTO Document TN/MA/W/93/Rev.1 (15 September 2009).

⁷⁸⁴ WTO, ‘Market Access for Non-Agricultural Products - Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers; Communication from the African Group, Canada, European Communities, LDC Group, NAMA-11, Group of Developing Countries, New Zealand, Norway, Pakistan and Switzerland’, WTO Document TN/MA/W/106 (9 May 2008). Since this document is a ‘Ministerial Decision’ it is referred to as “this Decision” in the text.

⁷⁸⁵ WTO, ‘Negotiating Proposal on WTO Means to Reduce the Risk of Future NTBs and to Facilitate their Resolution: Communication from the European Communities’, WTO Document TN/MA/W/AA/Add.8 (1 May 2006); WTO, ‘Resolution of NTBs through a Facilitative Mechanism: Submission by NAMA 11 Group of Developing Countries’, WTO Document TN/MA/W/68/Add.1 (22 March 2006).

Currently, disputing countries can either resort to the traditional dispute settlement system of the WTO under the DSU (a time-consuming and costly process) or utilise the notification system under the relevant WTO agreement (a consultation mechanism that is not meant for dispute resolution).⁷⁸⁶ The new proposal takes into account these facts and is intended to supplement the existing WTO dispute settlement framework.

The proponents of the horizontal mechanism claim that “Numerous NTBs are caused by faulty implementation of a law rather than the law itself. The Horizontal Mechanism seeks to provide a means to address such problems quickly and efficiently.”⁷⁸⁷ The proponents also argue that the horizontal mechanism is not intended to be a “legalistic evaluation of Members’ rights and obligations”; therefore it is distinct from the DSU mechanism.⁷⁸⁸

The proposed system envisages a two-stage resolution system for NTB related disputes. The first stage of the process covers request for information and response to the request on a specific NTB.⁷⁸⁹ The request shall identify and describe the specific measure at issue and provide a detailed description of the requesting Member's concerns regarding the measure's impact on trade.⁷⁹⁰

The proposal states that in response to the request, the responding Member shall provide a written response within twenty days containing its comments on the issues raised in the request.⁷⁹¹ In cases where the responding Member

⁷⁸⁶ The preamble to the proposal floated by the sponsors of the horizontal mechanism states that it is a “flexible and expeditious procedures of a conciliatory and non-adjudicatory nature, involving a facilitator, may promote mutually acceptable solutions to Members' concerns regarding non-tariff barriers that aid exporters and importers, while respecting the legitimate objectives of the Members maintaining the measures” (WTO, above n 790, Preamble)

⁷⁸⁷ WTO, ‘Negotiating Group on Market Access; Answers by the co-sponsors to Questions raised during Chair's NTB sessions in 2009 regarding the proposed Ministerial Decision on procedures for the facilitation of solutions to non-tariff barriers’, WTO Document TN/MA/W/110/Rev.1 (29 October 2009), 1.

⁷⁸⁸ Ibid, 2.

⁷⁸⁹ The proposal states that the requesting Member may, individually or jointly with other Members, initiate Stage I of these procedures by submitting in writing to another Member (the responding Member) a request for information regarding a non-tariff barrier (WTO, above n 784, Paragraph 6).

⁷⁹⁰ Ibid.

⁷⁹¹ Ibid, Paragraph 7.

cannot meet the short timeline of twenty days, it shall inform the requesting Member of the reasons for the delay, along with an estimate of the period when it would be able to prepare a response.⁷⁹²

The proposal further states that once submitted, the requesting Member shall notify its request for information to the relevant WTO Committee, which shall circulate it to all Members.⁷⁹³ Similarly, the responding Member shall also notify its response to the relevant WTO Committee, which shall also be circulated to all Members.⁷⁹⁴

Following the receipt of notifications from both parties, the Chairperson or one of the Vice Chairpersons of the relevant WTO Committee shall convene a meeting with the parties to discuss any outstanding issues and explore possible next steps.⁷⁹⁵

Thereafter, the parties shall by mutual agreement determine the expediency of proceeding to the second stage of the dispute settlement process.⁷⁹⁶ The proposal states that if one of the parties to the dispute requests that proceedings be taken to the second stage then the other party shall accord “sympathetic consideration” to that request.⁷⁹⁷ The decision to proceed to the second stage is also to be notified to the relevant WTO Committee.⁷⁹⁸

The proposal further states that once initiated, the second stage proceedings can be terminated upon request by either party.⁷⁹⁹ The proposal also makes provisions covering issues of appointment of a facilitator,⁸⁰⁰ the issue of confidentiality,⁸⁰¹ transparency⁸⁰² and technical assistance.⁸⁰³

⁷⁹² Ibid.

⁷⁹³ Ibid, Paragraph 8.

⁷⁹⁴ Ibid.

⁷⁹⁵ Ibid.

⁷⁹⁶ Ibid, Paragraph 9.

⁷⁹⁷ Ibid.

⁷⁹⁸ Ibid, Paragraph 10.

⁷⁹⁹ Ibid, Paragraph 11*bis*.

⁸⁰⁰ Ibid, Paragraph 12.

⁸⁰¹ Ibid, Paragraph 16.

If the second stage of the dispute settlement proceedings is either terminated or if the parties reach a mutually agreed solution, the facilitator in the proceedings shall issue to the parties a draft factual report that provides a brief summary of (1) the NTB at issue in these procedures; (2) the procedures followed; and (3) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.⁸⁰⁴

The proposal also specifies that the facilitator shall provide the parties fifteen days to comment on the draft report.⁸⁰⁵ Thereafter, the facilitator shall submit, a final factual report in writing to the relevant WTO Committee within fifteen days of receiving the comments.⁸⁰⁶ The proposal states that if the parties reach a mutually agreed solution, such solution shall be implemented in conformity with the WTO Agreement.⁸⁰⁷

The factual report can possibly be used in the WTO DSU as well since it contains factual information.⁸⁰⁸ However, the factual report does not bind any DSU panel that may independently establish facts.⁸⁰⁹

Concerning the issue of application and review, the proposal states that the WTO CTG and the relevant Committees shall apply this Decision and implement it from the date of the adoption of this Decision.⁸¹⁰ The WTO CTG and each Committee to which this Decision applies may decide, by consensus, to modify certain procedural aspects of this Decision.⁸¹¹ The proposals also state that a review of the effectiveness of the proposed procedures will be

⁸⁰² Ibid, Paragraphs 20-21.

⁸⁰³ Ibid, Paragraph 22.

⁸⁰⁴ Ibid, Paragraph 18.

⁸⁰⁵ Ibid.

⁸⁰⁶ Ibid.

⁸⁰⁷ Ibid, Paragraph 19.

⁸⁰⁸ WTO, above n 787, 15.

⁸⁰⁹ Ibid.

⁸¹⁰ WTO, above n 784, Paragraph 23. See above n 784 for an explanation behind the use of the term “this Decision.”

⁸¹¹ Ibid, Paragraph 23.

undertaken by the WTO CTG after five years of the adoption of the horizontal mechanism.⁸¹² This would give an opportunity to the Members to decide on extending these procedures to other matters falling under the WTO Agreement or otherwise modify these procedures.⁸¹³

The US has opposed these proposals and favours the "committee first approach" in which problems should be resolved at the respective committee level first.⁸¹⁴ Undoubtedly, the proposals for NTB specific dispute settlement indicate some level of dissatisfaction with the existing dispute settlement system. This is especially true if cost and time implications are considered for a developing country mulling proceedings against a developed country in the WTO DSB. However, the NTB Resolution Mechanism is not an ideal solution even for its developing country proponents. This proposal suffers from some major drawbacks e.g. the process is based on consensus between disputants and the political will to modify the NTBs in question. History demonstrates that NTBs are often introduced by governments in response to protectionist pressures from domestic industry groups. In these circumstances, a country maintaining the challenged NTBs may simply refuse to cooperate. This would leave no other option except recourse to the WTO DSU, which the horizontal mechanism was intended to avoid.

Also, the use of the expression "sympathetic consideration" in Paragraph 9 of the proposals is unclear and creates no binding obligations upon the parties. Again, a country may simply refuse to cooperate after according 'sympathetic consideration' to the request by the other country, thereby abruptly ending the dispute settlement under the horizontal mechanism. Additionally, the process can be easily terminated without risk of any substantial sanction to deter against abuse (see Paragraph 11*bis*).

⁸¹² Ibid, Paragraph 24.

⁸¹³ Ibid.

⁸¹⁴ TWN, 'Good Progress during NAMA Week, Says Chair', TWN Info Services on WTO and Trade Issues (February 2010/06) < <http://www.twinside.org.sg/title2/wto.info/2010/twninfo100206.htm> > at 1 July 2010.

Whilst the factual report can be used in DSU as a guide, it is not binding on the WTO DSB. Therefore, if parties do eventually resort to the standard DSU mechanism, substantial time will have elapsed with the offending NTB continuing in force. Ideally, any NTB specific dispute settlement process should emphasise on swift, binding and effective resolution of disputes that entails full (as opposed to optional) commitments from the parties. However, a factual report by the facilitator does provide the WTO DSB Panels with an opportunity to fast-track the dispute settlement process if it is deemed that the factual report has indeed laid down the groundwork for dispute resolution.

It also seems from the wording of the proposal that the implementation under the horizontal mechanism would be non-binding. Eventually, recourse would be made to the WTO DSB for the decision to be enforced. This would be especially problematic in the protectionism prone sectors such as fisheries and T&C.

An additional dispute settlement stream alongside the existing DSU would cause confusion especially if the implementation is not mandatory. Countries would surely face difficulties in deciding whether to avail the much quicker, NTB-specific dispute settlement system with non-mandatory implementation or go for the certainty of the DSU and sustain the cost and time repercussions.

It is understandable that the underlying aim of these proposals is not to unsettle the integrity of the existing DSU, which obviously takes precedence over a new and untested system of limited scope. Therefore, the proponents of this proposal feel that the only feasible way forward is to introduce a “softer” version of a NTB dispute settlement version as step one before it can evolve into a separate NTB-specific dispute settlement system with the same implementation level as that of WTO DSB decisions.

One possible suggestion is to make the implementation’s mandatory and investing WTO DSB Appellate Body with the power to hear appeals against

findings of the hearing under the NTB Resolution Mechanism. This would act as a safety valve against “facilitator activism” and would also ensure that the respondent country has the opportunity to explain its action at the WTO level if the matter goes to appeal. Another positive outcome of this would be the development of WTO jurisprudence on dispute settlement involving NTBs which can potentially have the effect of actually reducing some of the NTBs themselves simply by becoming a precedent.

3.2.5 Outward Production Processing (OPP) in Textiles & Clothing Trade

3.2.5.1 Overview

Adam Smith offers an interesting summary in the *Wealth of Nations* of the process involved with producing pins. Smith writes:

One man draws out the wire, another straightens it, a third cuts it, a fourth points it, a fifth grinds it at the top for receiving the head; to make the head requires two or three distinct operations; to put it on, is a peculiar business, to whiten the pins is another; it is even a trade by itself to put them into paper; and the important business of making a pin is, in this manner, divided into about eighteen distinct operations, which in some manufactories, are all performed by distinct hands, though in some others the same man will sometimes perform two or three of them.⁸¹⁵

At the time Smith described this process, concentration of production processes in close proximity was considered a critical factor for an industrialised nation to achieve high productivity, compete with rival nations, and keep overheads low to maximise profit margins. Without concentrating production process in close locales, coordinating efforts of the workforce and their individual operations was well nigh impossible especially where

⁸¹⁵ Adam Smith cited by Gene Grossman & Esteban Rossi-Hansberg, ‘The Rise of Offshoring: It’s Not Wine for Cloth Anymore’ Federal Reserve Bank of Kansas City (2006) *Proceedings* 59, 63.

communications, transportation, procurement of raw materials and survey of market demand all required considerable time and physical effort.

In short, production was specialised, concentrated in common areas and factories produced final goods to be shipped directly to the markets and the consumers.⁸¹⁶

But modern trade practices have evolved and Adam Smith would surely be awestruck if he witnessed the extent of progress made in international commerce. He would be particularly impressed if he met Victor Fung and other Asian entrepreneurs who are at the forefront of goods and services trade that routinely operate on the basis of fragmented or “dispersed manufacturing”; an unthinkable proposition in the days of Adam Smith.

Thus, in many sectors of world trade such as services, electronics and consumer goods, automobiles, footwear, leather goods and T&C, OPP or simply outsourcing is a modern reality. Instantaneous communications and the revolution in transportation has meant that manufacturing instructions can be given instantaneously, semi-finished goods can be manufactured in another region and final merchandise can reach the target market much quicker than before. In a time sensitive and consumer-driven sector such as T&C trade, this has made a noticeable impact.

The case of modern T&C trade is especially illustrated by Victor Fung (Chairman of Li & Fung, one of Hong Kong’s largest exports trading company):

Say we get an order from a European retailer to produce 10,000 garments. It's not a simple matter of our Korean office sourcing Korean products or our Indonesian office sourcing Indonesian products. For this customer we might decide to buy yarn from a Korean producer but

⁸¹⁶ Ibid.

have it woven and dyed in Taiwan. So we pick the yam and ship it to Taiwan. The Japanese have the best zippers and buttons, but they manufacture them mostly in China. Okay, so we go to YKK, a big Japanese manufacturer, and we order the right zippers from their Chinese plants. Then we determine that, because of quotas and labor conditions, the best place to make the garments is Thailand. So we ship everything there.... We're not asking which country can do the best job overall. Instead, we're pulling apart the value chain and optimizing each step-and we're doing it globally... If you talk to the big global consumer products companies, they are all moving in this direction toward being best on a global scale.”⁸¹⁷

The rise in “dispersed manufacturing” is particularly noticeable in clothing production from the 1970s onwards.⁸¹⁸ It was necessitated by evolving market conditions, rising power of retail corporations, prevailing trade rules and development policies in both the developed and developing countries.⁸¹⁹ By the 1980s, many developing countries invested in export processing zones (EPZs) that attracted export-oriented investment with minimal regulation and oversight.⁸²⁰ One of the earliest examples of outsourced clothing manufacturing is the *maquiladoras* of Mexico that assembled pre-cut fabrics and re-exported the finished product.⁸²¹ In developed countries, the OPP was often coupled by special enabling legislation and customs regulations e.g. the ‘807’ rule of the US, which waived the double taxation on goods such as textiles,

⁸¹⁷ Victor Fung quoted by Joan Magretta, ‘Fast, Global and Entrepreneurial: Supply Chain Management, Hong Kong Style’ (1998) 76 (5) *Harvard Business Review* 102, 105-106. Note that the comments by Fung are in the context of quotas. In the post-ATC era, conditions have considerably changed.

⁸¹⁸ Meenu Tewari, ‘Is Price and Cost Competitiveness Enough for Clothing Firms to Gain Market Share in the World after Quotas? A Review’ (2006) 6 (4) *Global Economy Journal* Article 5, 13-14.

⁸¹⁹ Ibid.

⁸²⁰ Ibid.

⁸²¹ Jennifer Bair & Enrique Dussel Peters, ‘Global Commodity Chains and Endogenous Growth: Export Dynamism and Development in Mexico and Honduras’, (2006) 34 (2) *World Development* 203, 206-207, 209.

clothing, consumer electronics entering the US.⁸²² These goods were re-imported after assembly operations in the Caribbean or in Mexico.⁸²³

Similar to the US, developed countries in Europe also extended tax and tariff concessions to contract manufacturers in countries bordering the Mediterranean rim e.g. Turkey and post-socialist era Eastern European states where low-cost manufacturers undertook clothing OPP for large European retailers.⁸²⁴

Chapters 1 and 2 highlight the effect of quotas in dispersing production of clothing to other developing countries i.e. as quotas in one country were exhausted, the buyers simply migrated to another country that still had unused quotas and this increased that country's supply base.⁸²⁵ This cemented the reputation of this sector as being "footloose" where investors came and went as per the prevalent preferential trade, market and investment climate in a country.

The proliferation of OPP also resulted in a reshaping of the global governance systems and of trade policies.⁸²⁶ Large retail corporations in developed countries began coordinating complex transnational networks of clothing production and supply.⁸²⁷ In order to understand the dynamics of global production networks and the evolution of export-based industries, commentators have evolved new frameworks that help explain the patterns of

⁸²² Ibid, 206.

⁸²³ Gary Gereffi, 'International Trade and Industrial Upgrading in the Clothing Commodity Chain' (1999) 48(1) *Journal of International Economics* 37, 66; Tewari, above n 824, 13; Bair & Peters, Ibid, 206.

⁸²⁴ See generally Bob Begg, John Pickles & Adrian Smith, 'Cutting it: European Integration, Trade Regimes, and the Reconfiguration of East - Central European Clothing Production', (2003) 35(12) *Environment and Planning A* 2191; See also generally Adrian Smith et al, 'Upgrading the East European Clothing Industry: Outsourcing and the 'Embedded Geographies' of Production' (Paper presented at the conference 'Clothing Europe: Comparative Perspectives on Trade Liberalization and Production Networks in the New European Clothing Industry', University of North Carolina at Chapel Hill, 15-16 October, 2004).

⁸²⁵ USITC, above n 506, 2-7.

⁸²⁶ Tewari, above n 818, 13.

⁸²⁷ Ibid.

OPP trade.⁸²⁸ One of the popular such framework introduced by Gary Gereffi and others is the *Global Commodity Chain* (GCC) or the *Global Value Chain* (GVC) framework, which distinguishes between 'producer driven' and 'buyer driven' commodity chains.⁸²⁹

The producer driven commodity chains comprise large, multinational corporations that have integrated backward and forward linkages and actively coordinate production networks.⁸³⁰ In this framework, active control of the chain is central to the lead firm's overall control over production technology.⁸³¹ These industries are usually capital and technology intensive e.g. machinery, automobiles, electronics sectors.⁸³²

Buyer-driven commodity chains are best described as decentralised and globally dispersed production networks, coordinated by large retailers and brand name companies that control quality, design, marketing and branding at the retail level.⁸³³ Labour intensive sectors such as clothing, home wares, handicrafts and footwear are typical examples of a buyer-driven commodity chain, where production is carried out by "tiered networks of Third World contractors that make finished goods to the specifications of foreign buyers."⁸³⁴

3.2.5.2 OPP Trade

Typically OPP operations, in the context of the T&C sector, involve outsourcing the labour intensive part of the manufacturing process to countries that have abundance of labour resources e.g. in clothing manufacturing operations, the OPP-recipient country receives pre-cut fabric from the OPP-extending country for stitching and assembly under advance instructions.⁸³⁵ After completion of the labour intensive part of the process the

⁸²⁸ Ibid.

⁸²⁹ Bair & Peters, above n 821, 204; Tewari, above n 818, 13 & 14; Gereffi, above n 823, 41 & 42.

⁸³⁰ Gereffi, Ibid, 41; Tewari, Ibid, 13.

⁸³¹ Gereffi, Ibid; Tewari, Ibid.

⁸³² Gereffi, Ibid; Tewari, Ibid.

⁸³³ Gereffi, Ibid, 41-42; Tewari, Ibid, 14.

⁸³⁴ Gereffi, Ibid, 41.

⁸³⁵ Audet, above n 545, 272.

finished article is re-exported to the OPP-extending country under an existing preferential trade regime for value addition, quality control and final marketing.⁸³⁶

Large retail corporations outsource their manufacturing operations for the production part but retain tight control over the value chain part of the process.⁸³⁷ It is interesting to note that many of these corporations do not actually “own” manufacturing facilities and operate by liaising with the suppliers and the producers to get the product they want.⁸³⁸ Joan Margretta quotes Victor Fung, referring to two leading brands that do not own any manufacturing facilities:

...the classic supply-chain manager in retailing is Marks & Spencer. They don't own any factories, but they have a huge team that goes into the factories and works with the management. The Gap is known for stretching into its suppliers.⁸³⁹

By retaining the value chain part of the production process, retail corporations capture the largest share of value addition in T&C products.⁸⁴⁰ This tight control has enabled the retail corporations to exert influence over prices as well as on choosing the most favourable location.⁸⁴¹

⁸³⁶ Ibid.

⁸³⁷ Tewari, above n 818, 14; Adhikari & Yamamoto, above n 6, 203-204.

⁸³⁸ Adhikari & Yamamoto, Ibid, 203 & 207; Tewari, Ibid.

⁸³⁹ Victor Fung quoted by Joan Margretta, 'Fast, Global and Entrepreneurial: Supply Chain Management, Hong Kong Style' (1998) 76 (5) *Harvard Business Review* 102, 108. Other examples include companies like Liz Claiborne, Nike and Reebok (Gereffi, above n 823, 46).

⁸⁴⁰ Adhikari & Yamamoto, above n 6, 204; Tewari, above n 818, 14.

⁸⁴¹ WTO, 'Options for Least-Developed Countries to Improve their Competitiveness in the Textiles and Clothing Business', WTO Document WT/COMTD/LDC/W/37 (28 June 2005) 5; It is also noteworthy that in the first year of quota elimination 29 of the largest retailers in the US accounted for 98% of all clothing sales. In 1995 five largest US retailers Wal-Mart, Sears, Kmart, Dayton Hudson & JC Penny accounted for 68% of all clothing sales in the US (see UNDP Regional Centre in Colombo (RCC), 'International trade in Textiles and Clothing and Development Policy Options: after the Full Implementation of the WTO Agreement on Textiles and Clothing (ATC) on 1 January 2005', Policy Paper (January 2005) 23 & 24 <<http://www.undprcc.lk/Publications/Publications/T&CPolicyPaper.pdf>> at 5 May 2008).

Even with all the advancement in communication technology, reduced manufacturing and shipping time, OPP is a complicated process requiring extensive coordination e.g. Abernathy, Volpe and Weil comment:

Making sourcing decisions in the global clothing market is a daunting task. Due to factors including language and custom barriers, communications hurdles and the sheer number of producers scattered across the world. US retailers have had to change the way they approach the world market. Some large retailers have established their own buying offices overseas to administer the outsourcing of their private label products. Others work with large and independent sourcing agents to handle this intricate task.⁸⁴²

This is where intermediaries and sourcing agents such as Li & Fung come in.⁸⁴³ The sourcing agents act as sub-contractors for retail corporations based in developed countries.⁸⁴⁴ They draw on their knowledge and expertise in order to meet numerous requirements of their clients, ranging from exact specifications of the clothing in question to meeting delivery schedules.⁸⁴⁵ The intermediaries form part of “triangular” production networks whereby production is done in one country, organised and coordinated by firms in another country and marketed in another country.⁸⁴⁶

Under quotas, the costs of OPP were offset by trade distorting impact of quota allocations.⁸⁴⁷ OPP operations enabled developed countries (OPP-extending) to maintain a captive market (OPP-recipients) for their textiles and fabric inputs.⁸⁴⁸ However, quota expiry and the consequent increase in competition

⁸⁴² Frederick H. Abernathy, Anthony Volpe, and David Weil, ‘The Clothing and Textile Industries after 2005: Prospects and Choices’ (2004) Harvard Center for Textile and Clothing Research (23 December 2004) 11 cited by Adhikari & Yamamoto, above n 6, 207.

⁸⁴³ Adhikari & Yamamoto, *Ibid.*

⁸⁴⁴ *Ibid.*

⁸⁴⁵ *Ibid*; Tewari, above n 818, 29-30.

⁸⁴⁶ Gereffi, above n 823, 42-43 & 60.

⁸⁴⁷ Audet, above n 545, 273.

⁸⁴⁸ *Ibid.*

has affected how OPP operations are conducted, keeping in mind factors such as distance and time-to-market that often carry cost implications.⁸⁴⁹

Denis Audet opines that in the quota free era, assembly of pre-cut fabrics in low-wage countries is economically viable only if the venue of OPP is in close proximity to the OPP-extending country.⁸⁵⁰ Proximity to the target market reduces transport costs, ensures timely delivery, less expenditure on supervision, pre-shipment inspection and on quality control by the retail corporations in the OPP-extending countries.⁸⁵¹ In support of his analysis, Audet cites large scale closure of production facilities in African countries (originally established to avail benefits under the AGOA) and the lacklustre performance of African clothing producers in the quota-free era.⁸⁵² Audet's view are further explored in Chapter 4.

Audet's argument is opposed by Munir Ahmad who argues that it is a fallacy to link geographical proximity to the continued success of OPP operations in developing countries after quota expiry.⁸⁵³ Ahmad points out that Mexico and CBI/CBTPA countries started experiencing declines in the US market two years before quota expiry.⁸⁵⁴ Ahmad cites statistics that show Mexico's share of the US T&C market decline from 13.5% in 2000 to 9.38% in 2004 (one year before expiration of quotas).⁸⁵⁵ After expiry of quotas this trend has continued with Mexico's experiencing further decline of market share in the US from 8.1% in 2005 to 6.8% in 2006.⁸⁵⁶ According to WTO statistics, in 2008 Mexico held 6.8% and 5.2% in the US textiles and clothing market respectively.⁸⁵⁷

⁸⁴⁹ Ibid.

⁸⁵⁰ Ibid.

⁸⁵¹ Ibid.

⁸⁵² Ibid, 275.

⁸⁵³ ITCB, above n 634, 3

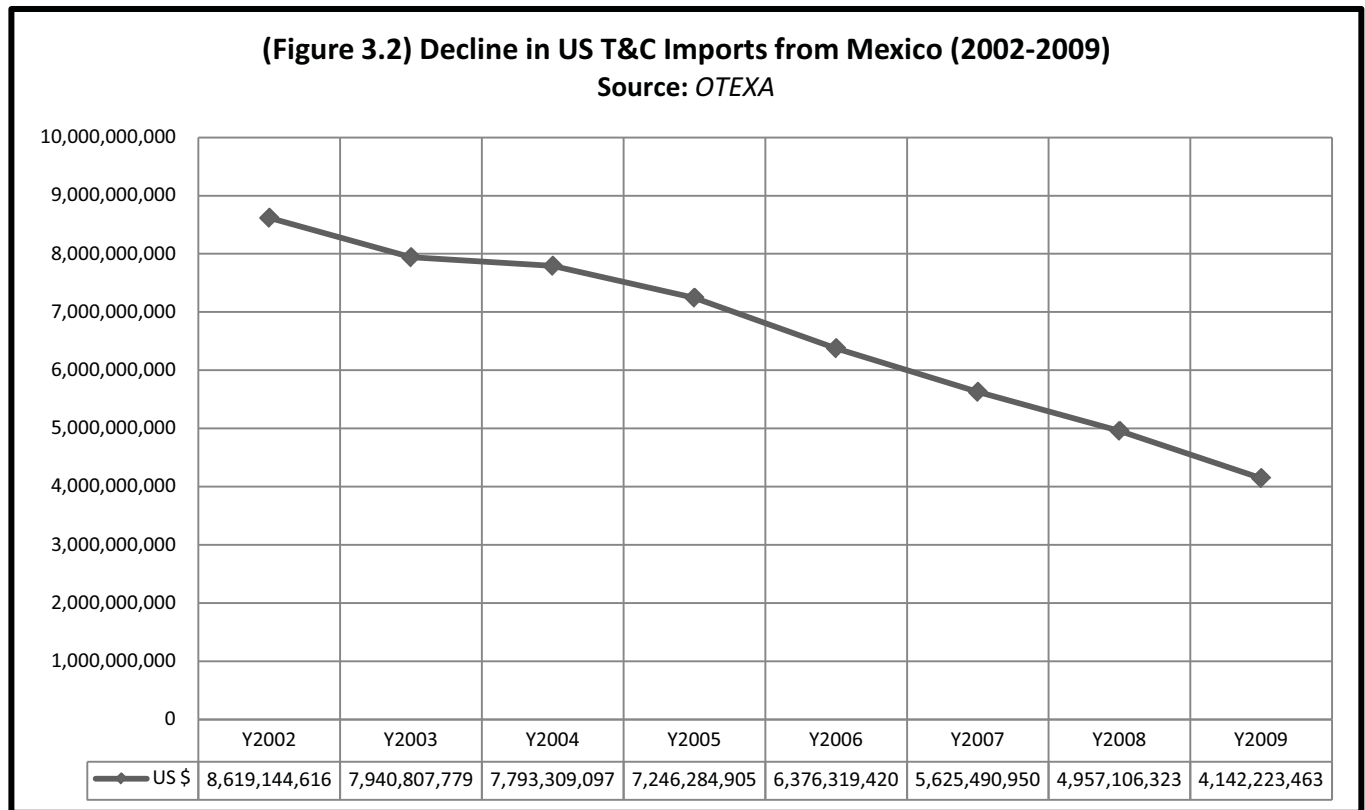
⁸⁵⁴ Ibid.

⁸⁵⁵ Ibid.

⁸⁵⁶ Ibid, 18.

⁸⁵⁷ WTO, above n 4, Tables II.68 & II.63.

Ahmad's analysis receives support from official US statistics (see Figure 3.2) which takes into account the actual US T&C imports from Mexico for years 2002-2009. The decline is clearly evident.



This demonstrates that in spite of enjoying proximity to the US market, duty free access and preferential treatment, Mexico failed to compete with China, which increased its market share of the US T&C market from 21.8% in 2004 to 29.5% in 2006.⁸⁵⁸ Munir Ahmad further cites calculations by OECD that consider transit, freight and duty costs on US imports of T&C while comparing Mexico, CBI producers like Dominican Republic, Latin American exporters and China.⁸⁵⁹ The advantage that Mexico possessed over China in OPP related products like cotton knit shirts was about 28% in cotton knit shirts and 40% advantage in knit shirts of MMF fibres, yet these countries have continuously lost market share in their primary export market of the US to China.⁸⁶⁰ According to Ahmad's analysis, the declining performance of preferential

⁸⁵⁸ Ahmad, above n 737, 18.

⁸⁵⁹ ITCB, above n 634, 5.

⁸⁶⁰ Ibid.

treatment recipients is directly attributable to the ROO maintained by the US (the constraining effects of which have been examined above in this chapter).⁸⁶¹

3.2.5.3 OPP and full-package services

According to Jennifer Bair and Enrique Peters the reason behind the export success of China and other Asian T&C producers is that they offer “full package” service to retail corporations in developed countries.⁸⁶² Full package production is the more advanced form of export-focused clothing production as compared to the simple cut-make-trim model of clothing assembly.⁸⁶³

Manufacturers in Asia, offering full-package service, are responsible for a range of activities from purchasing the required quality of fabrics, contributing inputs towards design specifications, producing a sample for the buyer approval, finishing operations and even direct delivery to retail outlets.⁸⁶⁴ By comparison, the *maquiladora* or export-processing plants only performs the labour intensive operations of sewing imported, pre-cut fabric together into clothing.⁸⁶⁵

The importance of full package service has assumed great importance after quota expiry. Producers that have demonstrated this capability have managed to snare market share away from preferential-treatment recipient and proximate suppliers in the developed economies. Even countries that offer full package service, competition is intense. This is illustrated by a case study on Pakistan in Chapter 4 (highlighting the export success of producers that excelled and those that failed in the post-ATC period despite possessing the industrial capacity to produce high quality T&C products).

⁸⁶¹ Ahmad, above n 737, 41. Ahmad’s analysis receives support from Tony Heron (see Heron, above n 365, 14-16).

⁸⁶² Bair & Peters, above n 821, 206-207.

⁸⁶³ Ibid, 207.

⁸⁶⁴ Ibid.

⁸⁶⁵ Ibid.

Bair and Peters state that full-package production is preferable to assembly subcontracting from the business development perspective because it increases backward linkages to local suppliers of inputs.⁸⁶⁶ Full-package service also attracts investment in capital intensive facilities such as textile mills that represent larger fixed capital investments than conventional sewing sites.⁸⁶⁷ It also increases the competitive position of exporters and promotes close interaction between lead firms and local manufacturers.⁸⁶⁸

Gary Gereffi comments “Participation in global commodity chains is a necessary step for industrial upgrading because it puts firms and economies on potentially dynamic learning curves.”⁸⁶⁹ Thus, exporting firms through their interaction with foreign retailers acquire knowledge pertaining to quality expectations, pricing and fashion trends in foreign markets.⁸⁷⁰ Gereffi’s comments offer the crucial link between product evolution and transfer of technology from the developed economies to developing countries/LDCs especially from the perspective of the business school theories such as product cycle theory and flying geese model (see the Introduction). However, the more appropriate nexus occurs between Gereffi’s analysis and Porter’s competitive advantage theory. This happens at the stage where countries *create* and then *sustain* competitive advantage (see the Introduction for a discussion of the competitive advantage theory).

If Porter’s competitive advantage theory is applied to what Gereffi alludes to, it explains well why some Asian manufacturers have succeeded against preferential treatment recipient in developed countries T&C import market. Porter writes that countries succeed in creating and sustaining competitive advantage where local circumstances incentivise firms to pursue strategies, such as integration of value chain and forging strategic partnerships, early and

⁸⁶⁶ Ibid.

⁸⁶⁷ Ibid; see also Jennifer Bair & Gary Gereffi, ‘Local Clusters in Global Chains: The Causes and Consequences of Export Dynamism in Torreon’s Blue Jeans Industry’ (2001) 29 (11) *World Development* 1885.

⁸⁶⁸ Bair & Peters, above n 821, 207.

⁸⁶⁹ Gereffi, above n 823, 38 & 39.

⁸⁷⁰ Bair & Peters, above n 821, 207.

aggressively.⁸⁷¹ If local firms do not receive the right signals or are not subjected to the right pressures or lack capabilities, then competitive advantage is neither created nor sustained.⁸⁷²

Applied to the OPP in the T&C sector, Porter's theory explains why Asian manufacturers chose to rely on either local textile inputs to support their clothing industries (as is the case with China, Indonesia and India) or have concentrated on clothing manufacturing through sourcing competitively priced inputs through proximate countries (as is the case with Bangladesh and Vietnam). The former group of developing countries encouraged parallel growth of both textiles and clothing industries. The latter group of countries concentrated more on clothing, while capitalising on the strengths of the former. Either way, these countries first *created* competitive advantage and then *sustained* it through maintaining low-wages, capacity building and product improvement.

By contrast, the CBI/CBTPA and AGOA countries are the perfect examples of countries that were, in Porter's words, "not subjected to the right pressures." This lack of pressure happened firstly, during quotas, which stunted the growth of African and Caribbean producers by not encouraging product diversification. The lack of diversification came because the producers were assured guaranteed minimum market access under quotas, therefore felt no need to broaden their product base. Contrast this lack of diversification in African and Caribbean producers with Asian manufacturers that diversified their product base, each time quotas restricted a particular product category (the paradoxical effects of quotas distorting and diversifying trade are highlighted in Chapter 1).

The lack of pressure on CBI/CBTPA and AGOA also meant that these producers became dependent on US for supplying their textiles inputs. This

⁸⁷¹ Porter, above n 93, 51, 54-55, 68.

⁸⁷² Ibid, 68.

means that instead of *creating* competitive advantage, African and Caribbean producers became dependent on preferential market access in order to compete with Asian manufacturers. This dependency means that after quotas expired, producers possessing competitive advantage dominated the EU/US T&C markets because they were not dependent on the EU/US for their inputs. Even within Asia, the same observation is true. Any producer that did not independently *create* competitive advantage in T&C experienced declines as soon as quotas lapsed.

The best reflection of *creating* and *sustaining* competitive advantage, in the T&C sector, is the capacity to offer full package service. Producers that offer it, excel – those that do not, experience erosion of their market share. This observation is corroborated in view of statistics examined in Chapter 4 especially from the case study on Pakistan.

Analysis by Bair and Peters also seems to confirm Porter's competitive advantage theory. Bair and Peters write that manufacturers based in developed countries preferred operators that undertook simple offshore assembly subcontracting.⁸⁷³ This enabled the developed-countries based producers to reduce their labour costs by shifting labour-intensive part of the production process to proximate, low-wage venues e.g. US retailers predominantly preferred Mexico and Central America as traditional destinations for such operations.⁸⁷⁴

By contrast, upmarket branded retailers adopted sourcing strategies that involved extensive networks offering full-package producers mostly situated in East Asia.⁸⁷⁵ These clothing producers in East Asia developed full-package capabilities much before their competitors in other parts of the world.⁸⁷⁶ This is

⁸⁷³ Bair & Peters, above n 821, 207 (Ibid).

⁸⁷⁴ Ibid.

⁸⁷⁵ Ibid.

⁸⁷⁶ Ibid.

reflected by the dominance of Hong Kong, Taiwan and South Korea's dominant performance during the eighties.⁸⁷⁷

To summarise, even though there are several factors that have contributed to Latin American, Caribbean and African producers concentrating on clothing assembly as against the full-package model, the actual distinguishing factor is preferential access regimes that promote subcontracting operations using EU/US made textile inputs. These textiles inputs are not competitively priced which is clearly reflected in the inflated price tag of the final value added product.

Since Asian contractors are not bound by preferential regimes to the same extent, they remain free to source inputs at competitive prices from a variety of producers. The added advantage is that EU extends preferential entry to LDC produced clothing under regional cumulation. This advantage allows Asian LDCs to manufacture high value added, time and fashion-sensitive clothing products as opposed to the basic cut-make-trim operations in the Latin, American, Caribbean and the African countries. Therefore, as far as the future of OPP is concerned in the post-ATC period, Asian producers that possess a competitive advantage over their preference receiving rivals will continue to see rise in their market shares of the EU/US markets. Unfortunately, the lack of competitive advantage carries a multitude of socio-economic consequences for T&C exporters dependent on preferential access. Case studies as part of Chapter 4 further sheds light on this issue.

3.2.6 The role of retail corporations and modern retailing practices

3.2.6.1 Overview

In the post-ATC period, growing economic power of retail corporations is a key factor that affects global trade flows in T&C as well as market access dynamics in the developed economies.⁸⁷⁸ These corporations retain an

⁸⁷⁷ Ibid.

⁸⁷⁸ Appelbaum, above n 495, 13.

important stake in the T&C trade. Being importers, these corporations are longstanding adversary of the textiles industry interests in developed countries.⁸⁷⁹ Due to the combined effects of quotas and restrictive ROO, retail corporations experienced difficulty in sourcing merchandise from competitive producers offering better quality products at lower costs.⁸⁸⁰ In the post-ATC period, these retailers now wield a more significant political clout.

Prior to quota expiry, the US retail corporations, for example, lobbied for a complete end to quotas in collusion with international organisations such as ITCB.⁸⁸¹ Even in the pre-expiry period, the economic power of these large retail corporations was formidable. According to Richard Appelbaum, the world's 40 largest retailers accounted for US \$ 1.3 trillion in total sales in 2001 out of which twelve retailers were based in the US and accounted for 43% of total sales, whereas the EU accounted for nearly 46% sales.⁸⁸² Out of the US \$ 1.3 trillion figure, Wal-Mart's total revenue stood at US \$ 263 Billion in 2003 which is one-fifth of total sales of the world's forty largest retailers.⁸⁸³ After the end of quotas, Wal Mart's net sales increased from US \$ 281.5 Billion in 2005 to US \$ 401.2 Billion in 2009.⁸⁸⁴

According to a World Bank report cited by USITC, by 2010 the largest ten retailers in the world are likely to account for 25–30% global T&C trade.⁸⁸⁵ Therefore, the sourcing decisions by the retailers affect the entire T&C supply chain.⁸⁸⁶ Retailers not only purchase clothing products, but also chose the inputs used in the products they purchase.⁸⁸⁷

⁸⁷⁹ Rivoli, above n 6, 136; see also discussion in Ellen Israel Rosen, *Making Sweatshops: The Globalization of the US Clothing Industry* (Berkeley, University of California Press, 2002) 119-128.

⁸⁸⁰ Rivoli, Ibid.

⁸⁸¹ Rivoli states that for Wal-Mart, Sears, JCPenny, Target and other large US retailers, lowering trade barriers and elimination of quotas was a crucial political objective (Rivoli, Ibid, 136, 162-163).

⁸⁸² Appelbaum et al, above n 419, 7; see also Appelbaum, above n 495, 24;

⁸⁸³ Appelbaum et al, Ibid.

⁸⁸⁴ Wal Mart Annual Report 2009, 3

<<http://www.annualreports.com/HostedData/AnnualReports/PDFArchive/wmt2009.pdf>> at 28 June 2010.

⁸⁸⁵ USITC, 'Sub-Saharan African Textile and Apparel Inputs: Potential for Competitive Production' (Investigation No. 332-502), USITC Publication 4078 (May 2009), 3-2.

⁸⁸⁶ Ibid.

⁸⁸⁷ Ibid.

Moreover, with the decline in the political influence of the US T&C industries in the post-ATC period, the major retail corporations have emerged as a new force on the US lobbying scene.⁸⁸⁸ The retail corporations have long pushed for relaxed import rules which could enable increased sourcing from the developing world.⁸⁸⁹ The representatives of retail corporations frequently recommend liberalisation and lobby on behalf of countries that they anticipate will benefit from US benevolence.⁸⁹⁰

The retail corporations have the potential and the resources to manipulate the direction of US/EU trade policies on similar scale as US textiles industry groups. Therefore, their role merits a brief review in this chapter.

3.2.6.2 Private labels & lean retailing

An interesting aspect, highlighted by Gereffi, is the new role being played by the large retail corporations in the GVC/GCC i.e. these corporations are now retailers as well as clothing producers.⁸⁹¹ Gereffi states that in the past, large retail corporations in the US and the EU served as an outlet for clothing manufacturers.⁸⁹² With the passage of time, the retailers gradually introduced their own “private” label merchandise at much reduced costs.⁸⁹³ This enabled increased profits to these corporations by eliminating middlemen.⁸⁹⁴ As a result of this venture, large retail corporations have adopted a more

⁸⁸⁸ See discussion of how ATMI conducted lobbying efforts in the US that culminated in the MFA series of T&C regimes (Dominique Jacomet, ‘The collective aspect of corporate political strategies’ (2005) 35 (2) *International Studies of Management and Organizations* 78, 86-88). ATMI was dissolved by its directors in 2004 and replaced by NCTO (see ‘ATMI Dissolved, NCTO Created’ (12 April 2004) <<http://www.nationaltextile.org/library/stn-atmi.htm>>) at 25 June 2010; see also Lynden Moore, ‘The Competitive Position of Asian Producers of Textiles and Clothing in the US Market’ (1995) 18 (4) *The World Economy* 583, 586-587.

⁸⁸⁹ Rivoli, above n 6, 114-115, 117, 119, 120, 133, 162, 171; see also USA-ITA, ‘Bringing Change To U.S. Trade and Economic Policy: The Successful Merger of Apparel Into Normal Trading Rules’ (30 December 2008) 3-7 <http://www.usaita.com/pdf/81_20100113120512.pdf> at 25 June 2010.

⁸⁹⁰ See for example interview of Janet Fox (senior Vice President and Director of Sourcing at JC Penney) where she particularly highlights opportunities in “garment makers in Haiti, and the setting up of effective reconstruction opportunity zones (ROZs) in Pakistan” (see Just-Style, ‘Speaking with Style: Janet Fox, JC Penney’ (27 April 2010); Rivoli, *Ibid.*, 158-161.

⁸⁹¹ Gereffi, above n 823, 46.

⁸⁹² *Ibid.*

⁸⁹³ *Ibid.*

⁸⁹⁴ *Ibid.*

entrepreneurial role akin to a clothing manufacturing label by engaging in designing, procurement of inputs like fabrics and sourcing the production to overseas producers.⁸⁹⁵ This move affected sales of famous designer brands in clothing due to heightened competition.⁸⁹⁶

Retail corporations typically source from suppliers that can meet their large capacities and they also tend to concentrate on greater product specialisation, brand name marketing and market segmentation.⁸⁹⁷ Moreover, these corporations wield considerable influence over suppliers due to the immense buying power and the resources these retail corporations expend in gauging consumer preferences.⁸⁹⁸ Peter Gibbon quotes an African supplier who opines that successful business relationship with a large retail corporation depended on “never deviating from a chosen product type, not trying to be versatile, seeking efficiency on single styles and going for longer and longer runs.”⁸⁹⁹

Perhaps this quote also provides an interesting insight on the short-term African entrepreneurial mindset as opposed to the Asian entrepreneurs. The restricted production in limited segments was a direct consequence of the quota system. African producers were ill-prepared for end of quotas because they did not diversify their product basket. As soon as the incubated quota environment ceased, African producers experienced a clear decline in contrast to the Asian LDC manufacturer that innovated and offered more capabilities to the retail corporations.

⁸⁹⁵ Ibid.

⁸⁹⁶ Ibid. Private label merchandise accounted for 25% of the total US clothing market in 1993 (Dickerson, above n 6, 460) which grew up to occupy almost one-third of all clothing sales in the US market (Appelbaum, above n 2, 7). Another report puts 45% of all clothing sale in the US in 2007 as private label sales (see Euromonitor International, ‘The rise and rise of Brand X: Why consumers are seeking out private labels?’ (3 December 2008) 3 <
<http://www.thefoodsummit.com/pdf/Private%20Label%20-%20The%20rise%20and%20rise%20of%20brand%20X.pdf>> at 21 June 2010.

⁸⁹⁷ Adhikari & Yamamoto, above n 6, 204.

⁸⁹⁸ Ibid.

⁸⁹⁹ Peter Gibbon, ‘The African Growth and Opportunity Act and the Global Commodity Chain for Clothing’ (2003) 31 (11) *World Development* 1809, 1822.

In close connection with the increased importance of large retail corporations in the T&C trade and the GVC/GCC, is the concept of “lean retailing.” This concept represents the evolving state of modern retailing practices and is yet another example of how the information age has transformed the way people do business globally.

Briefly, this retailing concept arose in the 1980s’ with the desire of large retailers based in developed countries to reduce and eventually eliminate unwanted inventories of unsold clothing, especially products that have “gone out of fashion” or clothing products that have failed to garner consumer interests.⁹⁰⁰ The rationale for moving away from maintenance of inventory is obvious; profit maximisation by reducing inventory costs.⁹⁰¹

Retailers acted as a catalyst in adoption of this mode of retailing and the result is increased control by the retailers over their suppliers.⁹⁰² This control manifests itself through exchange of sales data between the retailer and the supplier, adoption of common product labelling standards and other modern practices that offers consumers a variety of clothing products to suit their preferences and budgets.⁹⁰³

The technological foundation of lean retailing is the use of bar codes, uniform product codes, electronic data interchange (EDI) and processing, distribution centres and common standards across competing firms.⁹⁰⁴ Laser that reads bar codes on price tags at the check-out counter of retail stores is a common sight but it is more than a convenient way of generating the receipts for consumers. These methods enable the retailers to accurately track clothing items (including specific details like colour, size and design) that are selling and those that are

⁹⁰⁰ Adhikari & Yamamoto, above n 6, 206.

⁹⁰¹ Ibid.

⁹⁰² Fredrick Abernathy, John Dunlop, Janice Hammond and David Weil, *A Stitch in Time: Lean Retailing and the Transformation of Manufacturing – Lessons from the Clothing and Textile Industry*, (Oxford, OUP, 1999) 1-3.

⁹⁰³ Ibid.

⁹⁰⁴ Nordås, above n 2, 5.

not, by collecting and evaluating point of sale information in real time.⁹⁰⁵ The data on the price tag is further transmitted by EDI to distribution centres employing the same standards of warehousing, logistics and distribution system to match the ordered goods for onward transport to the retailers.⁹⁰⁶

Modelling a business and marketing strategy on this retailing practice means constant adjustment to match changes in consumer preferences as the information flows in.⁹⁰⁷ By adopting technology associated with lean retailing, shop shelves can be replenished quickly with the product that is in demand as opposed to the now obsolete method of stocking the store before a season and having huge sales at the end of the season to clear the stock.⁹⁰⁸

The obvious emphasis of lean retailing is on quick turnaround times. Therefore, countries that enjoy proximity to the developed markets seemingly possess an edge over their geographically disadvantaged competitors e.g. Mexico and the Caribbean countries enjoy proximate and preferential access to the US clothing market and Turkey/Euro-Med clothing producing countries focus predominantly on the EU retail market.⁹⁰⁹ This was in line with the predominant view of most commentators (including the WTO) that geographical proximity would have a compensatory effect in the post-ATC trade in T&C vis-à-vis China and other Asian manufacturers.⁹¹⁰

With the heightened retail competition in the post-ATC period (especially in the clothing segment) retailers emphasise on low prices and quick delivery times.⁹¹¹ Reduced delivery times enable retailers to follow fashion, colours and regulate the volume of orders closer to the selling season, allowing for accurate forecasting.⁹¹²

⁹⁰⁵ Ibid.

⁹⁰⁶ Ibid; Tewari, above n 818, 16.

⁹⁰⁷ Ibid.

⁹⁰⁸ Ibid.

⁹⁰⁹ Appelbaum, above n 2, 7.

⁹¹⁰ Heron, above n 535, 277.

⁹¹¹ USITC, above n 885, 3-2.

⁹¹² Ibid.

The emphasis of short delivery schedule should in theory prompt African and Latin American producers to establish/expand their domestic textiles industries or alternatively source their inputs regionally.⁹¹³ However, as discussed above and would be demonstrated in light of the case studies in Chapter 4, geographical proximity alone cannot provide a decisive advantage in an increasingly time and fashion-sensitive clothing sector.⁹¹⁴ Proximity has to be combined with factors such as political stability, labour costs, level of industrial development, sourcing and input costs, rules of origin, standards of innovation and manufacturing capacities, infrastructure, business reputation of manufacturer, sourcing intermediaries, reduced transit time and freight costs as well as improvement in efficiency of trade related services.

As opposed to the CBI/CBTPA, Mexico, Turkey, Euro-Med and other countries that are satellite manufacturing centres to the EU and the US, leading Asian producers specialise in full-package services (discussed above). Studies in the pre-elimination period overwhelmingly agree that benefits of quota elimination in T&C should accrue to a select number of countries that enjoy a better industrial infrastructure enabling these countries to produce a variety of T&C products, offer full-package service, produce high value added products for the US and the EU markets.⁹¹⁵ An added advantage for Asian producers, as compared to African, Latin American and Caribbean based manufacturers, is their capability of handling electronic orders from foreign buyers, advance market planning, forecasting, faster production of clothing in a flexible manner, all of which are attributes that are “far more enduring form of

⁹¹³ Ibid.

⁹¹⁴ Just-Style, ‘ANALYSIS: Proximity rates highly in sourcing choice’ (5 July 2010); Adhikari & Yamamoto, above n 6, 206-207; see also Adhikari & Weeratunge, above n 692, 112.

⁹¹⁵ Appelbaum, above n 2, 19; For the view that China and South Asian producers would fare better in the quota free trade environment see Nordås, above n 2; see also USITC, ‘Textile and Clothing: Assessment of the Competitiveness of Certain Foreign Suppliers to the US’ (Washington DC, USITC, January 2004); ILO, above n 4, 8-10.

comparative advantage...than constantly scouring the globe for lowest cost labor.”⁹¹⁶

It is interesting to note that despite the electronic tracking methods and distribution strategies, retailers still drew distinctions between suppliers on the basis of location of the suppliers of certain categories of clothing e.g. products that could easily be replenished accounted for a greater share of the US clothing imports from Mexico than they from China despite the fact that labour costs in Mexico were over three times those in China in the pre-elimination era.⁹¹⁷

This is illustrated by sourcing patterns of US retailers e.g. in 2003, US retailers sourced over US \$4 billion worth of replenishable products from Mexico and the Caribbean countries (which was 22% of all clothing sourced from these countries) compared to US \$1.3 Billion from China and other Asian countries.⁹¹⁸ This seemingly demonstrates the importance and preference of timely delivery in a lean retailing environment. This trend significantly affected supplier location as against price considerations.⁹¹⁹

However, statistics from US OTEXA from years 2008 and 2009 show decline in imports of fashion-sensitive segments from proximate suppliers to the US market as compared to China and ASEAN suppliers (see Tables 3.2 and 3.3). By comparing import data between two years, it is clear that CFATA and CBI suppliers are substantially servicing orders in Categories 338 and 339. Even then there has been decline in imports from these regions as opposed to China and ASEAN based suppliers in 2009.

⁹¹⁶ Eric Thun, ‘Growing Up and Moving Out: Globalization of ‘traditional’ industries in Taiwan’ (2001) (Cambridge: MIT Industrial Performance Center Special Working Paper 00-004) 15 <<http://ipc-lis.mit.edu/globalization/globalization%2000-004.pdf>> at 17 May 2008.

⁹¹⁷ Tewari, above n 818, 17; Adhikari & Yamamoto, above n 6, 206-207.

⁹¹⁸ Tewari, Ibid; Adhikari & Yamamoto, above n 6, Ibid.

⁹¹⁹ Tewari, Ibid; Adhikari & Yamamoto, Ibid.

(Table 3.2) US Imports of fashion sensitive product categories 2008 Data in Million US \$ Source: OTEXA					
Categories	China	ASEAN	CAFTA	CBI	Sub-Sahara
333 Suit-Type Coat, M	9.579	18.361	0.204	0.204	0
334 Other Coats, M/B	213.857	135.163	11.642	11.976	5.031
335 W/G Cotton Coats	363.803	411.225	24.773	24.783	4.093
336 Cotton Dresses	290.846	184.733	13.699	13.814	0
338 Knit Shirts, M/B	52.842	1188.887	1449.276	1664.333	125.391
339 W/G Knit Blouse	140.424	2828.476	1409.576	1421.709	138.450
340 N-Knit Shirts, M/B	127.742	571.168	100.692	101.855	84.451
341 W/G N-Knit Blouse	142.101	345.382	11.627	11.818	4.251
342 Cotton Skirts	74.188	115.566	13.118	13.164	1.540
345 Cotton Sweater	159.818	50.834	0.967	0.983	0

(Table 3.3) US Imports of fashion sensitive product categories 2009 Data in Million US \$ Source: OTEXA					
Categories	China	ASEAN	CAFTA	CBI	Sub-Sahara
333 Suit-Type Coat, M	6.260	14.044	0.139	0.143	0
334 Other Coats, M/B	158.216	125.198	15.259	16.289	5.999
335 W/G Cotton Coats	279.099	374.041	26.468	26.473	2.381
336 Cotton Dresses	312.489	226.934	10.769	10.837	0
338 Knit Shirts, M/B	59.054	971.656	1231.382	1494.873	93.084
339 W/G Knit Blouse	254.949	2516.942	1131.703	1144.704	85.277
340 N-Knit Shirts, M/B	160.822	500.644	83.412	84.494	70.367
341 W/G N-Knit Blouse	153.307	333.479	10.083	10.902	3.427
342 Cotton Skirts	62.869	120.471	8.391	8.412	2.185
345 Cotton Sweater	243.928	35.287	1.522	1.542	0

The data also confirms the USITC analysis on Sub-Sahara African (SSA) producers. The USITC analysis states that in the post-ATC period, increased concentration of “global buying power in the industrialized countries has negatively affected SSA textile and apparel export competitiveness.”⁹²⁰ Retailers in developed countries typically require a wide range of product varieties and large volume sales at low prices.⁹²¹ Asian T&C producers and transnational firms (often based in Hong Kong and Taiwan) generally possess a competitive advantage in organizing large-scale production runs as compared to the smaller-scale SSA producers.⁹²²

⁹²⁰ USITC, above n 885, 3-2 (Ibid).

⁹²¹ Ibid.

⁹²² Ibid.

The USITC analysis concludes that it is difficult for SSA producers to be cost competitive in the production of inputs and finished clothing when compared with Asian suppliers such as China, India, and Bangladesh.⁹²³ Without preferential entry under AGOA, most T&C exports to the US are unlikely to be cost competitive.⁹²⁴

The data considered above demonstrates that retailers still favour the suppliers that offer full-package services as opposed to simple cut-make-trim. The data also demonstrates that despite a move towards lean retailing, where proximity to the target market is thought to be critically important, retailers are still sourcing extensively from Asia. Chapter 4 further examines this area.

3.2.7 Employment and social issues

3.2.7.1 Overview

Perhaps the issue that weighs most heavily on the mind of policymakers, regardless of the development status of the country, is the impact of T&C trade on employment and the social effects it generates. Chapters 1 and 2 discussed the critical importance that this sector holds for developing countries/LDCs. A detailed examination of issue falls outside the scope of this thesis. However, this issue merits a brief discussion in view of the impact on employment levels in various countries in the post-ATC period.

3.2.7.2 Two perspectives

Social issues and employment, as factors that moulds the direction of T&C trade, have to be viewed from two perspectives. Firstly, from the perspective of the importing country (mostly developed) and, secondly, from the exporting countries (developing countries/LDCs). The history of T&C trade accentuates the view held by many countries on the “exceptional” character of the T&C industry. This argument is used to justify derogation against the norms of free trade in goods and for pursuing protectionist policies.

⁹²³ Ibid.

⁹²⁴ Ibid.

The view of T&C constituting as an exception to global trade begot nearly all the skewed T&C trade arrangements, from the early British measures against Indian cloth to regimes such as the VERs, STA, LTA and MFA I-IV. All of these arrangements aimed to protect domestic jobs and industries, while stemming the tide of T&C imports from developing countries.⁹²⁵

In line with this view in developed countries, trade liberalisation is often viewed with outright opposition. However, the factor that goes in the favour of displaced workers in developed countries is the capability of offering assistance programmes for re-employment, adjustment and relocation.⁹²⁶

Developing countries/LDCs are not so fortunate. For a range of reasons that may include economic and financial strength of the country, reliance on agriculture and limited industrial activity to generate alternative jobs and the prevalent socio-economic conditions, many developing countries and LDCs find adjustment to be painful and difficult.⁹²⁷

In retrospect, all pre-ATC arrangements, particularly the MFA series, were an obvious and deliberate effort by developed countries to protect their industries. The gradual enhancement of coverage of trade restraints over time also demonstrates that the industry associations kept on demanding protection instead of improving their competitive capacities.

Regardless of the actual aims of the quota system, the unintended effect was the dispersal of T&C production across the world (discussed in Chapter 1).

⁹²⁵ Even today the US textiles industry interests protest at any development initiative designed to assist poorest of countries in increasing their textiles exports (see for example NCTO, 'US Industry and Labor Join in Opposition to NPDA Trade Provisions Will Cost Thousands of US Textile Jobs; Poorest Countries in Africa, Central America are also Hardest Hit' Press Release dated 18 October 2007).

⁹²⁶ For example under the US law, workers who lose employment because of US trade agreements are entitled to Trade Adjustment Assistance (TAA) which offers training, job search and relocation allowances, income support and other reemployment services (a detailed examination of the merits of this programme falls outside the scope of this research. However, for further details see: <<http://www.whitehouse.gov/infocus/internationaltrade/taapager.html>> at 2 June 2010).

⁹²⁷ Chang, above n 759, 26.

This spread is best illustrated by the trend that as soon as a country reached its quota limits, the manufacturers and retailers sourcing from that country shifted to another location to avail unused quota of another country or to take advantage of any preferential treatment. As a result, T&C production is nowadays undertaken in more than hundred countries across the world.⁹²⁸ Most of developing countries/LDCs have become overly reliant on this sector for export earnings and providing employment for their people.⁹²⁹

The unfortunate fact of the proliferation of T&C industries is that most developing countries/LDCs compete in the global T&C market simply on the basis of reduced labour costs. Labour force in these countries is mostly semi-literate, unskilled and an overwhelming majority relies on T&C industries for employment.⁹³⁰

During the 1980's and 1990's when quotas were in force, many developing countries pursued the policies of encouraging investment into their countries by establishing Export Processing Zones (EPZs).⁹³¹

In order to further woo investors and attract them away from their competitors, policymakers pursuing the EPZs model kept taxes low and extended duty free treatment to the industries.⁹³² As competition increased with neighbouring countries also adopting the same model, many developing

⁹²⁸ Appelbaum et al, above n 419, 4.

⁹²⁹ Ibid.

⁹³⁰ Numerous examples can be cited in support of this fact e.g. in 2005-06 for Asian LDCs like Bangladesh, T&C accounted for 76% of the country's export earnings and also provided jobs to nearly 2 million workers (80% of whom were women) (see ILO, above n 4, 19). For other South Asian countries this sector also holds the same significance i.e. for India and Pakistan this sector provided employment to 35 Million and 2.3 Million people in 2005-06 respectively (see Adhikari & Weeratunge, above n 692, 113-114).

⁹³¹ See for example Raphael Kaplinsky, 'Export Processing Zones in the Dominican Republic: Transforming Manufactures into Commodities' (1993) 21(11) *World Development* 1851; see also Jean-Pierre Cling & Gaëlle Letilly, 'Export Processing Zones : A threatened instrument for global economy insertion ?' DIAL DT/2001/17, 2, 10-12 <http://dial.prd.fr/dial_publications/PDF/Doc_travail/2001-17.pdf> at 27 June 2010

⁹³² Kaplinsky, Ibid, 1852.

countries also resorted to currency devaluation in order to keep their products competitive.⁹³³

With developing countries/LDCs adopting similar export oriented growth policies, the effectiveness of measures such as tax rebates and duty free treatment was diluted.⁹³⁴ This resulted in developing countries/LDCs solely competing on the basis of lower labour costs.⁹³⁵ This degenerated into a “spiralling competitive race to the bottom” where countries constantly attempted to outbid each other by offering less labour costs, further duty relaxation, lower taxes in order to remain competitive.⁹³⁶ An interesting example is of Dominican Republic in the 1990’s, which extended a generous tax holiday regime for foreign investors electing to locate their operations in its EPZs.⁹³⁷ This scheme resulted in virtually no monetary income for the government from 40% of the country’s total exports.⁹³⁸

It is important to note that after 1 January 2007, developing countries/LDCs operating export subsidies schemes were affected by a WTO ban as per the WTO Agreement on Subsidies and Countervailing Measures.⁹³⁹ The ban was to originally come into force in 2003, however, Caribbean countries along with some other developing countries requested a four year extension which expired in 2007.⁹⁴⁰ The expiry of this date and consequent coming into force of this ban means that measures such as tax holiday schemes are now considered as illegal.⁹⁴¹ This adversely affected clothing operations in regions that organised entire assembly lines within EPZs with the investors pulling out due

⁹³³ Ibid.

⁹³⁴ Heron, above n 535, 268.

⁹³⁵ Ibid.

⁹³⁶ Ibid.

⁹³⁷ Ibid.

⁹³⁸ Heron, Ibid, 269; Cling & Letilly, above n 931, 28-29.

⁹³⁹ See Article 1.1 of the SCM Agreement which defines ‘subsidy’ in very broad terms. The status of export subsidies is specifically covered in Article 3 of the SCM Agreement. Article 3 (1) (a) prohibits any subsidy that is contingent upon export performance (see WTO AB Report, *Canada – Aircraft* (WT/DS780/AB/R); see also Heron, Ibid, 268; Cling & Letilly, Ibid, 25-26.

⁹⁴⁰ Heron, Ibid, 268.

⁹⁴¹ Heron, Ibid; see also Andrew Green & Michael Trebilcock, ‘Enforcing WTO Obligations: What Can We Learn from Export Subsidies’ (2007) 10(3) *Journal of International Economic Law* 653.

to the withdrawal of the very incentives that attracted them to the region in the first place.⁹⁴²

3.2.7.3 Issues in the ‘race to the bottom’

An important facet of the “race to the bottom”, in the post-ATC period, is the domestic labour policy of developing countries/LDCs. One way of looking at this issue is from the angle of the foreign buyers/retail corporations, investors and entrepreneurs in the T&C sector. These parties view increased competition as necessitating adoption of policies that aid in achieving, rather than hindering, enhanced competitiveness.⁹⁴³

These parties tend to favour investing in venues that have policies prohibiting unionisation and therefore, availability of cheap labour is guaranteed e.g. Indian textiles industries have long lobbied for a change in the country’s labour laws that favoured organised labour by prohibiting retrenchment (i.e. reduction in labour due to fall in demand).⁹⁴⁴ These industry interests were of the view that in as a result of increased competition from rival producers like China and Pakistan in the post-ATC period, any export-oriented country shackled by a restrictive labour policy may experience serious disadvantages in competing internationally.⁹⁴⁵

An alternative perspective of this issue is from the standpoint of the workers, who, if they do not unionise, would see their rights violated.⁹⁴⁶ Foreign retailers, in searching for the ideal venue, not only look for cheapest labour but also at the level of governmental regulation, coverage and enforceability of labour laws, environmental standards.⁹⁴⁷ Since large retailers exercise

⁹⁴² Heron, above n 535, 268 (Ibid).

⁹⁴³ Oxfam, above n 514, 24-25.

⁹⁴⁴ Haté et al, above n 426, 18.

⁹⁴⁵ Ibid.

⁹⁴⁶ Oxfam, above n 514, 25-26; Refer also to the recent strike by Bangladeshi garment workers over pay disputes BBC, ‘Bangladesh garment factory owners close units as violence flares’ (22 June 2010).

⁹⁴⁷ Gary Gereffi & Olga Memedovic, ‘The Global Clothing Value Chain: What Prospects for Upgrading by Developing Countries?’ UNIDO (Vienna, 2003), 8
<<http://www.inti.gov.ar/cadenasdevalor/ClothingUNIDOnew2Feb03.pdf>> at 15 May 2010; Appelbaum et al, above n 419, 2.

considerable influence over their suppliers, who are in turn free to choose the venue of actual manufacture of clothing, the workers have relatively little bargaining power because the manufacturers are able to easily shift production to another place if they perceive the labour as active and not pliant.⁹⁴⁸

In the post-ATC period, labour rights may also constitute a non-tariff barrier to trade. This occurs when developed countries with higher labour standards seek to enforce similar standards in developing countries/LDCs undertaking OPP operations. The underlying aim of these policies may be altruistic but the reality is that these measures may serve as an effective tool of protectionism. This issue recently features in the formal call by the US to the Guatemalan government over enforcement of labour rights under the DR-CAFTA.⁹⁴⁹ The stated aim of the US government is to ensure that “US businesses and workers compete on a level playing field and that labour rights are respected in our trading partner countries.”⁹⁵⁰

Through insistence by a developed country under the pretence of upholding labour rights, cost advantages in terms of low labour costs in certain developing countries/LDCs can be negated. This may enable a declining industry to extend its demise. The current target in this case is Guatemala, a poor, impoverished LDC that is dependent heavily on market access to the US for its T&C products. If this “experiment” proves successful, it may quite possibly create a policy precedent for the US trade officials for application to other T&C exporters as well. In short, the use of labour standards cannot be ruled out as a political economy tool to manipulate trade policies in the post-ATC trade in T&C.⁹⁵¹

⁹⁴⁸ Appelbaum et al, Ibid; Oxfam, above n 514, 25.

⁹⁴⁹ ICTSD Bridges Weekly Trade News Digest, ‘Targeting Guatemala, US Launches First-ever Labour Rights Dispute under an FTA’ Vol.14, No. 29, (4 August 2010); Just-Style, ‘Guatemala: Makes “undisturbed” by US labor complaint’ (8 August 2010).

⁹⁵⁰ See statement by Hilda Solis, US Secretary of Labor quoted in Just-Style (Ibid).

⁹⁵¹ See ‘Guatemala suspects political motivation behind US actions’ (ICTSD, above n 949).

In addition to official labour policies, another measure that directly affected workers in LDCs was when economy concentrating on EPZs entered into “competitive devaluations” in a bid to temporarily increase export competitiveness.⁹⁵² According to Raphael Kaplinsky, the increase in employment levels during the 1980s in the Dominican Republic was “directly attributable to a significant decline in real wages caused by a series of dramatic currency devaluations” whereby the “real wages in the Dominican Republic paid by foreign investors more than halved, at the same time as they rose 15% in the US.”⁹⁵³ Kaplinsky states that this strategy of deliberate devaluation of currency was useful and advantageous only until neighbouring EPZs align their currencies as well after which “such wage depressing tactics become highly contingent upon a continuing fall in local purchasing power for Caribbean Basin workers and a corresponding lowering in their standards of living.”⁹⁵⁴

With the end of quotas and the increased competition between countries, the labour represents the most vulnerable element of the global T&C trade. Many African, Caribbean and Latin American countries are already affected by China’s dominance in this sector and feel constrained to lower their wages in a bid to maintain their competitive status.⁹⁵⁵ This will undoubtedly weaken labour standards and reduction of wages aggravates the situation in many poor countries already reeling under pressure from rising world prices in fuel and basic commodities.

However, Suzanne Berger is of the view that low labour costs by themselves do not guarantee efficiency or export success in the quota free era.⁹⁵⁶ Berger

⁹⁵² Kaplinsky, above n 931, 269.

⁹⁵³ Ibid.

⁹⁵⁴ Ibid (emphasis added). Note that the WTO Agreement on Subsidies and Countervailing Duties has affected the EPZ policies significantly and now deliberate currency devaluations are not happening on the same scale as prior to 2007 (see discussion above).

⁹⁵⁵ Despite quotas imposed by the EU and the US between 2000-2006, China gained an additional 12% of the world clothing market and accounts for 31% of world exports (WTO, International Trade Statistics) <http://www.wto.org/english/res_e/statistics_e/its2007_e/its07_merch_trade_product_e.pdf> 41 at 1 June 2008.

⁹⁵⁶ Suzanne Berger, *How We Compete* (2006, New York, Currency/Doubleday) 120-121.

comments that even though labour costs in countries like China and India are a fraction of wages in developed countries, per unit labour costs for design-intensive clothing can often be lower in higher wage industrial countries than in low-wage countries.⁹⁵⁷ Berger cites an Italian textile firm which compared the costs of their Italian plant with their new plant in India.⁹⁵⁸ While a worker in Italy earned US \$2300 per month on average, a worker in their Indian plant just earned US \$70 per month. Labour costs were 25% of sales in Italy, while they were 4.5% of sales in India.⁹⁵⁹ However, the cost per meter of making the same fabric in India was twice as much as in Italy because Indian plant required import of machinery, dyes and other inputs.⁹⁶⁰ Additionally, the Indian plant was found to be less efficient than its Italian counterpart because local workers lacked the preparation to work on state of the art imported machines.⁹⁶¹

3.2.7.4 Sweatshops and employment of women

In the backdrop of quota elimination another issue of particular importance is the efforts to counter sweatshops. The end of quotas increases the challenges faced by international bodies and concerned labour rights group because the manufacturers and foreign retailers have more freedom to simply shift their sourcing country to another country with “less stringent” standards.⁹⁶²

This trend provides developing countries (particularly the LDCs) with an opportunity to improve their labour standards as well as move up the value chain by processing orders from famous brand marketers and large retailers. Cambodia stands out as one important example of this initiative.⁹⁶³ In order to

⁹⁵⁷ Ibid.

⁹⁵⁸ Ibid.

⁹⁵⁹ Ibid.

⁹⁶⁰ Ibid.

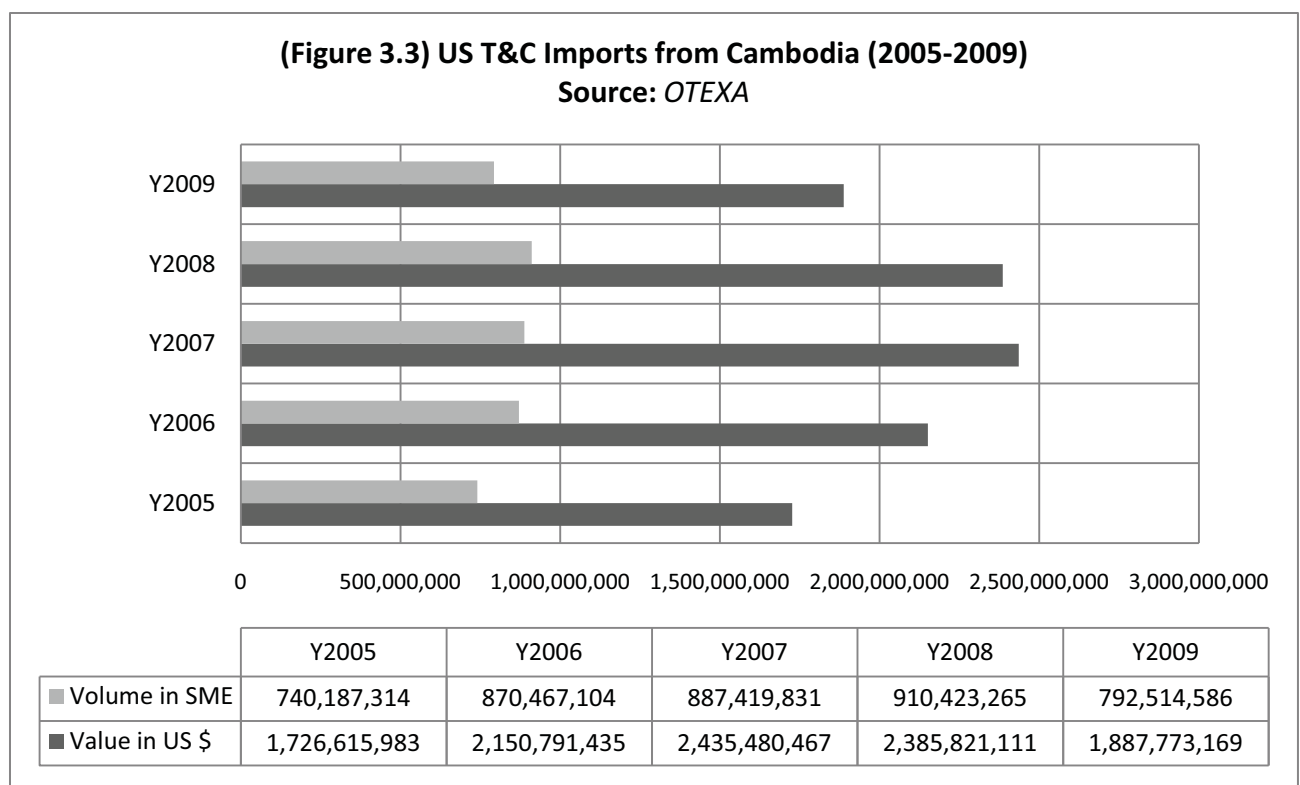
⁹⁶¹ Ibid.

⁹⁶² Appelbaum et al above n 419, 9; Oxfam, above n 514, 25.

⁹⁶³ According to 2005-06 figures, More than 270,000 workers are employed in around 200 clothing factories across Cambodia and an overwhelming figure of 85-90% of the workers are women (See ILO, above n 4, 21); see also International Herald Tribune, ‘ILO asks Cambodia to clarify accusations about ‘untruthful’ garment industry reports’ (25 January 2007) <<http://www.ihrt.com/articles/ap/2007/01/25/business/AS-FIN-Cambodia-ILO-Garment-Industry.php>> at 2 June 2008; Sri Lanka is another example of the “high road” policy that developing countries are

maintain its access to the US market, which was contingent on its compliance with ILO labour standards, Cambodia launched a corporate social responsibility programme referred to as the *Better Factories Cambodia* in 2001 (BFC). The BFC programme aimed at improving factory conditions, enhancing productivity and installing a transparent monitoring system for the future.⁹⁶⁴ As a result of this programme, Cambodia managed to achieve an overall clothing export figure of US \$ 2.2 Billion in 2005 (which was an increase of 11.7% over 2004).⁹⁶⁵

Cambodian success was short lived, possibly due to the combined effects of global financial crisis, lack of full-package capabilities and increased competition from other producers. From 2008 onwards, Cambodian T&C exports to the US faced declines in both volume and value terms (see Figure 3.3).



adopting in order to “stay in business.” Under the EU GSP system, Sri Lanka managed to secure an extra tariff concession which gives it considerable leverage with foreign retailers as a possible sourcing venue. Sri Lanka’s enhanced GSP treatment from EU has been discussed above in this Chapter (Oxfam, above n 520, 27).

⁹⁶⁴ Adhikari & Yamamoto, above n 6, 212; See also ILO, above n 425, 21.

⁹⁶⁵ Adhikari & Yamamoto, Ibid, 212-213.

According to a survey conducted by the Foreign Investment Advisory Services (2004) of the World Bank Group, 60% of the foreign buyers of clothing responded that compliance with labour standards was of equal or more importance compared to other important elements such as price, quality, processing and delivery times.⁹⁶⁶ Also, nine buyers intend to increase sourcing in Cambodia and 6 intended to continue sourcing at the same level. None intend to decrease sourcing volumes.⁹⁶⁷ Cambodia was also rated as having better labour standards than other regional producers such as Thailand, China, Vietnam and India.⁹⁶⁸

However, the representative association of garment manufacturers have indicated that emphasising on labour standards has affected competitiveness of Cambodian clothing products in the international markets and encouraging freedom of association has also led to instances of strikes and lockdowns which has also affected productivity.⁹⁶⁹ Additionally, the model in textiles industry has not been mirrored in other industries and in other LDCs of similar socio-economic status in the region as well.⁹⁷⁰

The elimination of quotas and its consequences discussed above also particularly affect employment level of women in developing countries/LDCs. In many developing countries/LDCs, women are predominantly employed in the garment industries since there are very few other employment alternatives available e.g. in Pakistan which extensively relies on T&C exports, women constitute 30% of the workforce employed in this sector.⁹⁷¹ Due to *purdah*

⁹⁶⁶ ILO, World Bank Survey of Textile and Garment Buyers Sourcing in Cambodia (2004) <<http://www.betterfactories.org/content/documents/WB%20survey.pdf>> at 2 June 2008.

⁹⁶⁷ Ibid.

⁹⁶⁸ Ibid.

⁹⁶⁹ Hach Sock & Chan Vuthy, 'Cambodia's Garment Industry Post-ATC Human Development Impact Assessment' (UNDP-RCC, January 2007) 14, 18. <http://www.eicambodia.org/downloads/files/UNDP_Cambodia_Garment_Post_ATC.pdf> at 2 June 2008.

⁹⁷⁰ Adhikari & Yamamoto, above n 6, 213.

⁹⁷¹ In 2004 the textile sector accounted for 9% of Pakistan's GDP, 46% of its manufacturing activity and 68% of its export earnings (see Karin Astrid Siegmann, 'The Agreement on Textiles and Clothing:

constraints (the social seclusion of women), if women do not have a job at a garment factory they experience difficulties in finding alternative work and augmenting income of their household in times of rising inflation and soaring food prices.⁹⁷² Other examples are Philippines where 80% of garment workers are women⁹⁷³ and Sri Lanka where women account for 85% of the total workers in the textiles sector.⁹⁷⁴

As a result of changes in the trading patterns in the post-elimination period, many countries have embarked upon modernisation plan and have adopted policies to move into higher value chain which would entail altering the existing infrastructure and retraining of workers.⁹⁷⁵ Inevitably this would result in displacement and possibly retrenchment of women workers who have little skills apart from working in garment factories.⁹⁷⁶ Many developing economies simply do not have the capacity to generate alternative employment, since the T&C sector often represent the principal industrial activity. With the impact of heightened competition, withdrawal of investors, less foreign orders and concentration by foreign retailers on sourcing from limited number of suppliers, the effects would be particularly pronounced on unskilled women workers.⁹⁷⁷

3.3 CONCLUSION

The issues examined in this chapter highlight changes that were anticipated before quotas were eliminated. These issues underpin most policies maintained by both developed and developing countries. This chapter discussed possible factors that might be responsible for the mixed results witnessed five years after quota expiry. These issues form the basis of case studies in Chapter 4.

Potential Effects on Gendered Employment in Pakistan' (2005) 144 (4) *International Labour Review* 401, 407).

⁹⁷² Ibid, 401.

⁹⁷³ ILO, above n 4, 27.

⁹⁷⁴ Oxfam, above n 514, 27.

⁹⁷⁵ ILO, above n 4, 27 & 35.

⁹⁷⁶ Ibid.

⁹⁷⁷ Ibid, 35.

Prior to quota expiry, there were numerous predictions that some countries will suffer significant loss of market share in the developed markets. These countries actually performed better than some countries that were supposed to be the beneficiaries of quota expiry. Amongst producers on the losing end, not all are on equal footing. Some countries have graduated through to higher value added products, whilst others have suffered due to lack of competitive capacity or simply due to their failure to adapt.

The first three years of quota elimination provided some artificial relief to countries that were expected to face stiff competition from China. This was due to the re-imposition of quotas on China as part of the temporary safeguard arrangements agreed at the time of Chinese accession to the WTO. These measures expired in December 2008. These restraints afforded a three year reprieve for other developing countries/LDCs to enhance their competitiveness before December 2008. The statistics from January 2009 onwards show the Chinese consolidation over the global T&C trade. The emphasis, however, of this observation is on the long term utility of safeguard measures. This forms the basis of Chapter 5 which discusses the efficacy of safeguards and anti-dumping measures in T&C trade.

The history of T&C trade is replete with protectionist policies and strong political economy factors. Developing countries/LDCs still view market access to the developed economies as the most important impediment to the growth of their exports. However, this issue can be resolved mainly through international and regional cooperation.

Additionally, there are several supply side constraints (such as poor human capital, political instability, lack of skilled workers, lack of necessary infrastructure, limited trade facilitation, high inputs costs and limited financing) that hinder growth of several developing countries. These problems should be addressed first at the domestic level by developing countries

themselves rather than pinning hopes on developed countries opening up access to their markets. Another problematic reality is simply the extensive over reliance of developing countries/LDCs on T&C industries.

It is also interesting to note that despite protectionist obstacles, the T&C industries have continuously evolved in the post-WWII period. Major reasons for this evolution are the changing demand of the consumers, access to technology, sourcing patterns, shifting levels of economic growth and the increasingly conscientious sensitive buyer that stresses corporate social responsibility, labour standards and ethical procurement.

In order to compete in the internationally, producers must appreciate the constantly changing consumer demands and the increased power of the retail corporations. Competing in such environment requires improved organisational skills, innovation, flexibility and the ability to offer full package services. These factors are more important than merely achieving cost competitiveness on the basis of reduced labour costs or by securing preferential access to a developed market.

The next chapter builds upon the issues examined in this chapter and assesses the actual performance of countries reliant on T&C trade. Chapter 4 considers available statistics to assess performance of major Asian T&C producers, therefore, Chapter 4 should be read in conjunction with issues raised in this chapter.

CHAPTER 4

POST-ATC CASE STUDIES

4.1 INTRODUCTION

This chapter builds upon the issues examined in Chapter 3 by offering an analysis of Asian T&C producers in light of the available statistics. Asian manufacturers were chosen as case studies because they featured centrally in the several migrations that have taken place since the 1950s in the global T&C trade.⁹⁷⁸

Briefly, the first of these migrations occurred in the 1950s and early 1960s with the shift of manufacturing to Japan from North America and Western European countries.⁹⁷⁹ The second migration involved the shifting of T&C production from Japan to Hong Kong, Taiwan and South Korea and other Asian countries during the 1970s and 1980s.⁹⁸⁰ The more recent third migration featured the shift from Hong Kong, Taiwan and South Korea to China along with other developing countries/LDCs in Asia, Africa, Central and Latin America.⁹⁸¹ Even within Asia not all countries have experienced growth after quotas ended. Rather, the statistics paint a mixed picture, which makes anticipation of future trends a difficult task.

There were numerous studies conducted prior to quota expiration to predict possible consequences and the impact of quota expiration on international trade in T&C.⁹⁸² The broad consensus was that China would be the major

⁹⁷⁸ Gary Gereffi, 'The International Competitiveness of Asian Economies in the Apparel Commodity Chain' (ADB, ERD Working Paper Series No.5, February 2002) 9.

⁹⁷⁹ Ibid.

⁹⁸⁰ Ibid.

⁹⁸¹ Ibid.

⁹⁸² For example USITC, 'Textile and Apparel; Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market' (Publication No. 3671, January 2004); Stephen MacDonald, et al 'The Agreement on Textiles and Clothing: Impact on U.S. Cotton' by Cotton and Wool Situation and Outlook (CWS-2001), Economic Research Service, (USDA, November 2001); Nordås, above n 2; ATMI, above n 426; Appelbaum, above n 2; Matthais Knappe, 'Textiles and Clothing Uncertainties Before and After the Quota Phase-Out', International Trade Centre (UNCTAD/WTO, 2004).

beneficiary of the termination of quotas and there would be shift in production to countries that were previously constrained by quotas. Moreover, the analysis predicted increased growth in global T&C trade after quotas.

The pre-expiration analyses also predicted heightened competition amongst the manufacturing countries which would lower prices generally, benefitting consumers. China and India (to a lesser extent) were predicted to increase their global T&C exports. Furthermore, opinion was almost unanimous that there would be a general increase in the US T&C imports from China and that as a result, the US T&C manufacturers would be adversely affected.

Most analyses also predicted that preferential trade agreements would likely cushion impact of quota expiration. Analysts agreed that countries that were proximate to the US and the EU or were recipients of preferential treatment would fare better than their competitors. This was cited with specific reference to clothing manufacturers in the Caribbean, Latin America, the Middle East and Africa. As a result of quota expiration, analysts also anticipated the possibility of the US, the EU and other WTO members resorting to trade remedy measures in response to the increased import competition from Asian suppliers (this issue forms the basis of Chapter 5). Finally, most analysts were of the view that countries that had limited textiles production capacities and relied heavily on quotas for export of clothing would face massive erosion in their exports.

Analysing the accuracy of these predictions forms the central premise of this chapter. To this end, the case studies examine statistics and academic literature. The case studies also highlight major issues in global T&C trade after quota expiration that are directly tied to the pre-expiration predictions summarised above e.g. the future of OPP after quota expiration, post-ATC decline in market shares of countries enjoying proximity and preferential trade with the US and the EU, counter-productive effects of the restrictive ROO, quota expiration rendering preferential treatment redundant, impact of

reducing tariffs and its effects on developing countries/LDCs. The case studies also provide practical illustrations of various trade theories discussed in the Introduction.

While investigating the above-mentioned issues, particular attention will be given to China, since the phenomenal increase in its T&C exports has given rise to issues that merit special consideration. This chapter also includes a case study on Pakistan, which was predicted to be one of the beneficiaries of quota expiration but only recorded mediocre growth. The case study of Pakistan raises interesting issues that, may by implication, be extended to other developing countries. The case study on Pakistan draws extensively on interviews conducted with, and data obtained from, various industry and governmental sources in Pakistan.

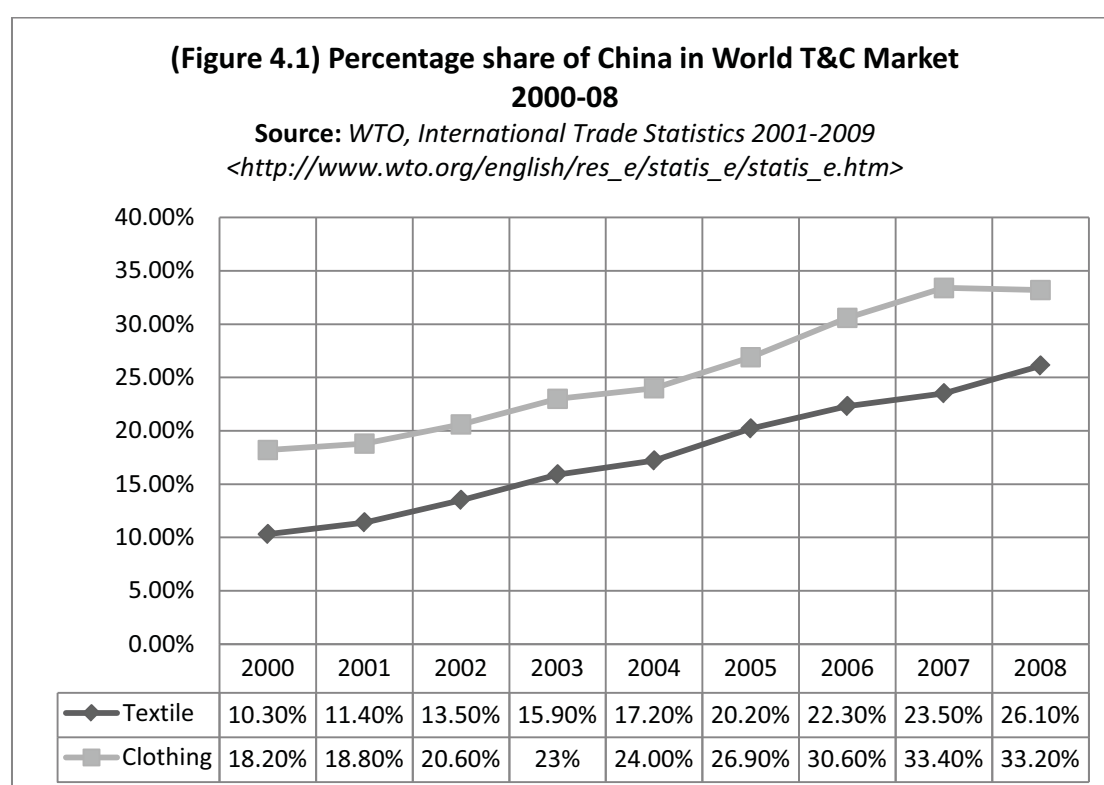
In addition to the special case studies on China and Pakistan, this chapter also contains case studies on India (another potential beneficiary of the quota expiration process), Indonesia (that stands out as a regional recipient of T&C industries and as a country that retains comparative advantage in manufacturing T&C despite graduating to advanced sectors of manufacturing) and Vietnam (an LDC that defied pre-expiration predictions to post an excellent growth in exports to the US/EU markets). These five case studies will be augmented by a brief overview examining other Asian manufacturers. The overview provides a link to the issues raised in Chapter 3 and their relevance to OPP-recipients in Asia such as Bangladesh, Sri Lanka, Cambodia, Nepal and Maldives. Also, the overview will also discuss Thailand, Malaysia and Philippines as manufacturers that were affected significantly by the quota expiration process.

4.2 CHINA

4.2.1 Overview

China dominates the world trade in T&C. Figure 4.1 highlights the constant growth of Chinese market share in world T&C trade. According to the WTO

International Trade Statistics 2009, the combined total of Chinese T&C exports amounted to US \$ 185.26 Billion (US \$ 65.26 Billion for textiles and US \$ 120 Billion for clothing).⁹⁸³ China's share of global textiles and clothing export market was 26.1% and 30.2% respectively.⁹⁸⁴ Chinese ascent dethroned the EU as the leading exporter of T&C in the world (compare Figure 4.1 with 4.2). WTO reports that EU's combined exports in T&C came to US \$ 164.17 Billion in 2008 as compared to China's figure of US \$ 185.26 Billion.⁹⁸⁵



China was predicted by analysts to be a major beneficiary of quota expiration. After the lapse of five years, China continues to dominate global T&C trade. China exports almost half of its clothing production, out of which only one-third is exported to the US or EU.⁹⁸⁶ In order to support its clothing production

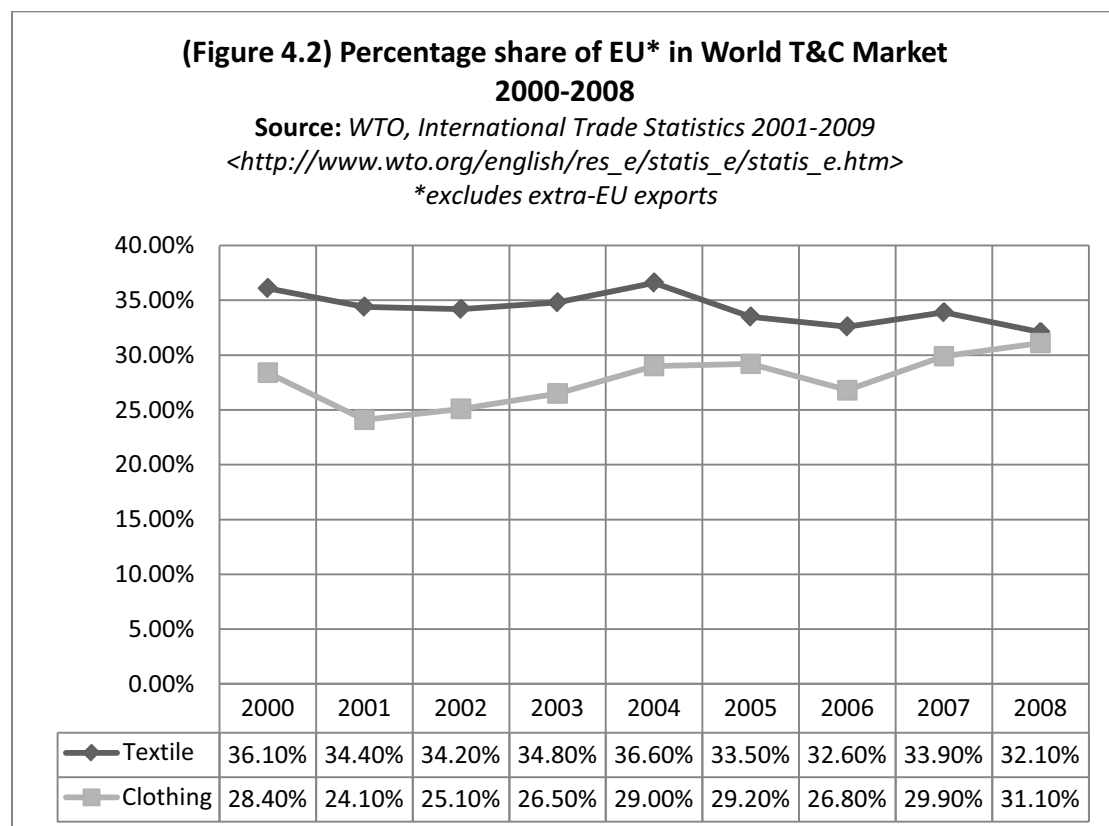
⁹⁸³ WTO above n 4, Tables II.64 & II.69.

⁹⁸⁴ Ibid.

⁹⁸⁵ Ibid.

⁹⁸⁶ China imports around half of its textiles needs to support its clothing manufacturing. According to WTO figures, in 2006, China imported US \$ 16.36 Billion worth of textiles which was 2.1% of total merchandise imports for China (WTO, above n 955).

operations, China is also the world's third largest importer of textiles behind the EU and the US.⁹⁸⁷



Furthermore, due to China's extensive infrastructure and the ability to adapt, it offers a wide range of options in clothing production.⁹⁸⁸ China is able to supply its domestic clothing industries with necessary inputs. China also imports inputs from geographically proximate suppliers such as South Korea, Taiwan and Japan. This reduces lead times in manufacturing clothing and reduces costs. By far, China's greatest attribute is the abundance of cheap and skilled labour, although this attribute is declining due to recent rises in labour costs (see below).

China has the capacity to produce clothing of all qualities and standards. Japan and Australia are major examples of consumer driven markets where quotas

⁹⁸⁷ China imported US \$ 16.23 Billion worth of textiles in 2008 (this was 26.1% of global textiles imports) (WTO, above n 4, Table II.64).

⁹⁸⁸ Statement by Carlos Moore to USITC, above n 506, 2.

were liberalised early and China managed to capture an overwhelmingly large share of the market.⁹⁸⁹

Given its production capacity, China's entry into the WTO in 2001 meant accession to the ATC regime. This attracted all benefits and rights available to a member of the ATC including unrestricted access to T&C export markets (see Chapter 2 for discussion). China's accession to ATC caused concern for interest groups based in the developed countries, since abolition of quotas was expected to bring significant changes to the competitive position of other countries (discussed in Chapter 2). Prior to China's entry into the WTO, Chinese T&C products were subject to comprehensive restrictions.⁹⁹⁰ Since China was not a member of the WTO prior to 2001, it could not challenge any discriminatory measure in the WTO DSB.⁹⁹¹

China's WTO accession was preceded by negotiation and conclusion of the TS that was made part of the China's accession protocol to the WTO.⁹⁹² Briefly, the TS covered all products that were the subject of the ATC and could be implemented if increased imports were causing or threatening to cause "market disruption." These safeguards were used to curb inflow of Chinese exports not only by the US and the EU but also by Turkey, Colombia, Brazil and Argentina.⁹⁹³ Under the TS mechanism, simply requesting consultations

⁹⁸⁹ For example, in 2004-05, China held a 73% share in Australian clothing market. Its closest competitor was Italy with just 4% of the share (US Commercial Service, 'Apparel in Australia' <<http://www.clothingandfootwear.org/pdf/isa0409australia.pdf>> at 19 July 2008. China's dominant share in the Australian T&C market is clearly evident from the statistics considered in Chapter 5; Whilst Japan accounted for highest number of foreign direct investment projects (11 in total accounting for 22.9% share of total FDI projects in T&C in China during 2002-04) (Appelbaum, above n 2, 23).

⁹⁹⁰ Rumbaugh & Blancher, above n 437, 11.

⁹⁹¹ Will Martin, 'China's textile and clothing trade and global adjustment' in Ross Garnaut, Ligang Song and Wing Thye Woo (eds) *China's New Place in a World in Crisis* (ANU ePress, 2009) 305.

⁹⁹² USTR, above n 437.

⁹⁹³ ICTSD Bridges Weekly Trade News Digest, 'Chinese Textile Exports Surge; US, EU to Invoke Textile Safeguard?' Vol.9 (No.11) 6 April 2005; see also ICTSD Bridges Weekly Trade News Digest, 'Post-Quota Textile Trade Starts to Take Shape' Vol.9, No.2 (26 January 2005); see also Congressional Research Service (CRS), 'US Clothing and Textile Trade with China and the World: Trends Since the End of Quotas' (Order Code RL34106) (10 July 2007) 5.

resulted in immediate imposition of quotas equal to 6% or 7.5% more than the amount imported over the previous twelve months.⁹⁹⁴

In addition to the TS, Chinese T&C exports are also subjected to the *Transitional Product-Specific Safeguard Mechanism* (PSS). The PSS allows an importing country to impose restrictions if it demonstrates that the imports are causing or threatening to cause serious injury to domestic firms producing similar products.⁹⁹⁵ The PSS is an available remedy for twelve years from 11 December 2001.⁹⁹⁶

This mechanism may only be imposed after consultations or, in circumstances warranting immediate remedial action, provisional measures can be imposed.⁹⁹⁷ The PSS can be imposed for up to three years as against the TS mechanism (which can only be imposed for one year).⁹⁹⁸ Therefore, even after the expiry of the TS, the restrictions on Chinese T&C exports may continue until 2013. This means that until 31 December 2008, Chinese T&C exports were subjected to two safeguard regimes. This enabled importing countries to employ safeguards under either one of the mechanisms. However, under the terms of China's WTO Accession Protocol the importing country may not apply both types of safeguards to the same product simultaneously.⁹⁹⁹ Safeguards as a remedy in T&C trade will be examined in Chapter 5.

In addition to safeguards, as part of the Chinese accession to the WTO, China's T&C exports may also be subjected to anti-dumping measures for fifteen years after accession (i.e. until 2016).¹⁰⁰⁰ In imposing anti-dumping measures, WTO

⁹⁹⁴ WTO, 'Report of the Working Party on the Accession of China' (1 October 2001) WTO Document WT/ACC/CHN/49, Paragraph 242 (c); see also CRS, *Ibid.*

⁹⁹⁵ China's Accession Agreement, Section 16, WTO Document WT/L/432 dated 23 November 2001.

⁹⁹⁶ *Ibid.*, Section 16(9).

⁹⁹⁷ Sung Jae Kim & Kenneth Reinert, 'Textile and Clothing Safeguards; From the ATC to the Future' (2007) 8 (2) *The Estey Centre Journal of International Law and Trade Policy* 155, 163.

⁹⁹⁸ *Ibid.*, 157.

⁹⁹⁹ WTO, above n 994, Paragraph 242 (g).

¹⁰⁰⁰ For a discussion on Antidumping and Safeguards in the Chinese context see Patrick Messerlin, 'China in the World Trade Organization: Antidumping and Safeguards' (2004) 18(1) *The World Bank Economic Review* 105, 106.

members may rely on the special “non-market economy” methodology in the WTO Anti-Dumping Agreement to determine dumping.¹⁰⁰¹ The non-market economy provisions imply that domestic prices cannot be used as a basis of reference and this increases the likelihood of a positive finding in an antidumping investigation.¹⁰⁰²

Despite the above restrictions, China accounted for 13.5% and 20.6% share of world textiles and clothing exports respectively in 2002 (refer to Figure 4.1). This was during the ATC when quota restrictions were still in place. As discussed in Chapter 2, these quotas existed on T&C categories that were more important to China and other exporting countries. These categories were liberalised at the very end. It is also interesting to note that within a few months of quota expiration, the EU and the US took immediate advantage of safeguard measures to reimpose restrictions on Chinese T&C exports (discussed below).

4.2.2 US-China Trade

Under the terms of China’s WTO Accession Protocol, the US restricted some Chinese T&C products soon after Chinese accession to the WTO.¹⁰⁰³ Later, the US progressively expanded the level of restrictions in December 2003 to include products that had been integrated as per the ATC integration schedule.¹⁰⁰⁴ This move effectively delayed the flow down of benefits of trade liberalisation to China. Expansion in restrictions was again undertaken in October 2004, whereby quota restraints were imposed on additional products.¹⁰⁰⁵ These restrictions were to last one year in line with the terms of China’s WTO Accession Protocol.

¹⁰⁰¹ Ibid, 115.

¹⁰⁰² China’s Accession Agreement, Section 15, above n 995.

¹⁰⁰³ See generally ITCB, ‘New US-China Textile Agreement’ (17 November 2005)

<<http://www.itcb.org/Documents/ITCB-MI52.pdf>> at 17 July 2008.

¹⁰⁰⁴ ITCB, Ibid. These categories comprised: (i) Category 222 – knit fabric; (ii) Combined Categories 349/649 – cotton and MMF brassieres; and (iii) combined categories category 350/650 – cotton and MMF dressing gowns and robes.

¹⁰⁰⁵ ITCB, Ibid. These products comprised cotton, wool and MMF fibre socks (Combined Categories 332/432/632).

While these restrictions were in force, the US industry groups petitioned for further restrictions on the basis of “anticipated increase in imports of these products threatened to disrupt the US market for such products.”¹⁰⁰⁶ Following an investigation by the US Department of Commerce into the alleged disruption in the domestic market by Chinese T&C exports, China eventually agreed to exercise voluntary restraint over its T&C exports to the US and entered into an agreement to this effect with the US in November 2005 (referred to as the “US-China MOU”).

The US-China MOU limited Chinese exports on 34 categories of products, which accounted for approximately one-third of its T&C exports to the US in value terms.¹⁰⁰⁷ However, the US-China MOU covered most but not all categories of T&C for 2006-2008.¹⁰⁰⁸ For clothing, the MOU specified a quota increase rate of 10% for 2006, 12.5% for 2007 and 15% in 2008, whereas for textiles the increase rate was 12.5% for 2006-2007 and 15% in 2008.¹⁰⁰⁹ This MOU was valid until 31 December 2008 and its expiry coincided with that of the TS on Chinese T&C products.¹⁰¹⁰

In addition to the restraints introduced under the US-China MOU, the US extensively relied on tariff barriers to control access to its market. Review of the US general tariffs rates until 2007 for each of the 14 HS chapters covering T&C, reveals that there has been a conscious effort to maintain import barriers on a selective basis.¹⁰¹¹ Figure 4.3 demonstrates that there is broad range of tariffs imposed on T&C imports. The peak tariff rate represents the highest tariff, which may possibly be imposed on T&C imports in special

¹⁰⁰⁶ USTR, ‘2006 Trade Policy Agenda and 2005 Annual Report’ (Chapter V: Trade Enforcement Activities)
<http://www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_Trade_Policy_Agenda/asset_upload_file765_9077.pdf> 236 at 18 July 2008.

¹⁰⁰⁷ ITCB, above n 1003, 3.

¹⁰⁰⁸ CRS, above n 993, 24

¹⁰⁰⁹ Ibid.

¹⁰¹⁰ WTO, above n 994, Paragraph 242.

¹⁰¹¹ CRS, above n 993, 4.

circumstances.¹⁰¹² (T&C products fall under the HS Codes from 50-63 where HS 61 and 62 are clothing products).

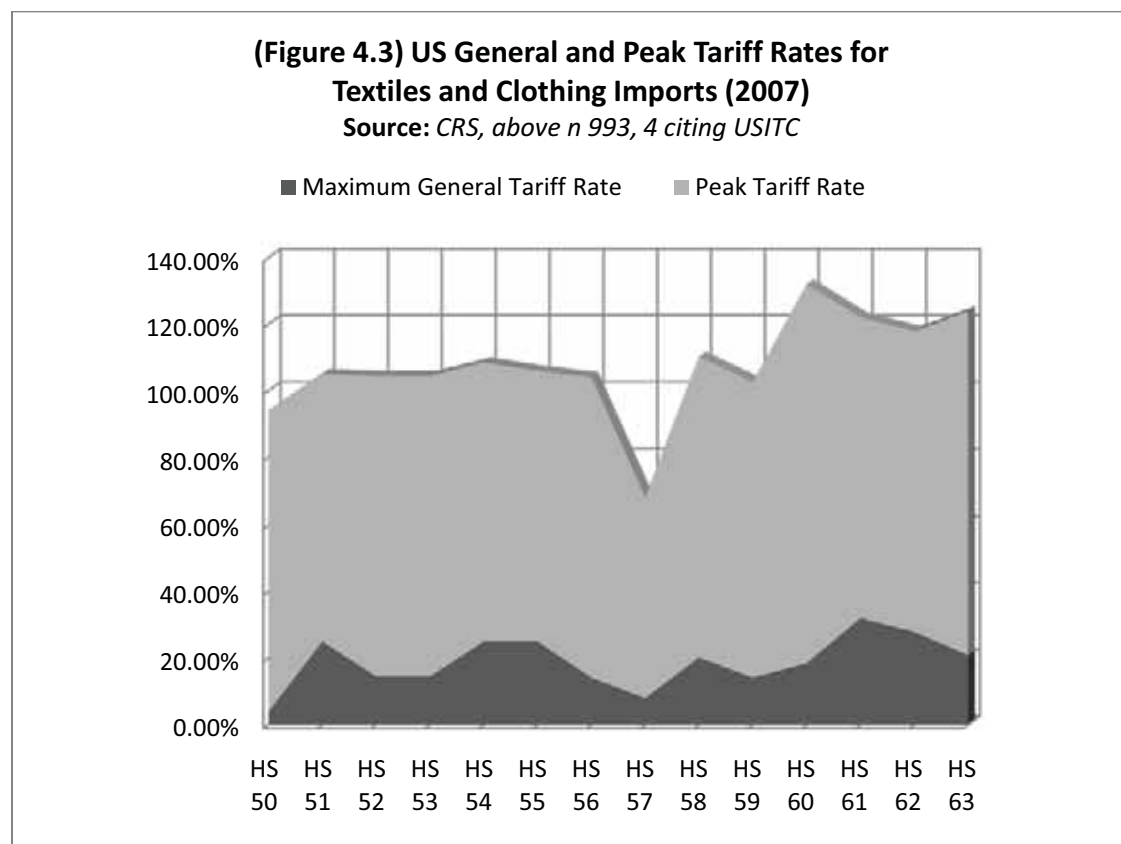


Figure 4.3 demonstrates high general and peak tariff rates maintained by the US. This shows that US maintained a certain level of protection for its domestic T&C market.¹⁰¹³ The imposition of higher tariffs on certain items in each HS Chapter is designed to restrain imports of certain T&C products.¹⁰¹⁴ It is interesting to note that the quota utilisation rate of Chinese exports in 2005 and 2006 (before and after signing of the US-China MOU). In 2005 the utilisation rate of 8 out of 10 products was 100%.¹⁰¹⁵ The US Industry groups used these figures to claim that as soon as quotas expire, there would be an increased surge that could cause serious market disruption in the US.¹⁰¹⁶ It was at this point in time that the US-China MOU was concluded (see above).

¹⁰¹² Ibid, 4.

¹⁰¹³ Ibid.

¹⁰¹⁴ Ibid.

¹⁰¹⁵ Ibid, 23.

¹⁰¹⁶ Ibid, 24.

In 2006, one year after the restrictions of the US-China MOU were in place, utilisation of the 22 separate quotas established under the US-China MOU was incomplete.¹⁰¹⁷ These apprehensions were clearly exaggerated since the expected market adjustment following quota expiration had already occurred in 2005.¹⁰¹⁸

In 2008, however, there were indications that the growth of Chinese T&C exports had subsided due to a combination of factors. These factors included the TS imposed by the EU and the US (see Chapter 2 for discussion), higher raw materials, increasing global energy costs, global environmental standards, costs arising from compliance with improved labour standards and restrictive credit regulations by Chinese Government to control inflation and lower tax rebates available to exporters.¹⁰¹⁹ Moreover, Chinese exports have also been affected by rising Chinese currency and labour costs as compared to other Asian producers.¹⁰²⁰

These indications correspond with the US OTEXA figures. According to the OTEXA statistics for period July 2007- July 2008 (See Table 4.1A), China expanded its share of the US T&C market by 6.5%. This represented a share of 33.69% in the US T&C market. The Chinese growth came at the expense of Mexico and Canada, that registered negative growth despite enjoying preferential access and proximity to the US market (refer to Table 4.1A and Figure 4.4). China's growth also affected market share of Indonesia, Pakistan and the Philippines as well (see Table 4.1A).

¹⁰¹⁷ Ibid, 24-25.

¹⁰¹⁸ Ibid, 25.

¹⁰¹⁹ See generally Textiles Intelligence, 'China Loses its Competitive Edge in Clothing' Press Release (July 2008); Michael Byrnes/Reuters, 'Chinese Textiles Lose out to Rising Costs and Currency Surges' The Wall Street Journal/LiveMint (13 August 2010) <<http://www.livemint.com/Articles/PrintArticle.aspx>> at 27 August 2010.

¹⁰²⁰ In certain regions of China, labour costs have reached US \$ 1.08 per hour as compared to Bangladesh, Cambodia, Pakistan & Vietnam which offer US \$ 0.22, 0.33, 0.37 & 0.38 per hour respectively (Textiles Intelligence, above n 1019).

(Table 4.1A) US Department of Commerce (OTEXA)
Total Textiles and Clothing Imports into the US (July 2008)

Source: OTEXA

Top 15 Exporters (Data in Million US \$)

Exporter	Year ending July 2007	Year ending July 2008	Year ending growth percentage
China	30162.903	32123.016	6.5
Mexico	6064.865	5395.016	-11.04
India	5036.807	5147.648	2.2
Vietnam	3667.808	4972.246	35.56
Indonesia	4206.102	4204.551	-0.04
Bangladesh	3191.401	3273.039	2.56
Pakistan	3233.879	3137.789	-2.97
Honduras	2494.824	2527.983	1.33
Cambodia	2317.197	2463.102	6.3
Italy	2142.633	2222.667	3.73
Hong Kong	2422.396	2110.421	-12.88
Thailand	2095.56	2075.043	-0.98
Canada	2420.918	1985.564	-17.98
Philippines	2011.683	1684.349	-16.27
San Salvador	1511.615	1544.825	2.2

(Table 4.1B) US Department of Commerce (OTEXA)
Total Textiles and Clothing Imports into the US (April 2010)

Source: OTEXA

Top 15 Exporters (Data in Million US \$)

Exporter	Year ending April 2009	Year ending April 2010	Year ending growth percentage
China	32436.045	32825.256	1.20
Vietnam	5505.696	5522.810	0.31
India	4834.441	4752.775	-1.69
Mexico	4632.373	4234.512	-8.59
Indonesia	4201.216	4149.148	-1.24
Bangladesh	3676.495	3508.563	-4.57
Pakistan	2972.165	2823.275	-5.01
Honduras	2443.914	2091.742	-14.41
Cambodia	2215.526	1908.881	-13.84
Thailand	1824.596	1405.511	-22.97
Salvador	1492.779	1375.684	-7.84
Canada	1478.577	1324.704	-10.41
Italy	1795.784	1311.137	-26.99
Sri Lanka	1437.485	1171.080	-18.53
Guatemala	1252.680	1139.586	-9.03

Table 4.1B presents OTEXA statistics from April 2009 to April 2010. China retains its primacy in the US market but lodged a nominal growth rate of 1.20%. However, this performance came against the backdrop of the global

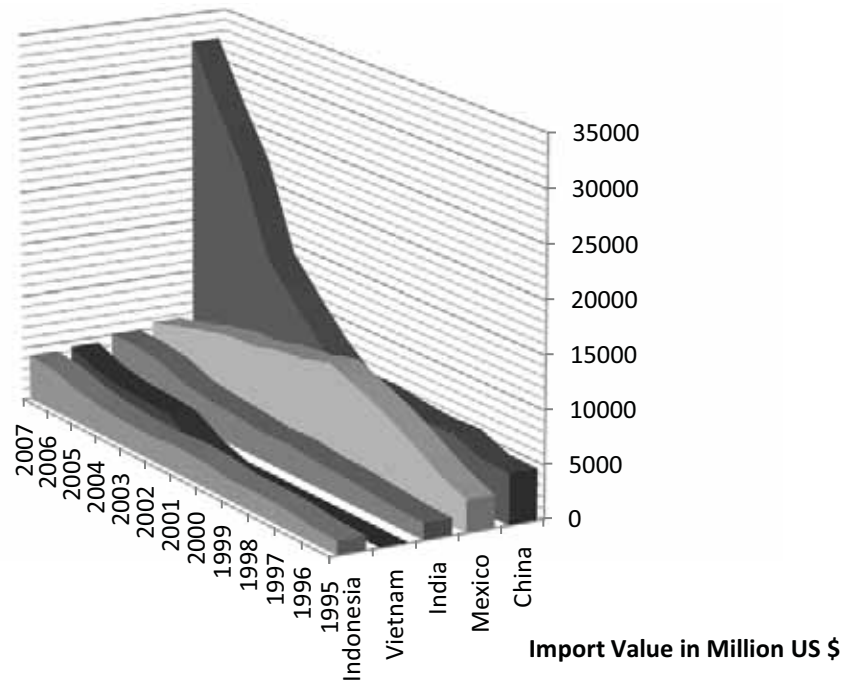
financial crisis. Decline is apparent in all other exporters to the US except for China and Vietnam (see Table 4.1B). Performance of preferential treatment recipients (Mexico, Canada, Honduras, Guatemala and Salvador remained in the negative). China's performance (examined in Table 4.1B) in the US market came in the very first year after the TS expired in 2008. Although the PSS is still available as a possible market control mechanism, it has not been invoked so far by the US. Therefore, with no external restraints the 2009-2010 figures show China as continuously maintaining its hold on the US T&C market, while all other countries experienced decline during the same period. Tables 4.1A, 4.1B, 4.2 and Figure 4.4 highlight the strong growth of Chinese T&C exports to the US market.

(Table 4.2) US Imports of Textiles and Clothing from Top 15 Exporters (2000 - 2009)
Import value in Million US \$ (Source: ITCB, Evolution of Textile & Clothing Imports into the United States, (1990-2009) <http://www.itcb.org/Documents/2010TbF_Usa_v1.pdf> at 29 June 2010)

Exporter	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
China	6527	6536	8744	11609	14558	22405	27068	32320	33148	32281
Mexico	9693	8945	8619	7941	7793	7146	6376	5626	5590	4828
India	2741	2633	2993	3212	3633	4617	5031	5104	5745	5142
Vietnam	50	49	952	2484	2720	2881	3396	4458	5543	5395
Indonesia	2380	2553	2329	2376	2620	3081	3902	4206	4502	4232
Bangladesh	2205	2205	1990	1939	2066	2457	1998	3191	3695	3665
Pakistan	1835	1924	1983	2215	2546	2904	3250	3170	3251	2847
Honduras	2328	2348	2444	2507	2678	2629	2445	2518	2766	2184
Cambodia	816	953	1061	1251	1442	1727	2151	2435	2512	1962
Italy	2129	2063	2031	2182	2261	2143	2068	2233	2287	1453
Canada	3350	3162	3199	3118	3086	2844	2587	2202	2212	1758
Salvador	1616	1646	1709	1758	1757	1646	1433	1507	1613	1363
Thailand	2447	2441	2203	2072	2198	2124	2124	2059	2167	1590
Philippines	2289	2248	2042	2040	1938	1921	2085	1794	1470	1090
Sri Lanka	1677	1698	1527	1493	1585	1677	1703	1590	1597	1295

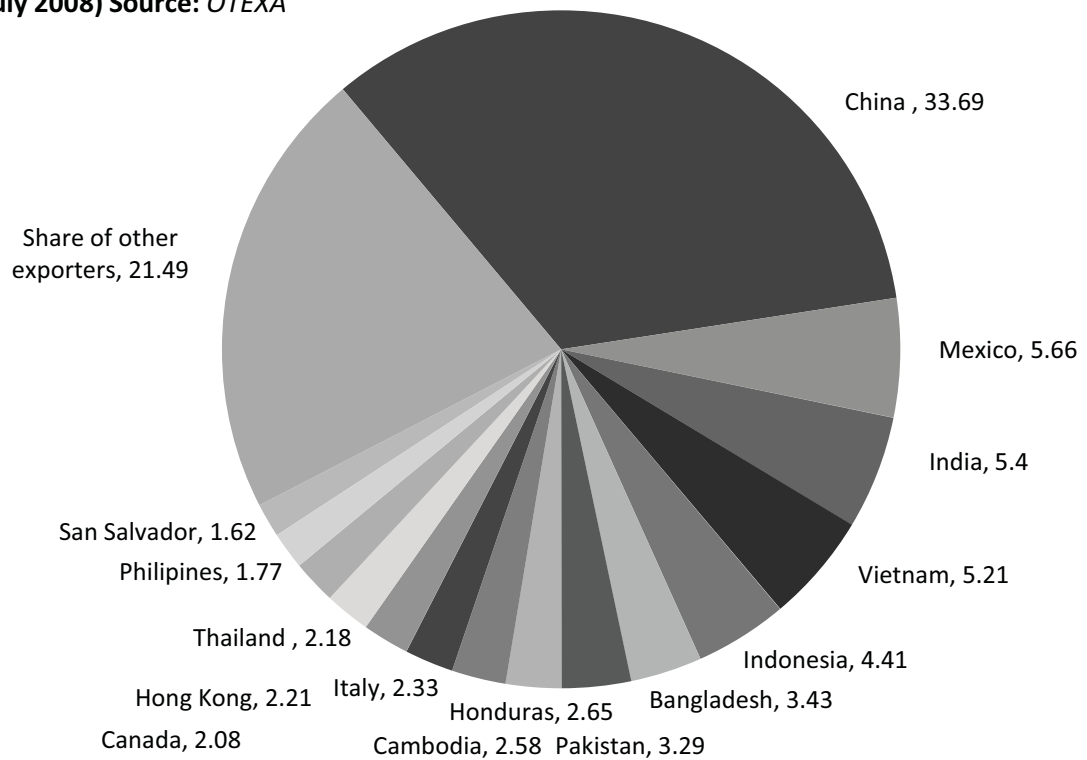
(Figure 4.4) Growth of Top-5 Exporters of Textiles and Clothing to the US (1995-2007)

Source: ITCB, *Evolution of Textile & Clothing Imports into the United States, (1990-2007)* <<http://www.itcb.org/Trade.htm>> at 29 January 2007

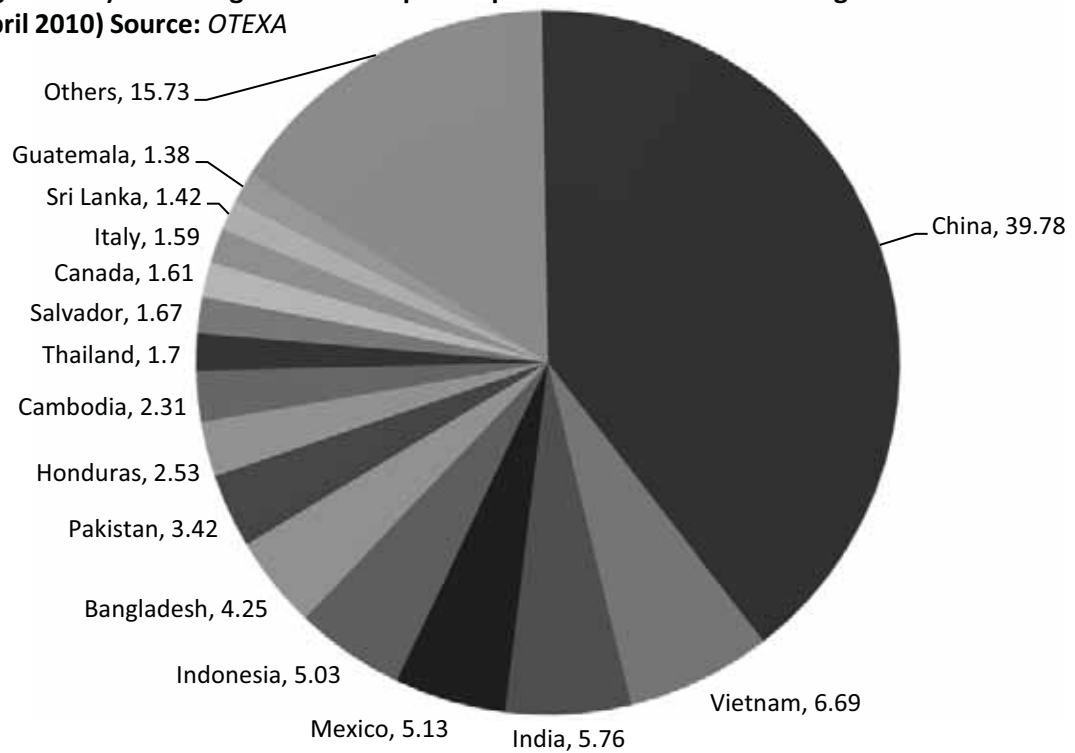


Considering the above statistics, it appears that China's ascent as the leading T&C exporter to the US coincides with its accession to the WTO and the phasing out of quotas (both of which prevented China from exporting increased quantities of such products prior to 2001). The strong growth of Chinese T&C exports to the US also lends credence to the pre-expiration predictions that the US would not only import more T&C from China but also that China would manage to expand its share of the US market at the expense of other exporters (refer to year ending growth percentage in Tables 4.1A & 4.1B). The exception is Vietnam which recorded an increase of 35.56% for period July 2007- July 2008 and 0.31% for period April 2009 - April 2010 (see Tables 4.1A & 4.1B). By April 2010, according to OTEXA statistics, China's market share stood at 39.78%, growing from 33.69% in July 2008 (refer to Figures 4.5A and 4.5B). China's growth affected the share of nearly all other suppliers to the US market.

(Figure 4.5A) Percentage Share of Top-15 Exporters of Textiles & Clothing to the US Market (July 2008) Source: OTEXA



(Figure 4.5B) Percentage Share of Top-15 Exporters of Textiles & Clothing to the US Market (April 2010) Source: OTEXA



4.2.3 EU-China Trade

In the immediate post-ATC period, the EU adopted an 'early warning system' to observe any adverse effects on the EU market due to growing imports from China.¹⁰²¹ After considering the first three months of trade data immediately after lifting of the quotas, the EU initiated an investigation into nine categories of Chinese textiles exports.¹⁰²²

The EU called for consultations with China on the basis of import data immediately following quota expiration. These consultations culminated in the EU-China MOU in June 2005 that lasted until December 2007.¹⁰²³ The EU-China MOU covered 10 of the 35 categories of Chinese exports that were liberalised upon quota expiration.¹⁰²⁴ It is pertinent to note that the EU-China MOU allowed for a growth of the restricted categories of products between 8% and 12.5% per annum for 2005, 2006 and 2007.¹⁰²⁵ This represented a higher growth rate as compared to the 7.5% growth rate permitted under China's WTO Accession Protocol. However, the MOU Agreement proved to be inadequate in stemming the tide of Chinese exports. Quotas were filled faster than expected and resultantly the EU authorities detained Chinese origin T&C imports at quaysides.¹⁰²⁶ This led to another round of negotiations that resulted in an amendment to the EU-China MOU known as the "Shanghai

¹⁰²¹ ICTSD Bridges Weekly Trade News Digest, 'Chinese Textile Exports Surge; US, EU To Invoke Textile Safeguard?' (Vol.9, No. 11, 6 April 2005) <<http://ictsd.org/i/news/bridgesweekly/7488/>> at 25 June 2010.

¹⁰²² These categories included T-shirts, pullovers, blouses, stockings and socks, men's trousers, women's overcoats, brassieres, flax or ramie yarn and woven fabrics flax (see EC, Press Release by the Directorate General for Trade of the European Commission on the EU-China Textile Agreement (Brussels, 12 June 2005) <<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/05/201&format=HTML&aged=0&language=EN&guiLanguage=en>> at 17 July 2008)

¹⁰²³ EC, Commission Regulation 1084/2005 Amending Annexes II, III and V to the Council Regulation (EEC) No. 3030/93 on Common Rules for Imports of Certain Textile Products from Third Countries, 2005 OJ (L177/19) (the "MOU Agreement"); see also EC, 'EU-China Textile Agreement' (10 June 2005) <http://ec.europa.eu/external_relations/china/intro/memo05_201.htm> at 18 July 2008.

¹⁰²⁴ These ten included pullovers, men's trousers, blouses, T-shirts, dresses. Brassieres, flax yarn, cotton fabrics, bed linen, table and kitchen linen (see EC, above n 1028); see also ITCB, 'EU-China Textile Agreement' (10 June 2005) <<http://www.itcb.org/Documents/ITCB-MI53.pdf>> at 18 July 2008.

¹⁰²⁵ ITCB, Ibid; Michael Murawski, 'Lacking Support: China Suffers a Textiles Trade Let Down by Politics and Poor Preparation in the EU' 2006 (30) *Suffolk Transnational Law Review* 141, 150.

¹⁰²⁶ Chris Buckley & Graham Bowley, 'EU Reaches Deal with China on Clothing', *International Herald Tribune* (6 September 2005) <<http://www.iht.com/articles/2005/09/05/business/textile.php>> at 18 July 2008; Murawski, Ibid.

Agreement” whereby China agreed to no additional clothing exports in 2005.¹⁰²⁷ The parties agreed to allow the detained Chinese exports into the EU with half of the items counting towards the 2006 quota, whilst the remainder entered unconditionally.¹⁰²⁸ The Shanghai Agreement also enabled flexibility in the allowed amounts for 2006 and 2007 by permitting year-to-year carryover and inter-category transfer.¹⁰²⁹

Table 4.3 and Figure 4.6 demonstrate the impressive growth of Chinese exports to the EU from 2000 to 2008. Similar to the US, China has outclassed other rival suppliers to the EU T&C market including Turkey, Tunisia and Morocco (proximate countries benefitting from preferential treatment).

(Table 4.3) EU Imports of Textiles and Clothing from Top 15 Exporters (2000 - 2008) Import value in Million US \$ (Source: ITCB, 'EU(27) Imports of Textiles and Clothing from Top-60 and Some Other Selected Suppliers: 1999 – 2008' <http://www.itcb.org/Documents/2009TablesF_Eec_v1.pdf> at 29 June 2010									
Exporter	2000	2001	2002	2003	2004	2005	2006	2007	2008
China	9,143.1	9487.7	11192.1	14706.9	18378.0	26201.8	29826.8	37420.1	45351.4
Turkey	7163.8	7725.0	9150.2	11693.0	13548.0	14221.6	14948.3	17430.4	16597.0
India	3801.6	3869.1	3948.4	4728.6	5535.0	6566.0	7559.3	8531.1	8992.8
Bangladesh	2518.5	2661.9	2732.1	3669.9	4847.1	4631.1	6077.1	6390.9	7352.6
Tunisia	2552.5	2796.2	2976.6	3359.9	3527.9	3342.1	3398.2	3908.8	4188.6
Morocco	2290.5	2483.8	2600.4	2938.9	3171.3	2957.5	3111.7	3651.3	3707.9
Pakistan	1570.5	1631.1	1883.7	2369.7	2893.1	2519.1	2885.4	3360.0	3451.7
Switzerland	1625.9	1587.2	1571.3	1872.5	1943.6	1810.8	1851.3	2180.1	2237.5
Indonesia	2300.0	2180.1	1965.8	2081.6	2190.4	1975.2	2322.1	2265.8	2231.8
Vietnam	770.5	754.7	728.2	689.5	911.5	973.9	1448.5	1773.4	2047.8
US	1979.3	1798.1	1586.6	1497.4	1443.1	1530.2	1702.4	1801.6	1910.4
Sri Lanka	831.2	737.3	741.6	833.2	1046.4	1038.6	1272.9	1494.8	1718.8
Thailand	1234.4	1104.8	1134.7	1284.0	1465.9	1337.6	1480.7	1517.6	1547.6
Hong Kong	2985.0	2415.3	2289.7	2461.2	2531.9	2195.8	3229.8	2372.5	1334.4
Sth Korea	1966.6	1740.5	1670.8	1775.2	1818.8	1397.6	1388.1	1448.9	1202.7

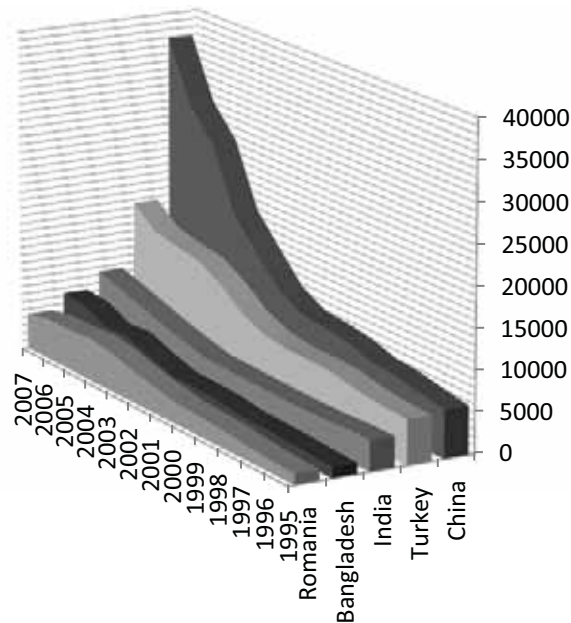
¹⁰²⁷ EC, Commission Regulation 1478/2005 Amending Annexes V, VII and VIII to Council Regulation (EEC) No 3030/93 on Common Rules for Imports of Certain Textile Products from Third Countries, 2005 OJ (L236) (the “Shanghai Agreement”).

¹⁰²⁸ EC, Press Release, ‘European Commission Adopts Regulation to Clear Blocked Chinese Textile Imports’ <<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/1124&format=HTML&aged=0&language=EN&guiLanguage=en>> at 18 July 2010.

¹⁰²⁹ Ibid.

(Figure 4.6) Growth of Top-5 Exporters of Textiles and Clothing to the EU (1995-2007) (Import value in Million US \$)

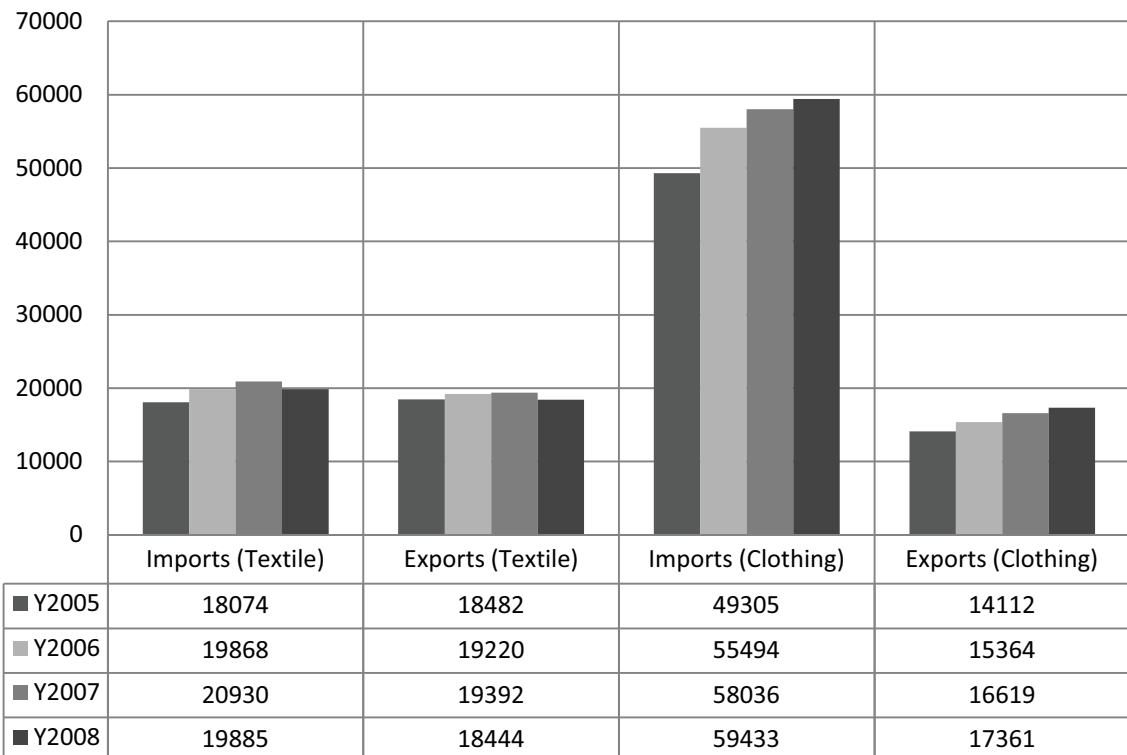
Source: ITCB, *Evolution of Textiles & Clothing Imports to EU-25, 1995-2007*
<<http://www.itcb.org/Trade.htm>> at 27 January 2009



(Figure 4.7) EU Comparison of Imports V Exports in Textiles & Clothing in the post-ATC period (Value in Million Euros)

Source: EC Statistics

<http://ec.europa.eu/enterprise/sectors/textiles/statistics/index_en.htm>



Chinese imports have had a pronounced effect on EU's T&C trade even while under the TS. This is presented in Figure 4.7 that cites official EC statistics for T&C trade. These statistics show that in the immediate post-ATC period up to the expiration of the TS in December 2008, EU's imports of clothing constantly increased. This demonstrates that EU has consistently imported more clothing from China (as of 2008, China's market share of the EU's clothing market was 42.6%)¹⁰³⁰

The EU imports and exports of textiles have remained largely static. This may partially explain the trend of most preferential exporters of clothing to the EU shifting to other suppliers for meeting their input needs. This proposition receives further support in light of the EU's decision to allow regional cumulation in its GSP regime (see Chapter 3 for discussion).

According to ITCB statistics, in 2007, China enjoyed a 32.9% share of the EU combined T&C market.¹⁰³¹ The second largest exporter (Turkey) secured 14.8%, followed by India, Bangladesh and Romania with 7.5%, 5.7% and 3.9% respectively.¹⁰³² Sector wise, China held a 26% market share of the EU textiles market in 2007 (see Figure 4.8). This further grew to 28.2% in 2008.¹⁰³³ Between years 2004-2007 (when Chinese T&C faced restraints under EU-China MOU), Chinese growth rate in the EU textiles market was 66.9% (see Figure 4.9). This clearly outpaced all other rival exporters.

Similarly, during subsistence of reimposed quotas under the EU-China MOU, China's market share of the EU's clothing market in 2007 was 37.7% (see Figure 4.10). During the period 2004-2007, Chinese clothing exports grew by 89.7% (see Figure 4.11). This growth performance was dominant over all other exporters (with the exception of Vietnam). According to official EC statistics, Chinese growth rate in the post-ATC period (2005-2008) was 49.2%.

¹⁰³⁰ EC Statistics <http://ec.europa.eu/enterprise/sectors/textiles/statistics/index_en.htm> at 25 June 2010

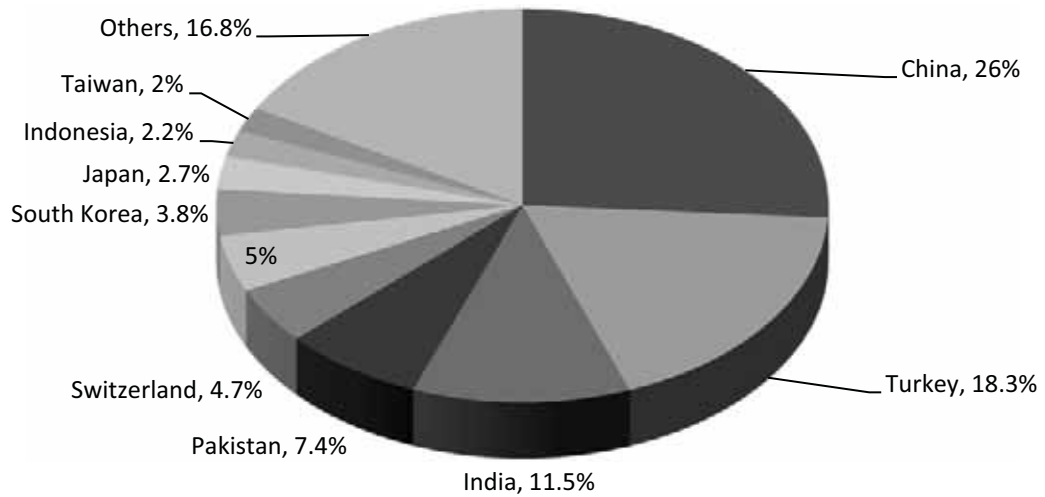
¹⁰³¹ ITCB, 'EU-25 Imports of Textiles and Clothing from Top 30 and Some Other Exporters (1995 - 2007)' <http://www.itcb.org/Documents/ITCB_TDEU_95-07.pdf> at 27 June 2010.

¹⁰³² Ibid.

¹⁰³³ EC Statistics, above n 1030.

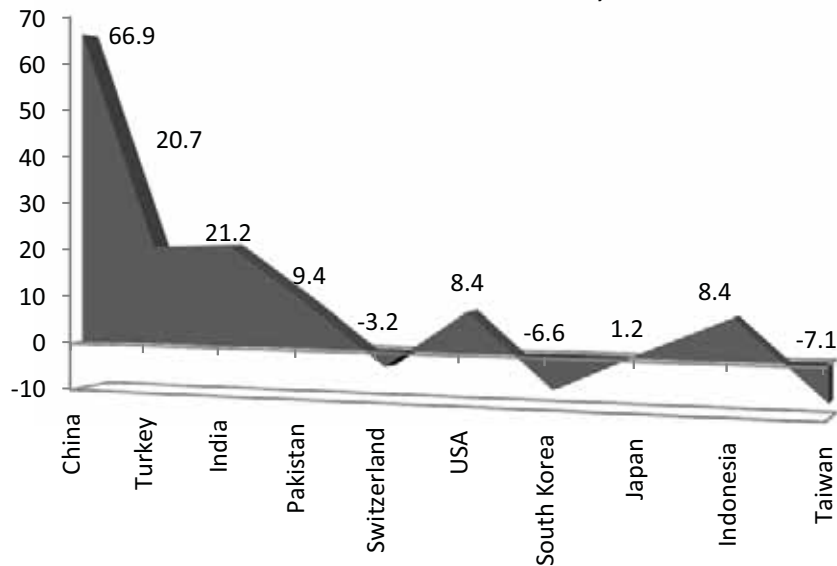
(Figure 4.8) Market share of Top-10 Exporters of Textiles to EU (2007)

Source: EC Statistics <<http://ec.europa.eu/enterprise/textile/statistics.htm>> at 27 January 2009



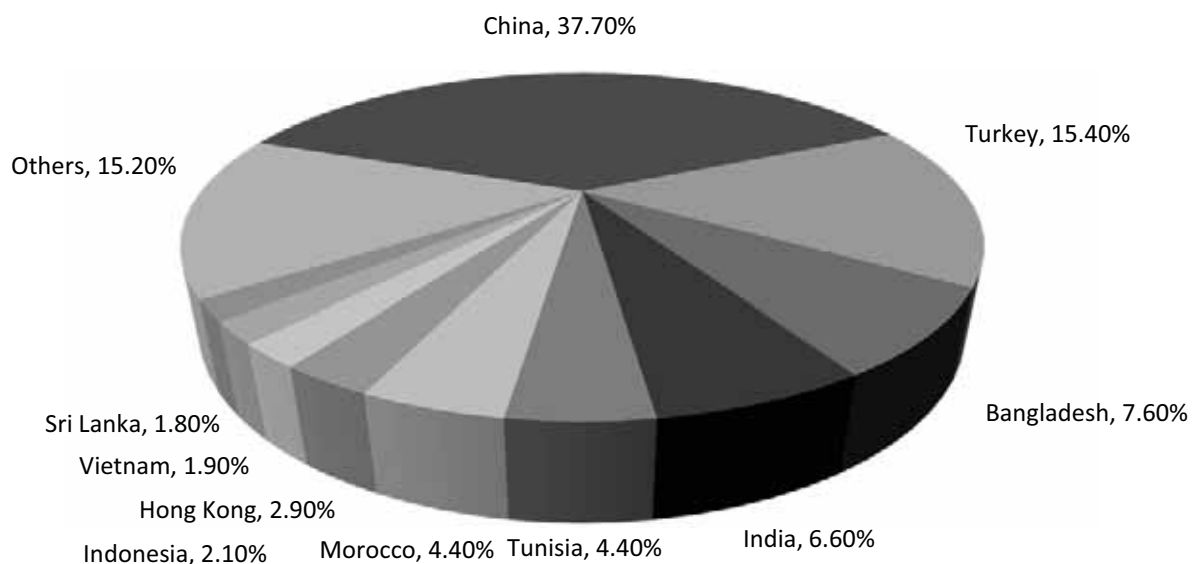
(Figure 4.9) Percentage Growth in Market Share of Top-10 Exporters of Textiles (2004-2007)

Source: EC Statistics <<http://ec.europa.eu/enterprise/textile/statistics.htm>> at 27 January 2009



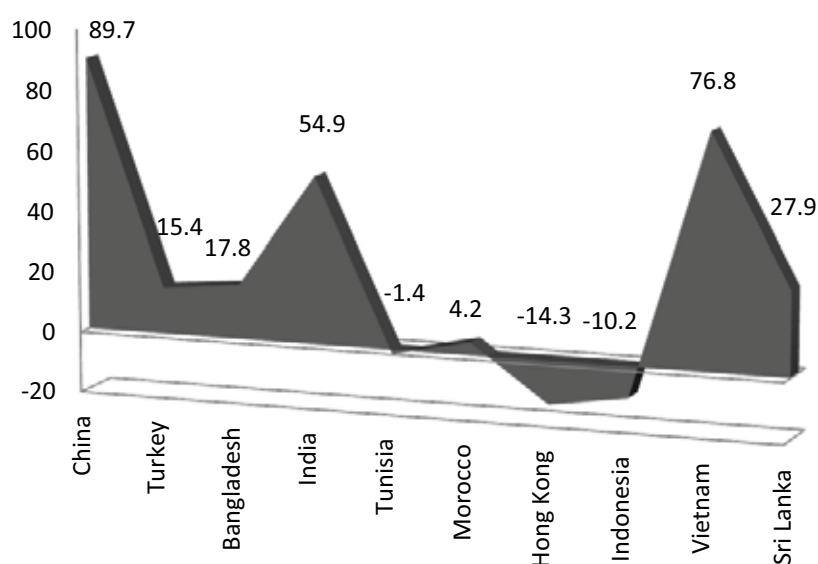
(Figure 4.10) Percentage Market Share of Top-10 Exporters of Clothing to the EU (2007)

Source: EC Statistics <<http://ec.europa.eu/enterprise/textile/statistics.htm>> at 27 January 2009



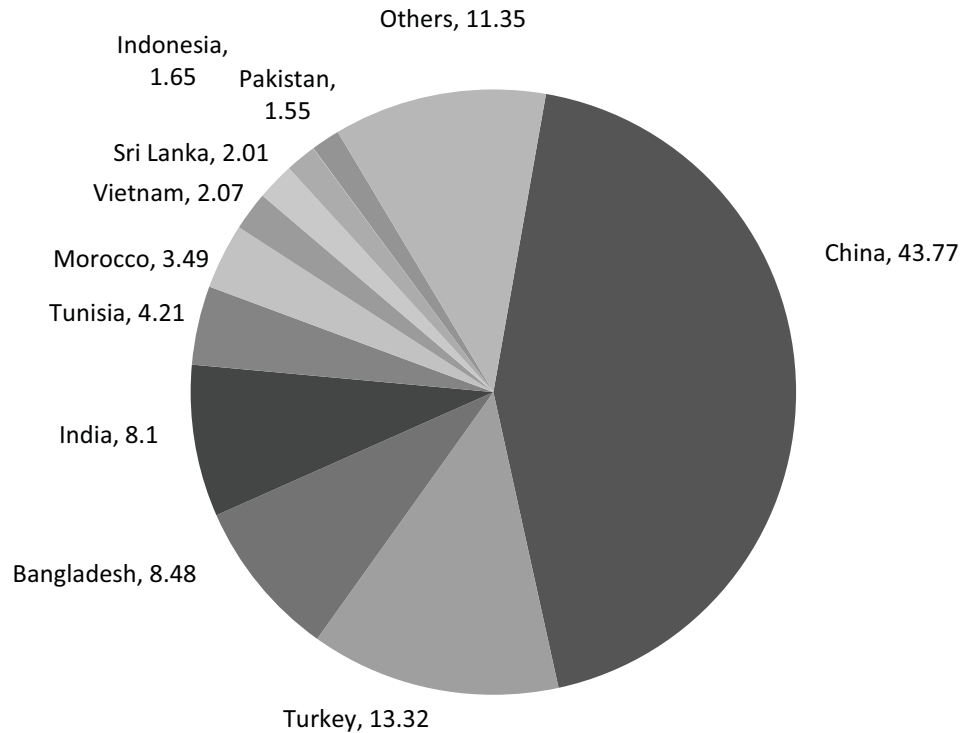
(Figure 4.11) Growth in Market Share of Top-10 Exporters of Clothing to the EU (2004-07)

Source: EC Statistics <<http://ec.europa.eu/enterprise/textile/statistics.htm>> at 27 January 2009



(Figure 4.12) Market share of the Top-10 Clothing Suppliers to the EU (Q1, 2010) (Value Share)

Source: *Emerging Textiles* <<http://www.emergingtextiles.com/?q=art&s=100707-eu-clothing-import&r=headlines&n=6>> at 8 July 2010



The afore-mentioned statistics show that clothing is the main value added category where countries compete more actively compared to textiles. The first-quarter 2010 statistics on EU clothing imports show that China has maintained its dominance of the EU clothing market (See Figure 4.12). China's performance comes when the EU/US markets are recovering from the effects of the global financial crisis. During 2009-2010, no new trade restraints were reported.¹⁰³⁴ Therefore, years 2009-2010 become important in proving that sector-specific trade restraints carry little utility in controlling inflow of imports from suppliers possessing comparative advantage.

¹⁰³⁴ EmergingTextiles.com, 'No new Textile Trade Barriers, WTO Reports' <http://www.emergingtextiles.com/_print/?q=art&s=100701-textile-trade-restrictions&r=chk> at 12 July 2010.

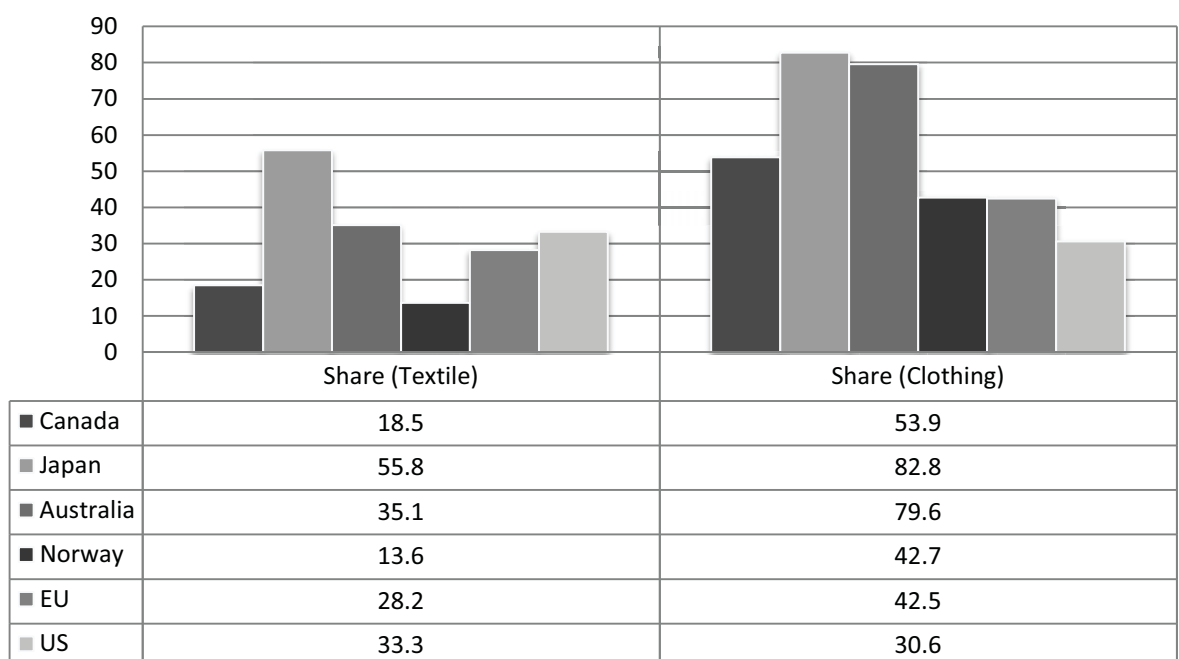
4.2.4 Issues for consideration

China's performance in the post-ATC highlights a number of issues for consideration that may explain the future direction of global T&C trade. The first issue is the usefulness of trade restraints and their long term utility. China has been subjected to comprehensive restraints since its accession to the WTO in 2001. Although, these restraints had inbuilt quota growth rates, they nevertheless suppressed China's true export potential. But even under restraints, Chinese growth rate was not significantly retarded.

Five years after quota expiration, the penetration of the global T&C trade has been comprehensive e.g. China has not only captured a major share in the EU/US markets but has managed substantial market share in other developed markets such as Australia, Canada and Japan as well (see Figure 4.13). These markets were liberalised much earlier than the EU/US markets. Therefore, the difference between restrained and unrestrained markets seems to indicate that trade barriers and quotas only delay the inevitable.

(Figure 4.13) Comparison of Market Share of China in Textiles & Clothing Imports of Selected Economies (2008)

Sources: WTO International Trade Statistics 2009 (Tables II.63, II.63b, II.63c, II.68, II.68b); ITCB, <<http://www.itcb.org/Trade.htm>>



The global financial crisis affected China's overall T&C exports (see Table 4.4). Whilst China experienced a 31.84% increase in its T&C exports to the EU in 2008, it experienced slight declines of -3.56% and -0.16% in T&C exports to NAFTA and African countries. In 2009, China experienced more decline but not at a massive scale. The maximum decline was -11.5% in T&C exports to Asia. During period January – April 2010, China lodged positive growth rate in all markets. This positive growth rate in the first four months of 2010 is sufficient to make up for losses of previous years (see Table 4.4).

(Table 4.4) China's Textile and Clothing Exports 2008, 2009, Jan-Apr 2010 (Annual Percentage Change and Billion US \$)

Source: *EmergingTextiles.com*, 'China Textile and Clothing Exports in January – April 2010' <http://www.emergingtextiles.com/_print/?q=art&s=100528-china-country-report&r=headlines> at 27 June 2010.

Market	2008 %change	2009 %change	Jan-Apr 2010 %change	Jan-Apr 2010 (Billion US \$)
<i>EU</i>	31.84%	-6.38%	16.28%	\$10.47
<i>NAFTA</i>	-3.56%	-0.30%	18.64%	\$8.82
<i>Africa</i>	-0.16%	-1.98%	22.41%	\$2.90
<i>Australia</i>	18.59%	-7.04%	14.57%	\$1.13
<i>Asia</i>	5.87%	-11.50%	12.24%	\$23.95

The second issue concerns two closely connected factors that can potentially affect the future competitiveness of Chinese T&C namely, rising labour costs in regions where T&C industries are concentrated and rising currency values.

A rise in labour costs carries particular cost implications for clothing industries. Since labour costs dictate the competitiveness of clothing more than any other factor, clothing manufacturers often indulge in massive reductions in wages in order to stay afloat (see discussion on the 'race to the bottom' in Chapter 3). According to a report by *EmergingTextiles.com*, Chinese labour costs (that include wages, social charges and bonuses) in three regions of China exceed other Asian manufacturers such as Vietnam, Bangladesh,

Pakistan.¹⁰³⁵ EmergingTextiles.com reports that labour costs in 2008 in China's inland regions ranged from US \$ 0.55-0.80 per hour, while in China's coastal regions labour costs ranged from US \$ 0.86-1.04 per hour (compare these costs with countries featuring in Figure 4.15).¹⁰³⁶

Chinese producers may not yet be overly-concerned about labour costs for the moment, since labour costs are not the only factor that decides global competitiveness of clothing products (see discussion in Chapter 3). Other factors such as high labour productivity, quality of inputs, cost of fabrics, infrastructure, political stability, energy prices, lead times, full-package service capabilities, import tariffs and freight costs all combine to give China an advantage that may yet persist.¹⁰³⁷ However, the bigger challenge for Chinese T&C producers lies in the increasingly stronger Yuan that affects the labour costs in foreign currency terms.

EmergingTextiles.com reports that the expected increase in the Yuan may bring financial difficulties for China's T&C exporters, further raising their prices in US Dollar terms.¹⁰³⁸ The increase came after the Central Bank of China recently announced that it is floating the Yuan against other currencies.¹⁰³⁹ This decision will result in a stronger currency that is likely to affect competitiveness of Chinese T&C.

Furthermore, a stronger Yuan affects all Asian manufacturers that import Chinese fabric/inputs since the imports would now cost more.¹⁰⁴⁰ Higher cost inputs will be directly reflected in the final prices of the clothing products. The

¹⁰³⁵ EmergingTextiles.com, 'Apparel Manufacturing Labor Costs in 2008' (Statistical Report) (23 May 2008) <<http://www.emergingtextiles.com/?q=art&s=080523-apparel-labour-cost&r=free&n=1>> at 25 July 2010.

¹⁰³⁶ Ibid.

¹⁰³⁷ Ibid.

¹⁰³⁸ EmergingTextiles.com, 'How Yuan's Rise Will Affect Textile & Clothing Markets' (29 June 2010) <<http://www.emergingtextiles.com/?q=art&s=100629-china-yuan-report&r=headlines&n=31>> at 25 July 2010.

¹⁰³⁹ Businessweek, 'China Central Bank Statement on Yuan Exchange Rate' (19 June 2010) <<http://www.businessweek.com/news/2010-06-19/china-central-bank-statement-on-yuan-exchange-rate-text-.html>> at 14 July 2010; see also EmergingTextiles.com, Ibid.

¹⁰⁴⁰ Ibid.

rising Chinese textiles prices provide an opportunity for other Asian textiles producers such as Pakistan, Indonesia and India to increase their T&C exports.¹⁰⁴¹ Another implication of rising prices in Chinese textiles is that clothing manufacturers may import their textile inputs rather than sourcing domestically.¹⁰⁴² This may cause a decline in the Chinese textiles industries.

The third issue for consideration is the effect of the global financial crisis that induced an economic slowdown in China. A major reason for this is China's reliance on export-growth which is sensitive to any financial upheavals in the target markets. The effects of the global financial crisis in China were mainly felt by the labour-intensive industries such as T&C.

Within the T&C sector, the labour-intensive clothing industry is more export oriented than the textiles industry (see Figure 4.13). Table 4.5 summarises the effects of global financial crisis on Chinese exports of clothing. Decline is clearly visible in 2008 and 2009 in some of the main target markets for Chinese clothing.

(Table 4.5) China's Clothing Exports 2008, 2009, Jan-Apr 2010 (Annual Percentage Change and Billion US \$)

Source: *EmergingTextiles.com*, 'China Textile and Clothing Exports in January – April 2010' <http://www.emergingtextiles.com/_print/?q=art&s=100528-china-country-report&r=headlines> at 27 June 2010.

Market	2008 %change	2009 %change	Jan-Apr 2010 %change	Jan-Apr 2010 (Billion US \$)
<i>EU</i>	35.63	-5.06	13.38	7.24
<i>US</i>	-4.21	7.66	18.07	4.88
<i>Canada</i>	-21.42	-14.05	-1.94	0.61
<i>Mexico</i>	-41.09	-74.80	-24.49	0.04
<i>Africa</i>	-29.15	4.08	27.23	1.04
<i>Australia</i>	17.16	-7.59	13.81	0.82
<i>Asia</i>	1.88	-15.39	4.07	12.6

¹⁰⁴¹ Ibid.

¹⁰⁴² Ibid.

The global financial crisis will likely lead to a process of industrial restructuring where industries aim to cut costs while increasing productivity.¹⁰⁴³ Although there are a number of models that may explain industrial readjustment in response to economic slowdown, the most appropriate model in the case of Asian developing countries is the flying geese model.

Industrial restructuring, as explained through the flying geese model, states that the cost cutting process leads to a higher rate of automation in labour-intensive industries.¹⁰⁴⁴ This is presumably done with a view to increase productivity and lower costs of production.¹⁰⁴⁵ According to the flying geese model (see discussion in the Introduction), labour-intensive industries gradually transfer to other developing countries where labour costs are lower.¹⁰⁴⁶ The overseas shifting of labour-intensive industries is essentially a response by the restructuring country to changes in its underlying comparative advantage.¹⁰⁴⁷ Historically, this is how Japan transplanted its labour-intensive T&C industries to South Korea, Taiwan and Hong Kong that, in turn, transferred the same industries to ASEAN and China's coastal regions.¹⁰⁴⁸ The transferring countries, while jettisoning labour-intensive sectors, shifted over to higher value-added sectors that are more capital-intensive.

Cai Fang, Dewen Wang and Qu Yue argue that in the aftermath of the global financial crisis, Chinese clothing industries located in the coastal regions, will undertake restructuring that will see labour-intensive industry shifting to

¹⁰⁴³ Cai Fang, Dewen Wang & Qu Yue, 'Flying Geese Within Borders; How does China sustain its labour-intensive industries?' in Ross Garnaut, Ligang Song and Wing Thye Woo (eds) *China's New Place in a World in Crisis* (ANU ePress, 2009) 210.

¹⁰⁴⁴ Ibid.

¹⁰⁴⁵ Ibid.

¹⁰⁴⁶ Ibid.

¹⁰⁴⁷ Ibid, 209-210.

¹⁰⁴⁸ Ibid, 211.

inland regions.¹⁰⁴⁹ As the labour-intensive industries restructure inland, they will be supplanted by capital intensive and automated industries.¹⁰⁵⁰

Fang and others differentiate between 'flying-geese' type industrial transfer in the context of country-to-country and internal transfer within a country. To advance their argument, they state that "Changing paths of comparative advantage and forms of the flying geese model...are not the same between small and large economies."¹⁰⁵¹ In case of small economies, a change in comparative advantage alters the economy and it enters a new stage of development because smaller economies are "characterised by the homogeneity" in their resource endowments.¹⁰⁵² Larger economies, on the other hand, are characterised by heterogeneity in their resource endowments and consequently have a diverse industrial infrastructure.¹⁰⁵³ Therefore, if one region reaches a new stage of industrial development, other regions may remain static.¹⁰⁵⁴ Thus, in the case of China, restructuring in the Chinese coastal region (where major T&C industries are located) may affect China's comparative advantage in manufacturing clothing, even if the clothing manufacturing shifts to inland regions because even the inland regions of China are experiencing a constant rise in labour costs.¹⁰⁵⁵

This may lead to the conclusion that China is gradually losing comparative advantage in manufacturing clothing.¹⁰⁵⁶ Based on this view, investment in Chinese clothing industries should experience decline and therefore would be channelled towards other Asian countries instead.

¹⁰⁴⁹ Ibid, 212.

¹⁰⁵⁰ Ibid.

¹⁰⁵¹ Ibid.

¹⁰⁵² Ibid.

¹⁰⁵³ Ibid.

¹⁰⁵⁴ Ibid.

¹⁰⁵⁵ See EmergingTextiles.com, above n 1035.

¹⁰⁵⁶ Fang et al cite research by AlixPartners, 'AlixPartners Introduces New Outsourcing Tool that Determines 'Best-Cost Countries' (14 May 2009)

<<http://www.alixpartners.com/en/MediaCenter/News/tabid/56/language/en-US/ItemID/18/Default.aspx>> at 17 July 2010.

Fang and others counter this argument by referring to the higher labour productivity rate in China. They state that improvement in labour productivity counters the effects of rising labour costs.¹⁰⁵⁷ Thus, relying on the aforementioned extension of the flying geese model, it is argued that China will continue to retain comparative advantage in manufacturing clothing in the foreseeable future.¹⁰⁵⁸

China has come a long way from the MFA/ATC era that imposed significant barriers against its T&C exports. The restrictions under the MFA/ATC quotas lasted longer for China than any other country due to China's late joining of the WTO. Even after joining the WTO and after lapse of quotas in 2005, trade restrictions persisted on China's T&C until 2008. However, these restrictions offered a better quota growth rate as compared to the MFA/ATC. As a result, China's T&C exports to the US and the EU market experienced constant rise during 2005-2008 period.

China's share in the global T&C market rose less spectacularly as compared to the US and the EU market (compare Figure 4.1 with Figures 4.4, 4.5A, 4.5B, 4.6, 4.9, 4.10, 4.11 and 4.12). This may be due to diversion of exports from the liberalised markets to the newly liberalised US/EU market. Nevertheless, China's share of world T&C trade has constantly witnessed growth (albeit at much lower rate) and was able to weather the global financial crisis as well (see Tables 4.5 and 4.6 that show recovery in Chinese T&C exports).

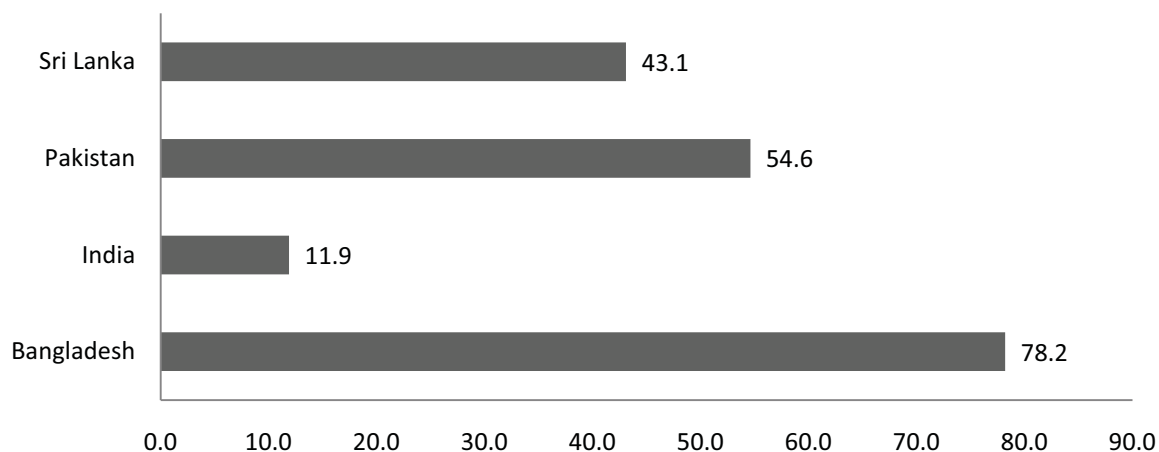
In the foreseeable future, China will continue to dominate the global T&C trade up to the point where it starts experiencing decline in comparative advantage. This development will again alter the course of T&C trade with comparative advantage shifting in favour of willing recipients in the developing countries/LDCs.

¹⁰⁵⁷ Fang et al, above n 1043, 212.

¹⁰⁵⁸ Ibid, 212, 224 & 230.

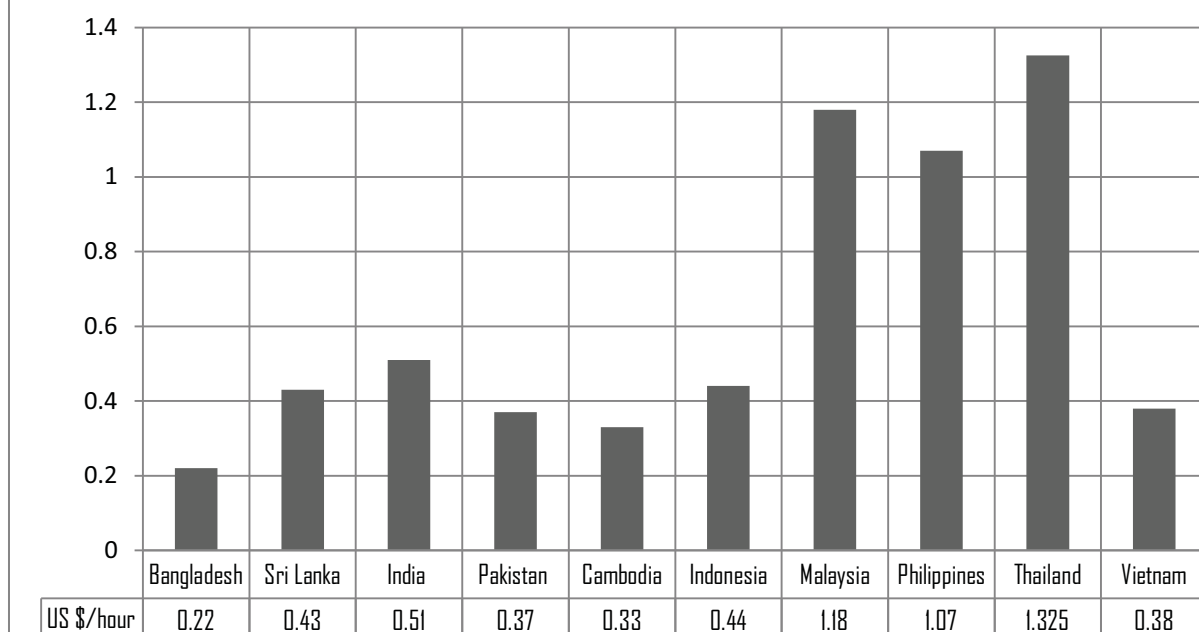
**(Figure 4.14) Percentage of Share in Total Merchandise Exports 2008
(Textiles and Clothing)**

Source: WTO, *International Trade Statistics 2009*, Tables II.65 & II.70
<http://www.wto.org/english/res_e/statis_e/its2009_e/its09_merch_trade_product_e.htm>



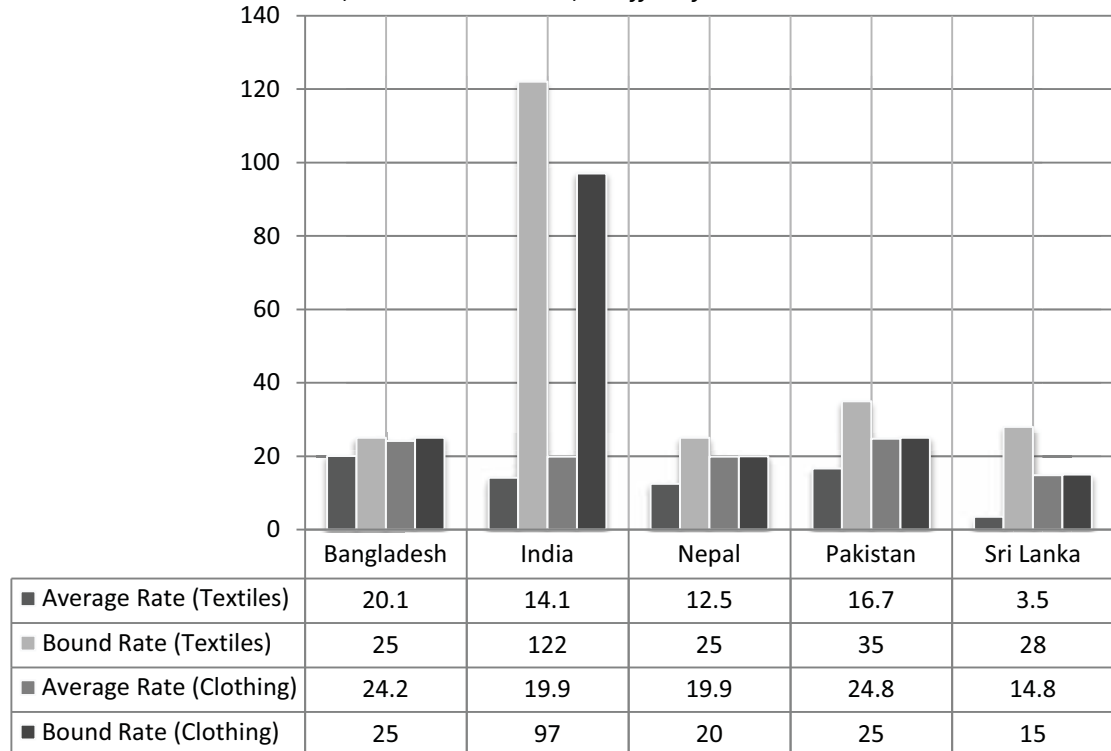
**(Figure 4.15) Clothing Manufacturing Labour Costs (US \$ Per Hour) in
Leading Asian Producers (2008)**

Source: *EmergingTextiles* <<http://www.emergingtextiles.com/?q=art&s=080523-apparel-labor-cost&r=free&n=1>> at 27 January 2010



(Figure 4.16) A Comparison of Average & Bound MFN Tariff Rates Maintained by South Asian Producers (in percentage)

Source: WTO, Statistics Database, Tariff Profiles 2009-2010



4.3 PAKISTAN

4.3.1 Overview

Pakistan is one of the world's major exporters of T&C products and is discussed in this thesis as the second special case study. Figure 4.14 illustrates the extent of reliance Pakistan places on this sector for its export earnings i.e. T&C exports constitute 54.6% of the total merchandise exports in 2008-09. However, Pakistan is gradually moving towards diversification in its exports.¹⁰⁵⁹ This is evident from a decline in reliance on T&C from previous years e.g. in 2006-07, T&C occupied 74% of the country's total merchandise exports.¹⁰⁶⁰

The primary advantages that Pakistan possesses are an abundance of low cost labour (see Figure 4.15) and a large cotton production base, backed by some

¹⁰⁵⁹ The News, 'Pakistan Misses 2009/10 Export Target by \$ 1.2bn' (13 July 2010) <<http://www.thenews.com.pk/print1.asp?id=250343>> at 19 July 2010.

¹⁰⁶⁰ WTO, above n 955, Tables II.59 & II.64.

level of vertical integration in the weaving, ginning and spinning sectors. With these advantages, Pakistan was counted amongst the potential beneficiaries in the post-ATC period.¹⁰⁶¹

In Pakistan, the T&C sector represents a major industry that provides employment to a significant section of the populace (especially women).¹⁰⁶² Pakistan has historically opposed quotas and it was expected that Pakistani T&C industry would experience significant growth in the post-ATC period.¹⁰⁶³

The Pakistani textile industry concentrates on the early stages of processing i.e. cotton ginning, spinning and weaving and as such is highly dependent on its agricultural sector for supply of crucial raw materials.¹⁰⁶⁴ This concentration of activities also means that Pakistan is a predominant exporter of cotton yarn, cloth and fabric (primary inputs for manufacture of cotton clothing). Therefore, Pakistan relies more on textiles exports as compared to clothing.¹⁰⁶⁵

Pakistan's particular strength is the textiles made-up sectors such as bed linen and towels. The made-ups manufacturing is concentrated around major urban centres and is directly dependent on the power loom operations of the mainstream textiles industry.¹⁰⁶⁶ Since the power looms are predominantly installed in Faisalabad and Karachi (accounting for 90 % of all fabric production in Pakistan) the bed linen/made-ups segment is able to benefit from vertical integration in the primary textiles industries.¹⁰⁶⁷

¹⁰⁶¹ See for example Haté et al , above n 426, 21-20; Appelbaum, above n 495, 51-52

¹⁰⁶² Siegmann, above n 971, 1-2.

¹⁰⁶³ Appelbaum, above n 495, 51-52.

¹⁰⁶⁴ Government of Pakistan, *Textile Vision 2005*, 7; Siegmann, above n 971, 8-9.

¹⁰⁶⁵ According to WTO 2008-2009 statistics, Textiles occupied 35.4% of the total merchandise exports of Pakistan. For clothing, the figure was 19.2% (WTO, above n 4, Tables II.65 & II.70).

¹⁰⁶⁶ EmergingTextiles.com, 'Pakistan's Home Textile Exports Began Recovering' (Statistical Report) (16 December 2009) <http://www.emergingtextiles.com/?q=art&s=091216-pakistan-bed-linen-export&r=chk&user=u_ghori&pw=uziel10&emt看.x=39&emt看.y=12&emt看=Log+In> at 19 July 2010.

¹⁰⁶⁷ Ibid.

4.3.2 Post-ATC performance of the Textiles & Clothing sector

In the immediate post-ATC period (end of May 2005), Pakistan's T&C exports stood at US \$ 3.048 Billion, which represented a 22.1% increase compared with the six months preceding the quota expiration.¹⁰⁶⁸ Eventually, Pakistan exported T&C worth US \$ 10.151 Billion in 2005.¹⁰⁶⁹ This figure rose to US \$ 11.092 Billion in 2008.¹⁰⁷⁰

Similar to other developing countries/LDCs, Pakistan competes heavily in the T&C market of the EU and the US. Five years after quota expiration, Pakistan has performed reasonably well in both markets but not to the extent predicted prior to quota expiration.

In 2006, Pakistan's T&C exports to the US stood at US \$ 3.25 Billion, which fell to US \$ 3170 million in 2007 (see Table 4.2). By 2009, Pakistan's T&C exports further fell to US \$ 2847 million (see Table 4.2). Pakistan's market share of the US T&C market (as of April 2010) was 3.42%, a slight improvement over 3.29% from July 2008 levels (see Figures 4.5A and 4.5B). The lacklustre growth in the US market over this period was due to gradual liberalisation of trade restraints on China and the effects of the global financial crisis that depressed demand.

Growth and market share can be somewhat deceptive if the overall value is not kept in mind. Even though, Figures 4.5A and 4.5B show a slight increase in market share, the overall value of Pakistani T&C exports to the US is in decline (see Table 4.2). The year 2006, therefore, represents the highest level of Pakistani T&C exports to-date in the US market. This growth came in a period where China was under reimposed quotas. These restrictions presented an important opportunity for Pakistani exporters to increase their share of the US market. However, statistics show that Pakistan's T&C export performance was below par and it failed to take full advantage of restraints on China.

¹⁰⁶⁸ ILO, above n 4, 25.

¹⁰⁶⁹ WTO, above n 4 (2006), Tables IV.75 & IV.83 .

¹⁰⁷⁰ WTO, above n 5 (2009), Tables II.65 & II.70.

(Table 4.6) Percentage Market share and change in market share of Top Clothing & Made-up Exports to the US Market

(China V India V Pakistan) Year ending June 2007 – June 2008

Source: OTEXA

<i>Categories</i>	Market share in June 2008			Change in Market share		
	<i>China</i>	<i>India</i>	<i>Pakistan</i>	<i>China</i>	<i>India</i>	<i>Pakistan</i>
332 COTTON HOSIERY	14.34	0.63	16.12	48.35	-26.42	-0.62
338 M/B KNIT SHIRTS, COTTON	8.74	8.78	8.36	-7.68	0.94	-7.47
339 W/G KNIT SHIRTS/BLOUSES, COTTON	12.9	3.92	1.5	-4.43	7.17	7.82
340 M/B COTTON SHIRTS, NOT KNIT	19.27	9.02	0.51	39.27	2.54	-36.41
345 COTTON SWEATERS	53.33	0.99	0.13	83.55	28.35	-4.79
347 M/B COT. TROUSERS/BREECHES/SHORTS	8.48	4.55	4.56	-25.32	1.09	26.76
348 W/G COTTON TROUSERS/SLACKS/SHORTS	15.54	4.25	1.8	-21.22	20.4	-12.02
362 COTTON BEDSPREADS / QUILTS	58.08	7.15	17.46	16.4	-7.67	2.51
363 COTTON TERRY / OTHER PILE TOWELS	20.82	28.85	19.16	15.26	26.92	22.43
465 WOOL FLOOR COVERINGS	17.02	36.8	9.33	-3	0.43	-13.59

(Table 4.7) Percentage Market share and change in market share of Top Clothing & Made-up Exports to the US Market

(China V India V Pakistan) Year ending May 2009 – May 2010

Source: OTEXA

<i>Categories</i>	Market share in May 2010			Change in Market share		
	<i>China</i>	<i>India</i>	<i>Pakistan</i>	<i>China</i>	<i>India</i>	<i>Pakistan</i>
332 COTTON HOSIERY	17.83	0.33	17.65	19.69	-13.96	-1.35
338 M/B KNIT SHIRTS, COTTON	15.86	7.98	8.36	29.59	-8.42	-1.62
339 W/G KNIT SHIRTS/BLOUSES, COTTON	29.39	4.26	1.33	36.40	-7.42	-20.31
340 M/B COTTON SHIRTS, NOT KNIT	31.83	8.19	0.45	20.71	-8.21	8.86
345 COTTON SWEATERS	86.98	0.50	0.34	35.85	-6.53	111.06
347 M/B COT. TROUSERS/BREECHES/SHORTS	19.87	2.70	4.00	38.07	-24.75	-1.70
348 W/G COTTON TROUSERS/SLACKS/SHORTS	37.26	3.63	1.82	43.76	-7.96	-9.52
362 COTTON BEDSPREADS / QUILTS	57.89	7.30	20.54	-0.22	1.29	5.29
363 COTTON TERRY / OTHER PILE TOWELS	24.05	29.91	23.46	8.96	8.08	13.39
465 WOOL FLOOR COVERINGS	13.76	39.30	10.07	-41.76	-19.83	-23.51

This is illustrated in Table 4.6 (see above). Table 4.6 considers the principal items that Pakistan exported to the US during the subsistence of US-China MOU. Pakistani exports in these categories faced tough competition from India and China. With the exception of a few categories such as 339, 347, 362, 363, Pakistan lost major share to China and India (refer to Table 4.7). These figures

confirm that Pakistan failed to capitalise on the quotas imposed on China. After the expiry of TS in December 2008, Pakistan's T&C exports to the US have stagnated in the face of competition from China and other exporters. The global financial crisis also depressed growth of Pakistan's exports to the US.

Table 4.7 takes into account US OTEXA import data for May 2009 to May 2010. This table illustrates the combined effects of increased competition from China and the global financial crisis in the same categories where China was restrained until December 2008. During the period under consideration, no new trade restraints were imposed by the US. Therefore, this period is a good indicator of a future liberalised trading environment in T&C. For Pakistan, Table 4.7 mostly shows decline or modest growth rates. Decline in market share is visible in Categories 339, 340, 347, 362 and 465. Category 338 recorded no change. Improvement was made in Categories 332, 345, 362 and 363.

What is noticeable from Tables 4.6 and 4.7 is that Pakistan growth came in textiles made-ups categories 362 and 363 (bed linen and towels respectively). According to 2008 OTEXA statistics, Pakistan's share (14.46%) in the US market in this sub-sector is second only to China (58.08%). As of May 2010, Pakistan's market share in Category 362 (cotton bedspreads/quilts) was 20.54% second only to China (57.89%). For the same period, Pakistan's market share in Category 363 (cotton terry/pile towels) was 23.46%, ranking third behind India and China with 29.91% and 24.05% respectively. The consistent performance and growth demonstrates Pakistan's competitive advantage in manufacturing these items. For all other items, Pakistan has experienced negative growth, contrary to what was predicted prior to quota expiration.

In the EU textiles market, between 2004 and 2007, Pakistan lodged an overall growth rate of 9.4% (see Figure 4.9). Pakistan's market share of the EU textiles market in 2007 was 7.4% (see Figure 4.8). However, since Pakistan is not a leading supplier of clothing to the EU, the combined T&C exports of Pakistan to the EU actually declined e.g. in 2005 (one year after quota expiration),

Pakistan's exports stood at US \$ 2519.1 million down from US \$ 2893.1 million in 2004 (See Table 4.3). Pakistan's performance in the EU market was affected by the EU's imposition of 13.1% antidumping duty on Pakistan's bed linen.¹⁰⁷¹ Additionally, increased international competition and the reintroduction of 12% customs duty on imports from Pakistan also affected growth in the EU market.¹⁰⁷² Pakistan's exports were also affected when EU excluded Pakistan from its GSP+ Program for preferential treatment following the outcome of the *EC-Tariff Preferences* case in the WTO DSB.

The 2007 statistics (see Table 4.3) show that Pakistan's exports staged a recovery and its exports to the EU stood at US \$ 3360.0 million. This recovery coincides with the reduction of the antidumping duty on Pakistani bed linen from 13.1% to 7.6% in December 2005. This change had positive effect on Pakistan's bed linen exports to the EU in 2006-2007 and beyond.¹⁰⁷³ This is summarised in Table 4.8 which presents the value shares of leading suppliers of printed cotton bed linen to the EU in the post-ATC period. The impact of the drawdown in the anti-dumping duties on Pakistani bed linen is clearly observable. As the anti-dumping duty was reduced in December 2005 and again in May 2006, growth in market shares is noticeable from 2005 onwards to 2008.

¹⁰⁷¹ The anti-dumping duty of 13.1% was introduced by the EU on bed linen imports from Pakistan in early 2004. This duty was gradually reviewed to 9.9% and then further brought down to 7.6%. The duty was later on reduced to 5.8% in May 2006 and finally eliminated in March 2009. The estimated loss suffered by Pakistan's bed linen exporters came to US \$ 300 Million over five years (see Pakistan Textile Journal, 'Lifting of EU'S anti dumping duty on Pakistani bed linen, a ray of hope for the industry' (Editorial) (9 March 2009) <<http://www.ptj.com.pk/Web-2009/03-09/editorial.htm>> at 19 July 2010.

¹⁰⁷² ILO, above n 4, 25

¹⁰⁷³ Asian Textile Business, 'Pakistan: EU Reducing Anti-Dumping Duties' (1 February 2006) <<http://www.allbusiness.com/asia/1084243-1.html>> at 25 July 2007 (See further Figure 4.18).

(Table 4.8) EU Imports of Printed Cotton Bed linen 2005-2010 (Q1) (Value Share in Percentage)

Source: *EmergingTextiles.com, Statistical Reports 2005-08, 2006-09, Q1 2010*

Suppliers	2005	2006	2007	2008	2009	2010 (Q1)
Pakistan	29.31	32.84	33.77	32.80	33.48	33.89
Turkey	33.17	30.71	29.34	25.98	27.00	27.87
Bangladesh	7.99	9.56	11.59	13.03	13.77	12.12
China	4.76	4.14	6.25	8.60	9.18	10.40
India	14.46	13.33	11.16	11.26	10.30	9.97
Moldova	1.95	1.87	1.68	2.28	1.42	1.78
Israel	1.26	1.70	1.75	1.98	1.94	1.49
Switzerland	1.15	0.80	0.58	0.65	0.52	0.74
Egypt	0.98	1.23	1.09	1.01	0.91	0.55
Tunisia	0.44	0.44	0.79	0.72	0.36	0.48

In 2007, Pakistan managed to secure new market share after EU imported increased volume of bed linen from Pakistan (which expanded by 33% in value terms to 294 million Euros).¹⁰⁷⁴ In the preceding two years, shipments from this origin were up 52% in value terms.¹⁰⁷⁵ This was despite continued imposition of anti-dumping duties on Pakistani bed linen which for Pakistani products ranged from 0% up to 8.5%, in addition to a GSP rate of 9.6% (instead of a "third-country" tariff of 12%).¹⁰⁷⁶ The slight reduction in market share in 2008 is attributable to the economic slowdown. Recovery from the recession in the first Quarter of 2010 is also visible.¹⁰⁷⁷ Pakistan dominates this category in both the printed and non-printed market segments with 13% and 19.2% increase in volume terms in both sub-categories respectively (note that Table 4.9 only presents the printed segment of EU cotton bed linen imports).¹⁰⁷⁸

¹⁰⁷⁴ EmergingTextiles.com, 'EU Imports of Cotton Bed linen in 2005-2007' (Statistical Report) (10 April 2008) < <http://www.emergingtextiles.com/?q=art&s=080410-home-eu-bed-linen&r=bed-linen&n=1> > at 23 July 2010

¹⁰⁷⁵ Ibid.

¹⁰⁷⁶ Ibid.

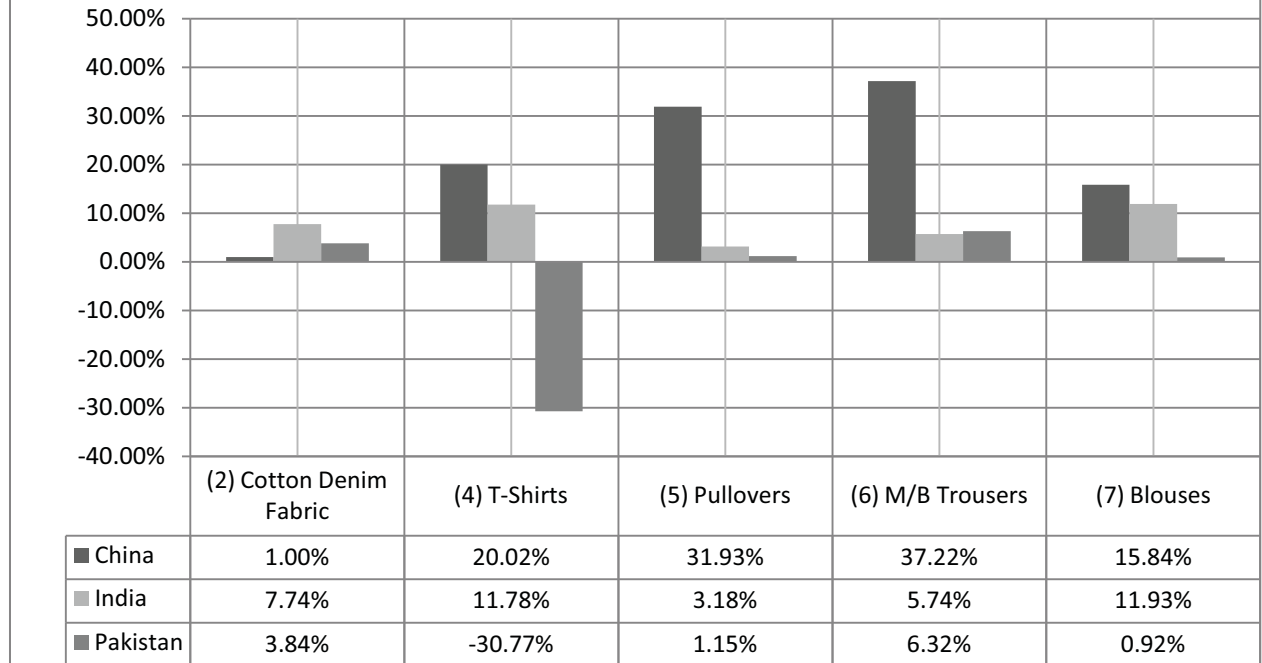
¹⁰⁷⁷ EmergingTextiles.com, 'EU Imports of Cotton Bed linen in First Quarter 2010' (Statistical Report) (8 July 2010) < <http://www.emergingtextiles.com/?q=art&s=100708-eu-cotton-bed-linen-import&r=home-textiles&n=1> > at 21 July 2010.

¹⁰⁷⁸ Ibid.

(Figure 4.17) EU Imports of Categories Restricted by EU-China MoU/Shanghai Agreement (China V India V Pakistan) Value Change (1st Quarter 2008)

Source: *Emerging Textiles.com (various product index)*

<http://www.emergingtextiles.com/?q=com&s=product_index>



In other market segments, Pakistan failed to capitalise on the reimposed quotas on China. According to the EU-China MOU, ten product categories were subjected to renewed quotas i.e. EU Categories 2 (Cotton fabrics), 4 (T-shirts), 5 (Pullovers), 6 (Men's trousers), 7 (Blouses), 20 (Bed linen), 26 (Dresses), 31 (Brassieres), 39 (Table linen), 115 (Flax yarn). Figure 4.17 takes into account some of the important categories and considers the first quarter 2008 changes for China, India and Pakistan in terms of value shares in these categories. A pattern similar to the US market emerges. Pakistan lodged a change of 6.32% in Men's/Boy's Trousers categories. In the Pullovers category, Pakistan experienced a decline by -30.77% change in value share terms (see Figure 4.17).

In other categories, growth stagnated. Whereas China demonstrated a healthy growth in the categories considered in Figure 4.17 and India managed to keep a sizable stake in the EU market as well in these categories, the only category where Pakistan outperformed its rival exporters is the bed linen category (see

Table 4.9 and the accompanying discussion). In addition to reduction (and eventual elimination of anti dumping duty), Pakistan's strong performance in this category may also be attributable to the decline of the Pakistan Rupee against the Euro, which made Pakistani bed linen exports attractive for EU buyers.

It is interesting to note the developments in the categories (considered in Figure 4.17) after the lapse of reimposed quotas on China in 2008. In the cotton denim fabric category (an emerging export from Pakistan – see below for discussion), Pakistan managed to increase its value share of the EU market in 2009 by 13.16% beating India and China that lodged 5.78% and 0.96% changes in market share respectively.¹⁰⁷⁹

(Table 4.9) EU Imports of Some Categories Restricted by EU-China MOU and the Shanghai Agreement (Value Share comparisons of China, India & Pakistan) Source: <i>EmergingTextiles.com (various product index)</i> http://www.emergingtextiles.com/?q=com&s=product_index						
Note that non-uniform comparison is due to varied availability of data.						
Category	Pakistan		India		China	
(4) Cotton T-Shirts (Q1 2008 Vs Q1 2010)	0.95%	0.80%	12.74%	11.58%	18.46%	20.35%
(2) Cotton Denim Fabric (Q1 2008 Vs H1 2009)	3.84%	14.76%	7.74%	6.89%	1.00%	0.94%
(6) M/B Trousers (Q1 2008 Vs Y2009)	8.58%	10.82%	3.71%	3.11%	19.59%	25.83%

¹⁰⁷⁹ EmergingTextiles.com, 'EU Imports of Cotton Denim Fabrics in 2006-2009' (Statistical Report) (28 April 2010) < <http://www.emergingtextiles.com/?q=art&s=100428-eu-cotton-denim-fabrics-import&r=denim&n=1> > at 21 July 2010.

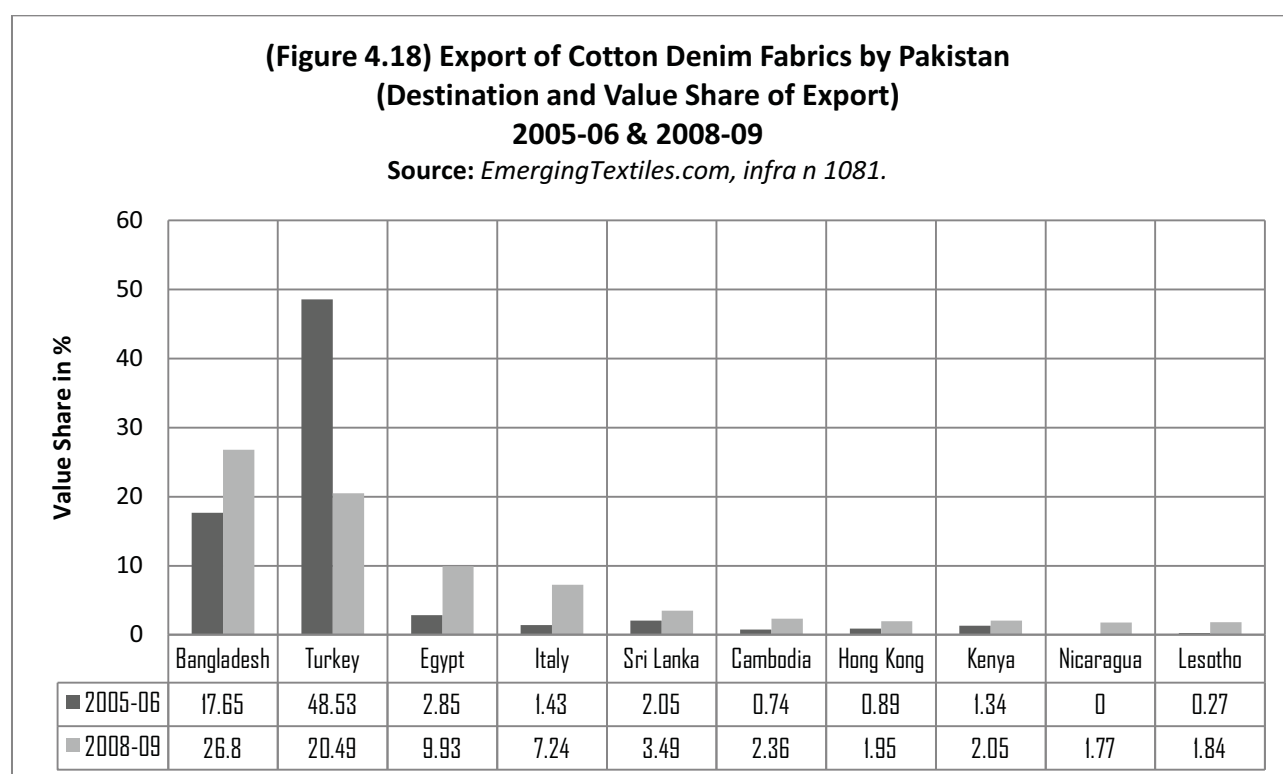
Table 4.9 further highlights the shifting market shares of Cotton T-Shirts, Cotton Denim Fabrics and Men's/Boy's Trousers category. These categories were selected because the restraint-free period after December 2008 provides a picture of true competitive advantage of the three leading cotton producers and consumers. India's slow decline is visible in all of the three categories when compared with first quarter 2008 data (when China was under restraints).

Pakistan's growth in market share in cotton denim fabrics category is impressive (outpacing both China and India) in the restraint free period. Conversely, China increased its market share in T-Shirts and M/B Trousers after the TS and reimposed quotas expired in 2008. The changes highlighted in Table 4.9 allude to the possible trade patterns of trade in T&C categories in the EU/US markets as the distortions of quotas evaporate i.e. the competitive strengths of producers would determine the presence in the target markets as opposed to quotas and preferential access.

In addition to the EU and the US market, Pakistan exports T&C to other markets as well. Again, the bulk of the exports are in the textiles inputs and made-ups sector rather than value added products such as clothing. Data obtained from the *Trade Development Authority of Pakistan* (TDAP) shows that Pakistan is a supplier of inputs to other countries that process textiles inputs into value added clothing products (see data presented in Annex-1)

Annex-1 also reveals that Pakistan suffers from a characteristic lack of diversification, both in terms of products and target markets. Additionally, Pakistan is hampered by a lack of innovation in T&C products similar to other developing countries/LDCs. The Government of Pakistan has acknowledged this fact and stressed increasing the share of MMF based products in the

downstream industry by expanding the raw material base for the MMF sector.¹⁰⁸⁰



A particular category that stands out as an emerging strength of Pakistani T&C industry (in addition to bed linen) is the cotton denim fabric category. Pakistan has recorded strong growth in this segment in the non-EU/US markets as well. A significant surge of exports was lodged by Pakistani exporters in this category, increasing exports by 40% from July 2008 to June 2009.¹⁰⁸¹ This growth came after 45% growth in 2007-08 and 30% in 2006-07¹⁰⁸² (see Figure 4.18).

Bangladesh and Turkey were the main target markets in the past fiscal year with a combined share of 47.29%. Other buyers include Egypt, Italy, and Sri

¹⁰⁸⁰ This was to be done through encouraging the production of polyester staple fibre and other man-made fibres within the country as part of the *Textile Vision 2005* policy (Textile Vision 2005, above n 1064, 474).

¹⁰⁸¹ EmergingTextiles.com, 'Pakistan Denim Exports Boosted by Competitive Advantages' (Statistical Report) (4 June 2010) <http://www.emergingtextiles.com/?q=art&s=100604-pakistan-denim-industry&r=chk&user=u_gkori&pw=uziel10&emt看.x=0&emt看.y=0> at 21 July 2010.

¹⁰⁸² Ibid.

Lanka (see Figure 4.18). These top five buyers constitute 60% of cotton denim exports of Pakistan.¹⁰⁸³ It is worth mentioning here that both Bangladesh and Turkey are major manufacturers of denim jeans that target the EU market. Turkey enjoys proximity and preferential entry to the EU market. Bangladesh is extended preferential treatment for its clothing exports. Pakistan has indirectly benefitted from both especially from the regional cumulation permitted under the new EU ROO (see discussion in Chapter 3). The export growth of Pakistani denim is attributed to declining local currency that lowered prices in the export markets.¹⁰⁸⁴ Pakistan also possesses natural advantages in the manufacture of denim fabrics including low labour costs.¹⁰⁸⁵ The government also supports this sub-sector by granting subsidies in the form of the 3% R&D support for exports of dyed fabrics.¹⁰⁸⁶

4.3.3 Issues for consideration

A major weakness of Pakistan's T&C industry is the lack of diversity (both in terms of products and target markets). The post-ATC figures examined above demonstrate that Pakistan has lodged growth in selected textiles segments, while experiencing considerable declines in the clothing sector. The emphasis on cotton textiles is a major factor behind the lack of product diversity into the MMF and composite MMF-cotton categories. This has especially affected Pakistan's exports to the EU/US in the wake of the economic slowdown.

Prior to the economic slowdown in the EU/US market, there were predictions that the looming crisis may affect Pakistani T&C exports.¹⁰⁸⁷ The main reason behind the need to diversify from heavy reliance on cotton-based products is that polyester and MMF products are considered more affordable than 100% cotton products (that cost more and are difficult to maintain).¹⁰⁸⁸ Since the global financial crisis affected the average spending on clothing, consumers

¹⁰⁸³ Ibid.

¹⁰⁸⁴ Ibid.

¹⁰⁸⁵ Ibid.

¹⁰⁸⁶ Ibid.

¹⁰⁸⁷ See for example Mansoor Ahmad, 'Pak Textile Sector May be Severely Hit by US Slowdown' *The News* (30 November 2007) <<http://thenews.jang.com.pk/print1.asp?id=83495>> at 25 July 2010.

¹⁰⁸⁸ Ibid.

preferred the cheaper composite fibre products.¹⁰⁸⁹ This is further reinforced by statistics examined above where growth is visible only in textiles related made-ups sector rather than value-added clothing industries. Anis-ul-Haq (Deputy Secretary of the *All Pakistan Textiles Mills Association*) admits this weakness and comments that "...we are caught in the web of 80-20! 80% of our exports go to 20% of countries. Similarly our fabric composition is mainly 80% cotton and 20% synthetic fiber. Our export reliance versus domestic use is also in 80:20 ratio whereby we place 80% reliance on export and rather than value addition. We suffer from structural imbalance and hence are not trained in value addition production."¹⁰⁹⁰

According to Anis-ul-Haq, Pakistan's industry is handicapped because very few entrepreneurs venture out and search for alternative markets.¹⁰⁹¹ Pakistani entrepreneurs mostly rely and plan on the basis of business information rather than through trade offices abroad.¹⁰⁹²

Azhar Mahmood, an industry representative from the value added industry, cites the policy failure of the successive Pakistani governments in securing increased market access to the US market as a factor behind the post-ATC decline of the clothing industry.¹⁰⁹³

In addition to the typical third world problems of poor infrastructure, bureaucratic inefficiencies and political instability, Pakistan also faced gradual obsolescence of its industrial infrastructure.¹⁰⁹⁴ To offset this shortcoming, the Government of Pakistan announced loans to textiles industries as part of the

¹⁰⁸⁹ Ibid.

¹⁰⁹⁰ Interview with Anis-ul-Haq, Deputy Secretary of All Pakistan Textiles Mills Association (APTMA) (APTMA Regional Offices, Lahore, Pakistan, 21 December 2009).

¹⁰⁹¹ Ibid.

¹⁰⁹² Ibid.

¹⁰⁹³ Interview with Azhar Mahmood, Secretary of Pakistan Readymade Garments Manufacturers and Exporters Association (PRGMEA) (PRGMEA Head Office, Lahore, Pakistan, 22 December 2009).

¹⁰⁹⁴ This was particularly true in the case of primary sector activity in textiles such as ginning and weaving. According to one estimate, these facilities were only one-fifth as productive as in the developed world (Haté et al, above n 426, 20).

Textile Vision 2005 programme.¹⁰⁹⁵ This policy package aimed to assist the industry in upgrading their infrastructure as well as introducing tax reforms, promotion of market and product diversification and adoption of uniform standards.¹⁰⁹⁶ Furthermore, the Government of Pakistan also took measures to encourage product diversification and expansion into the MMF and women garments sub-sectors as well.¹⁰⁹⁷

Whether these measures have been successful or not is still a subject of debate. The statistics examined above tell a story of mediocrity and average growth except in bed linen, cotton yarn and denim fabric. This average performance was not unexpected given that Pakistani exporters and industries were well aware of the risks and potentials of quota expiration. Most entrepreneurs invested in upgrading infrastructure¹⁰⁹⁸ and capacity building of workers through training programmes in order to enhance their productivity for the post-ATC period challenges.¹⁰⁹⁹

The value added industries have incurred the bulk of losses in the post-ATC period in Pakistan. Awais Mazhar, owner of the Angora Textiles (a vertically integrated unit specialising in knit garments, woven garments and denim products that handled orders from high-end brands) was one of the foremost casualties of the quota expiration process.¹¹⁰⁰

According to Mazhar, a major cause behind Pakistan's decline in the value-added sector is low labour productivity along with extraneous factors such as the security situation, rising costs, energy constraints and negative image of

¹⁰⁹⁵ *Textile Vision 2005*, above n 1064, 476, 483-490; Haté et al, above n 426, 22.

¹⁰⁹⁶ *Textile Vision 2005*, Ibid); Haté et al, Ibid.

¹⁰⁹⁷ Appelbaum, above n 2, 46; Haté et al, Ibid.

¹⁰⁹⁸ Under various duty concessions, Pakistani textiles industries imported used machinery and plant equipment from the closed down US textile mills in North Carolina as a result of quota expiration. This new capacity resulted in an entire new industrial belt in Khurrianwala near Faisalabad (the main textile hub of Pakistan) (Interview with Aftab Ahmed, Secretary, Pakistan Textiles Exporters Association (PTEA), PTEA Head Office, Faisalabad, Pakistan, 23 December 2009).

¹⁰⁹⁹ Interview with Awais Mazhar, Chairman Board of Directors, Lahore Garment City Project (LGCP) (Lahore, Pakistan) 21 December 2009.

¹¹⁰⁰ Ibid.

Pakistan as an OPP venue.¹¹⁰¹ Mazhar claims that he followed and acted upon “all those analysis that over informed me when quotas were about to run out and the virtues of vertical integration.”¹¹⁰² Mazhar not only upgraded his manufacturing capacities by importing state-of-the-art equipment but also embarked upon an ambitious employee training regime.¹¹⁰³

Mazhar also provides unique insights of how flawed Government of Pakistan’s investment policies affected the value added industries e.g. in a bid to attract the global chemicals giant ICI into investing in the polyester sub-sector of Pakistan, the government offered ICI a 15% tariff wall against any competing imports.¹¹⁰⁴ As a result of this protection from competition, the polyester manufacturers in Pakistan often demand a price of their choice from the textiles industries that combines traditional cotton yarn with MMF.¹¹⁰⁵ The increase in cost is transferred from the textiles industries to the value added industries that are forced to source their inputs from local manufacturers because of high tariffs on textiles imports (see Figure 4.16). These comments by Mazhar provide a link to Anis-ul-Haq’s comments of Pakistan being “caught in the web of 80-20” (see above).

The implication of these comments is that unless Pakistan reduces tariffs on textiles imports and MMF sectors, the input costs will continue to rise and will directly affect any value added sectors that are import-dependent. Unlike the MMF dependent clothing sector, bed linen, towels and cotton denim fabric are not import dependent. This is the primary reason why these sectors have seen growth in the post-ATC period and the value added industry has not.

¹¹⁰¹ Ibid.

¹¹⁰² Ibid.

¹¹⁰³ Ibid.

¹¹⁰⁴ Ibid.

¹¹⁰⁵ Ibid.

Pakistan's value added industries have been further affected by the ongoing yarn crisis in the country.¹¹⁰⁶ This crisis sprang from high global yarn prices.¹¹⁰⁷ Pakistani yarn is widely viewed as relatively cheaper in US Dollar terms as compared to Indian and Chinese yarn.¹¹⁰⁸ As a result, most yarn manufacturers export their output rather than sell domestically. This led the clothing industry to exert pressure on the Government of Pakistan to introduce a temporary 15% export duty based on quotas in a bid to limit exports.¹¹⁰⁹ This restriction was removed in July 2010 after APTMA reported that 50 yarn producing units had either shutdown or scaled down their operations.¹¹¹⁰

In addition to the issues highlighted above, Pakistan's value added industry is significantly impaired by their inability to offer full-package service for foreign retailers.¹¹¹¹ Syed Shad Mustafa (director of an intermediary company that sources local inputs for foreign clients) dispels the impression that supply side constraints are the actual factor that hampers Pakistan's performance in the value added segment.¹¹¹² Mustafa dismisses this as "lame excuses" offered by the clothing industry and points out to "civil war in Sri Lanka, 13 hour long power shortages in some cities of India, frequent natural disasters and civil disturbances in Bangladesh."¹¹¹³ Mustafa comments that the actual factor that is decisive in modern clothing trade is the ability to follow the "direct-to-store" service (the "DTS Model").¹¹¹⁴ Mustafa agrees that the DTS Model is akin to the full-package service.¹¹¹⁵

¹¹⁰⁶ See for example Fibre2Fashion, 'Spinning industry demands lift of duty, quota on yarn' (3 July 2010) <http://www.fibre2fashion.com/news/yarn-news/newsdetails.aspx?news_id=88230> at 21 July 2010; see also AllBusiness (Business Recorder), 'Export of Yarn; Value-Added Textile Sector Rejects Free Market Mechanism' (10 December 2009) <<http://www.allbusiness.com/legal/international-trade-law-tariffs-customs-duties/14091699-1.html>> at 21 July 2010.

¹¹⁰⁷ EmergingTextiles.com, 'Pakistan Cotton Yarn Export Market Prices' (Statistical Report) (14 December 2009) <<http://www.emergingtextiles.com/?q=art&s=091214-pakistan-yarn-export-market-price&r=search&n=1>> at 21 July 2010.

¹¹⁰⁸ Ibid.

¹¹⁰⁹ Ibid; Fibre2Fashion, above n 1106.

¹¹¹⁰ Just-Style, 'Pakistan: Export Yarn Duty Removed' (27 July 2010) <http://www.just-style.com/news/export-yarn-duty-removed_id108416.aspx?lk=dm> at 28 July 2010.

¹¹¹¹ Interview with Syed Shad Mustafa, Director, Textile Marketing Company (TMC) (TMC Offices, Lahore, Pakistan, 21 December 2009).

¹¹¹² Ibid.

¹¹¹³ Ibid.

¹¹¹⁴ Ibid.

¹¹¹⁵ Ibid.

Mustafa's further explains that not all Pakistani clothing or value added industries have experienced losses in the post-ATC period e.g. Masood Textiles Ltd. (a Faisalabad based T&C giant) lodged a PKR 9 Billion turnover in 2008-09 and is a major supplier to JC Penny.¹¹¹⁶ Similarly he cites InterLoop (that specialises in hosiery and socks and is one of the largest suppliers of Nike) and KAP Ltd. (a sourcing company for knitwear garments that supplies American Eagle apparel) as some of the winners of the post-ATC period.¹¹¹⁷

Mustafa states that instead of being entirely dependent on reports by experts and business magazines to inform them of shifting market dynamics, Pakistani manufacturers following the DTS Model maintain overseas offices and warehouses.¹¹¹⁸ This allows them to gauge changes in fashion trends, and offer superior client service including reduced turnaround times for fashion-sensitive categories.¹¹¹⁹ If Mustafa's comments on DTS Model are contrasted with Awais Mazhar's experience, it explains why a vertically integrated processing unit that supplied leading foreign retailers went bankrupt.

Another factor that affects the performance of the Pakistani T&C industry as a whole is preferential access. In the backdrop of the war on terror, it was expected that the US would 'reward' Pakistan by concluding a FTA and reduce barriers to market entry (tariffs were as high as 29% in some categories).¹¹²⁰ The US retail industry backed Pakistan but there was heavy opposition by the US textiles industry groups.¹¹²¹ As a result no FTA with the US has materialised so far.

Pakistan's industry also needs to shift its focus on to other developed economies. Any FTA with the developed countries such as the EU, Canada or

¹¹¹⁶ Ibid.

¹¹¹⁷ Ibid.

¹¹¹⁸ Ibid.

¹¹¹⁹ Ibid.

¹¹²⁰ Rivoli, above n 6, 158.

¹¹²¹ Ibid, 158-160.

Japan would give Pakistan's T&C industry a competitive edge over its regional rivals. The need for an FTA with developed countries is further reinforced if the impending *EU- India FTA* is taken into consideration (see discussion in Chapter 3).

Whilst the T&C industry would definitely like to see FTA's with developed countries, the policymakers have cautious opinions about regional FTA's, especially liberalising the currently impotent SAFTA (see discussion in Chapter 3). Omer Hameed of the TDAP states that the government is generally in favour of trade liberalisation but certain sectors in the T&C industries voice strong opposition to it.¹¹²² Hameed forcefully argues in favour of trade liberalisation and comments that "our industries need to decide whether they want to stay in infancy of development or diversify and be competitive."¹¹²³

Regarding regional liberalisation and the prospect of trading with India, Sarah Saeed from the WTO Wing (Ministry of Commerce, Government of Pakistan) comments that Pakistan's trade regime is the most transparent in the region especially when compared to India where there are invisible NTB's.¹¹²⁴ Dr. Azam Chaudhry, a prominent expert on WTO laws in Pakistan, also favours trade liberalisation. However, Dr. Chaudhry is of the view that prior to liberalisation, capacity building support is essential for the local T&C industries because after liberalisation, these industries cannot be shielded from open competition.¹¹²⁵

Awais Mazhar and other manufacturers engaged in clothing and value added activity have generally voiced opposition to trade liberalisation.¹¹²⁶ Mazhar states that Pakistani clothing producers are less competitive in major apparel

¹¹²² Interview with Omer Hameed, Director Trade Development Authority of Pakistan (TDAP) (TDAP Islamabad offices, Islamabad, Pakistan, 31 October 2009).

¹¹²³ Ibid.

¹¹²⁴ Interview with Sarah Saeed, Deputy Secretary, WTO Wing, Ministry of Commerce (MoC) (MoC, Islamabad, Pakistan 31 October 2009).

¹¹²⁵ Interview with Dr. Mohammad Azam Chaudhry, Senior Partner, Azam Chaudhry Law Associates (ACLA) (ACLA, Islamabad, Pakistan, 31 October 2009).

¹¹²⁶ Mazhar, above n 1099.

categories than Bangladesh, Sri Lanka and India.¹¹²⁷ In the event of any regional liberalisation, these local industries would be “swept away and there will be no more clothing industries.”¹¹²⁸ Mazhar’s views are mimicked by Azmat Butt (a major fabric and upholstery manufacturer), Talat Mahmood (a Faisalabad based mid-size exporter of cotton, poly cotton and curtain liners), and Mohammad Nadeem (a Faisalabad based exporter of fabrics and home textiles).¹¹²⁹ Mahmood confirmed that generally small to medium sized textile operations and the value added industry does not favour regional trade liberalisation for fears of competing with Indian imports.¹¹³⁰ The fears of competition following regional liberalisation is succinctly summarised by Meenu Tewari following a 2007-08 survey and interviews conducted in South Asia:

The overwhelming finding from numerous interviews in Bangladesh and (especially) Sri Lanka was that *despite proximity to India and Pakistan, and the much greater distance between them and PRC and other East Asian countries, “it is cheaper for us to source from PRC [and East Asia] than it is to source from India or Pakistan.” The difference is not only in absolute costs...but includes energy costs, the bureaucratic costs of sourcing and transporting goods from and within South Asia versus from PRC or East Asia, and the myriad tariffs, para-tariffs, infrastructure gaps, port costs and other non-tariff barriers that make it costly to source fabric efficiently even from across a contiguous border as in the case of Bangladesh and India, or India and Pakistan, relative to other parts of Asia.*¹¹³¹ (*emphasis added*)

¹¹²⁷ Ibid.

¹¹²⁸ Ibid.

¹¹²⁹ Interview with Azmat Butt, Chief Executive, Opal Textiles Private Limited (Lahore, Pakistan, 22 December 2009); Interview with Talat Mahmood (Director of AQ Textiles Pvt Ltd, Faisalabad, Pakistan, 23 December 2009); Interview with Mohammad Nadeem (Export Manager, KB Enterprises, Faisalabad, Pakistan, 23 December 2009).

¹¹³⁰ Mahmood, Ibid. Mahmood’s comments could not be confirmed through a comprehensive industry survey due to the resources, time and security reasons.

¹¹³¹ Meenu Tewari, ‘Deepening Intraregional Trade and Investment in South Asia: The Case of the Textiles and Clothing Industry’ (Working Paper 213, Indian Council for Research on International Economic Relations, 2008) 43.

Keeping the above quote in mind, the case study of Pakistan raises a number of trade policy issues pertaining to trade liberalisation. The major player in Pakistan's T&C industry and the government policymakers are by and large in favour of opening up regional trade by reducing tariffs. The opposition comes from small-to-medium size operators that are more numerous and exert significant pressure on the government. As a result, the Government of Pakistan is reluctant in opening up sensitive sectors such as T&C and agriculture. Policymakers are perhaps also mindful that they lack the resources to retrain, adjust and compensate laid-off workers in wake of regional liberalisation of the T&C sector. This fear preys most on the minds of the politicians that dictate trade policy rather than economists (also a practical illustration of the Stolper-Samuelson theorem and the public choice theory).

Since the larger T&C groups are aware of their competitive advantage, they see regional liberalisation as opening up of an additional market. The small-to-medium size enterprises, particularly the cottage industry sized clothing units apprehend diversion of their orders to India if Pakistan's fabric manufacturers get a better rate as a result of tariff liberalisation. These clothing units also fear the influx of competing imports would affect their business in the local markets as well. Therefore, as per the Stolper-Samuelson theorem, these sectors oppose regional trade liberalisation.

The fears of the sectors are not unfounded. In a poor country with high inflation rate and high unemployment, retrenchment and decline in the leading industry is something that no policymaker can ignore. However, the myths and fears that have built in the minds of the small-to-medium operator against regional liberalisation must be dispelled e.g. regional liberalisation in the textiles sector would have meant that tariffs on fabrics and yarns would be considerably reduced, thereby enabling the clothing industries to use imported inputs. The ongoing yarn crisis in Pakistan could certainly have been avoided if the tariffs on yarn imports were lower.

The public choice theory also explains why Pakistan has not moved in the direction of regional liberalisation even where trade officials have expressed their views on the positive effects this would carry for the Pakistani economy (see comments in the preceding section). The reality is that similar to developed countries, trade policy is dictated by the politicians that keep political, and not economic, considerations in mind. As a result, any measures that promote free competition with foreign imports are often looked at with hostility. Therefore, the Government of Pakistan is partially to blame for the mediocre performance of Pakistani T&C industries in the post-ATC period.

Nevertheless, the recent positive steps taken by Government of Pakistan building on the *Textile Vision 2005* scheme must be appreciated. The new *Textile Policy for 2009-2014* scheme aims to enhance T&C exports to 25 billion USD by 2015.¹¹³² The policy extends PKR 42 Billion in subsidies and incentives during the fiscal year 2009-2010.¹¹³³ Export refinance is reduced at a rate of 5% with a Rs. 2.5 billion allocation.¹¹³⁴ PKR 5 Billion is allocated as a relief on the existing long term loans of the textile industry.¹¹³⁵ Duty drawbacks are offered between 1 to 3% for a period of two years for value added textile exports which will aid the industry to offset both its direct, and indirect costs.¹¹³⁶ Most importantly, this policy exempts the industry from regulated power supply (referred to as “load shedding” in Pakistan) and allows it to have a prioritized gas supply.¹¹³⁷ The new policy also establishes a *Technology Upgradation Fund* (TUF) that will contribute as a grant around 20% of the capital cost on upgrade of T&C infrastructure.¹¹³⁸

It remains to be seen how Pakistan fares in the coming years. The current statistics show that Pakistan’s T&C industry is now coming to terms with its

¹¹³² M.S. Qazi, ‘Will the New Textile Policy Deliver?’ *Business and Finance Review* (14 September 2009) < <http://jang.com.pk/thenews/sep2009-weekly/busrev-14-09-2009/p8.htm> > at 21 July 2010.

¹¹³³ Ibid

¹¹³⁴ Ibid.

¹¹³⁵ Ibid.

¹¹³⁶ Ibid.

¹¹³⁷ Ibid.

¹¹³⁸ Ibid.

strengths and weaknesses that were masked by the quota system. The liberalised trading environment has meant that competitive strengths of various T&C manufacturers will now determine trade performance more than preferential treatment or higher quotas in the developed markets.

4.4 INDIA

India is a key player in the global T&C trade and a strong advocate against quotas. India is well endowed with natural resources linked to cotton production and possesses vertically integrated industrial infrastructure that produces textiles for exports as well as inputs for its local clothing industries.

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India also stands out as an alternative to foreign retailers that avoid over-reliance on China by diversifying their procurement sources.¹¹⁴⁰ These advantages are coupled with reasonably low labour costs (see Figure 4.15), stable economy, highly developed fashion industry and aggressive marketing capabilities that attract investment into the T&C sector.¹¹⁴¹ India's advantages are offset by a number of drawbacks such as bureaucratic inefficiencies at ports, high energy costs, poor road infrastructure and international transportation cost to the US/ EU markets.¹¹⁴² In the time-sensitive clothing sector, such delays increase turnaround time as well as costs of clothing products indirectly. However, in spite of these impediments, India has emerged as a 'winner' in the post-ATC period.¹¹⁴³

¹¹³⁹ According to 2006-7 estimates, India is the world's second largest producer of cotton after China. Together, China, India and Pakistan account for half of the world's cotton production and two-thirds of world cotton consumption. Pakistan is the world's fourth largest producer and third largest consumer (see Business Line, 'India 2nd largest global cotton producer' 4 October 2006 <<http://www.thehindubusinessline.com/2006/10/04/stories/2006100403030800.htm>> at 25 July 2008).

¹¹⁴⁰ Haté et al, above n 426, 29; see also Appelbaum, above n 495, 7.

¹¹⁴¹ According to Adhikari & Weeratunge, this enables up to 98.5% of value addition within India itself (see Adhikari & Weeratunge, above n 692, 116); India benefitted from the 2004 SARS outbreak in China which severely affected the Chinese clothing industry prompting foreign buyers to establish linkages with India (see Shuba Madhukar, 'Indian Garments in a Brave New World' (29 December 2004) *Domain-b* <http://www.domainb.com/industry/textiles/20041229_new_world.html> at 27 July 2008).

¹¹⁴² Appelbaum, above n 2, 45.

¹¹⁴³ Ibid.

Estimates conducted prior to quota expiration predicted that India would increase its share of world T&C trade from 4% to 15% between 2005 and 2010 which would mean creation of more than 1 million jobs during this period.¹¹⁴⁴ Indeed, there were optimistic estimates of a 50% expected increase in India's exports in the first quarter of 2005 alone.¹¹⁴⁵ However, at the end of 2005, the figures painted a different picture. Even though India did manage positive growth, it failed to capitalise on the situation e.g. Indian exports to the EU in the first quarter of 2005 grew by just 5% as against the projection of 50% growth, whilst Chinese exports to the EU experienced a 59% increase.¹¹⁴⁶

By 2007, Indian textiles and clothing exports held 11.5% and 6.6% share respectively in the EU market (see Figures 4.8 and 4.10). This figure is important because this performance came during the continuance of the post-ATC restrictions on China. Considering ITCB statistics of 2008, India's exports to the EU grew from US \$ 5535.0 million in 2004 to US \$ 8992.8 million in 2008 (see Table 4.3). India's share of the EU T&C market was 7.7% in 2008.¹¹⁴⁷ First quarter figures of 2010 shows India occupying 8.1% of the EU's clothing market in value terms (see Figure 4.12).

In the US market, according to ITCB statistics, India's exports to the US grew from US \$ 4192 million in 2004 to US \$ 5142 million in 2009 (see Table 4.2). India lodged a 2.2% market growth rate in the US T&C market between July 2007 and July 2008 (see Table 4.1A). The global financial crisis negatively impacted India's growth slightly, as is evidenced by a decline of -1.69% in the US T&C market between April 2009 and April 2010 (see Table 4.1B). The overall market share of Indian T&C exports to the US market grew from 5.4% in July 2008 to 5.76% in April 2010 (refer to Figures 4.5A and 4.5B). China's

¹¹⁴⁴ ILO, above n 4, 25; Hall, above n 376, 29

¹¹⁴⁵ Kaushik Basu, 'Winners and Losers in Textile Shake-Up' (2 March 2005) <http://news.bbc.co.uk/2/hi/south_asia/4294679.stm> at 5 August 2008.

¹¹⁴⁶ Cris Prystay, 'India Plays Catch-Up in Textiles: Labor Rules Hinder Country From Benefiting From End of Quotas', (1 December 2005) *The Wall Street Journal* A15.

¹¹⁴⁷ ITCB, 'EU(27) Imports of Textiles and Clothing from Top-60 and Some Other Selected Suppliers: 1999 – 2008' <http://www.itcb.org/Documents/2009TablesF_Eec_v1.pdf> at 29 June 2010.

rapid expansion in the US market seems to have affected India's market share as it has the shares of other developing countries/LDCs.

India's performance must be considered against the backdrop of reimposed quotas and safeguards on China. Indian T&C producers realised that overseas buyers saw India as a preferred supplier next to China and that global buyers are keen to do business with suppliers that provide one-stop solutions.¹¹⁴⁸ As a result of this trend, retailers like Wal-Mart, Gap, H&M, and JC Penny increasingly source from India.¹¹⁴⁹ The restraints on China presented an ideal opportunity for India to make inroads into the EU/US markets. However, as the figures demonstrate, India was not able to capitalise fully on the situation. Later on, the global financial crisis further eroded any gains made by the Indian exporters.

Tables 4.6 and 4.7 provide an analysis of the major market segments of the US T&C market. According to the US-China MOU Agreement, quotas were placed on 34 Categories of T&C exports of Chinese origin which included (amongst others) US OTEXA Categories 332, 339, 338, 340, 345, 347, 348 & 363 (refer to Tables 4.6 and 4.7) that are leading export items of India and Pakistan to the US. A review of the June 2007 to June 2008 figures (Table 4.7) shows that India maintained or increased its share in Categories 338, 339, 340, 345, 347, 348 & 363 and only lost out in Categories 332 and 362 by experiencing a reduction in market share of -26.42% and -7.67% respectively. China, on the other hand, continued to dominate the market in Categories 332, 340 & 345. China lost some market share in Categories 338, 339, 347 & 348 due to quota restraints.

In the important period of May 2009 to May 2010, where there were no T&C trade restraints imposed in the US market but the effects of global financial crisis depressed market activity. During this period, India experienced

¹¹⁴⁸ Siddhartha Rajagopal, Texprocil Executive Director referred to in Government of India (GOI), 'Technology Upgradation Fund Scheme (TUFS) (01-04-2007 to 31-03-2012)', Circular No. 4, No. 28(19)/2008-MS dated 28 July 2008, <http://www.aepcindia.com/portal/tufs_a.asp> at 20 August 2008.

¹¹⁴⁹ Haté et al, above n 426, 19; GOI, Ibid.

significant loss of market share in major segments. The decline in market share came in all categories except Categories 362 and 363. The decline is noticeable in categories where India had lodged positive growth during subsistence of trade restrictions on China (compare Tables 4.6 and 4.7). China continued to expand market shares in all categories except 465 where it experienced a significant drop by -41.76% during May 2009 to May 2010 period.

Therefore, it can be said that India had lost what little gains it made during period of trade restraints on China, while China recorded growth in market share in nearly all segments even during the global financial crisis. However, India's T&C exports with the EU may receive a significant boost if the *EU – India FTA* is signed in 2010.¹¹⁵⁰ This arrangement will give India a definite edge over its regional rival Pakistan and allow better competitive terms vis-a-vis China in the EU market.

Some analysts blame lack of economies of scale as a major factor that has hampered India's competitive strength.¹¹⁵¹ This is due to the dispersed nature and small structure of Indian clothing manufacturing units that are classified as cottage industries.¹¹⁵² The dispersal of Indian clothing industries was undertaken pursuant to left-leaning policies that aimed at providing employment throughout the country.¹¹⁵³

Nevertheless, India has taken significant measures to enhance its competitiveness by undertaking industrial upgrade, supported by the TUF.¹¹⁵⁴ This fund was also supplemented by reduction of excise duties on import of machinery, establishment of industrial zones accommodating clothing

¹¹⁵⁰ See for example European Parliament (Press Release), 'EU-India: Free Trade Agreement to be signed by the end of 2010 say MEPs' (26 March 2009) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20090325IPR52628+0+DOC+XML+V0//EN>> at 21 July 2010.

¹¹⁵¹ Haté et al, above n 426, 18-19; Adhikari & Weeratunge, above n 692, 116; Hall, above n 376, 31-32; Prystay, above n 1146.

¹¹⁵² Hall, Ibid; Prystay, Ibid.

¹¹⁵³ Hall, Ibid; Prystay, Ibid.

¹¹⁵⁴ See generally GOI, above n 1148.

manufacturing units and reform of foreign investment laws.¹¹⁵⁵ However, any reform of the present socialist leaning labour laws would likely face stiff resistance from labour groups and trade unions concerned about the impact of an increasingly competitive global trade in T&C on their employment.¹¹⁵⁶ Therefore, in absence of any reform of labour laws labour-related inefficiencies will continue to impact on India's productivity and competitiveness in the coming years even when India upgrades its industrial infrastructure and investment laws.

In addition to the afore-mentioned shortcomings and supply side constraints, India has also begun to move up the value chain. This is evident by a decline in the share of T&C in the total merchandise exports from 27% in 2007 to 11.9% in 2008 (see Figure 4.14).¹¹⁵⁷ As an indication of India's reduced reliance on the T&C sector, the average and bound tariff levels have also come down. This can be demonstrated by comparing the average and bound tariff levels of textiles and clothing in 2009-2010 (see Figure 4.16) with 2006-2007 levels e.g. the average textiles import tariffs were reduced from 20.2% (2006-2007) to 14.1% (2009-2010).¹¹⁵⁸ Similarly, the average clothing tariffs were brought down from 22.4% (2006-2007) to 19.9% (2009-2010).¹¹⁵⁹

India is exhibiting signs of gradually reducing labour-intensive operations and divert labour resources to others sectors (similar to China). This means that in the future, India will shift its reliance more on to the capital-intensive textiles

¹¹⁵⁵ Shankar, 'Post-MFA regime: Textile Restructuring and The Impending Turbulence' *Liberation* (January 2005) <http://www.cpiml.org/liberation/year_2005/january/mfa_regime.htm> at 27 July 2008; Madhukar, above n 1141; T Surendar, 'Textiles: The Big Factories Are Coming' (15 November 2004) *Businessworld* <<http://www.businessworldindia.com/nov1504/index.asp>> at 27 July 2008; V Sridhar, 'Towards New Frontiers' (6-19 November 2004) *Frontline* <<http://www.hinduonnet.com/fline/fl2123/stories/20041119003710500.htm>> at 27 July 2008; Prystay, above n 1146.

¹¹⁵⁶ Shankar, *Ibid*; Haté et al, above n 426, 18-20.

¹¹⁵⁷ WTO, above n 4, Tables II.65 & II.70; WTO International Trade Statistics 2008, Tables II.65 & II.70 <http://www.wto.org/english/res_e/statistics_e/its2008_e/its08_merch_trade_product_e.htm>.

¹¹⁵⁸ WTO, World Tariff Profiles 2006 <http://www.wto.org/english/res_e/booksp_e/tariff_profiles06_e.pdf> at 27 January 2009.

¹¹⁵⁹ *Ibid*.

industries from the labour-intensive clothing industries. This view is further reinforced by India's status as one of the leading cotton producing countries.

4.5 INDONESIA

Indonesia is a major manufacturer and exporter of T&C. It has lodged a consistent performance both before and after expiration of quotas. However, Indonesia is not heavily dependent on T&C exports to sustain its economy as compared to some of the other countries (compare Figure 4.19 and 4.14). The tradition of manufacturing fabric and textiles is much older in Indonesia as compared to countries that owe establishment of T&C due to quotas.¹¹⁶⁰ In the 1980s, quotas under the MFA acted as a catalyst in luring foreign manufacturers into Indonesia.¹¹⁶¹ This further contributed to the growth of the clothing industry that consequently led to growth of the local textiles industry (which expanded in order to meet the domestic fabrics and input needs).¹¹⁶² At this stage, Indonesian exports primarily targeted the US market (with 60% of Indonesian clothing exports destined for the US), while the EU absorbed 15% of Indonesian clothing.¹¹⁶³

Successive Indonesian governments took measures to advance Indonesia's position as a manufacturer and exporter of T&C.¹¹⁶⁴ However, this sector was not always prioritised.¹¹⁶⁵ This is evidenced by Indonesia's import substitution policies during the 1970s to advance the country's industrialisation.¹¹⁶⁶ These policies indirectly affected the clothing industries since the high cost of using

¹¹⁶⁰ During the 1920s and the Dutch Colonial Rule, Indonesia had a thriving a weaving industry (Peter Dicken & Markus Hassler, 'Organizing the Indonesian Clothing Industry in the Global Economy: The Role of Business Networks' (2000) 32 *Environment and Planning A* 263, 265).

¹¹⁶¹ Mari Elka Pangestu, 'The Indonesian Textile and Garment Industry: Structural Challenge and Competitive Challenges' in Mari Elka Pangestu and Yuri Sato (Eds) *Waves of Change in Indonesia's Manufacturing Industry* (1997), 54.

¹¹⁶² Ibid.

¹¹⁶³ Dicken & Hassler, above n 1160, 266.

¹¹⁶⁴ Hal Hill, 'Indonesia's Textile and Garment Industries: developments in an Asian Perspective' (Occasional Paper No. 87, Institute of South East Asian Studies, Singapore) 65-66.

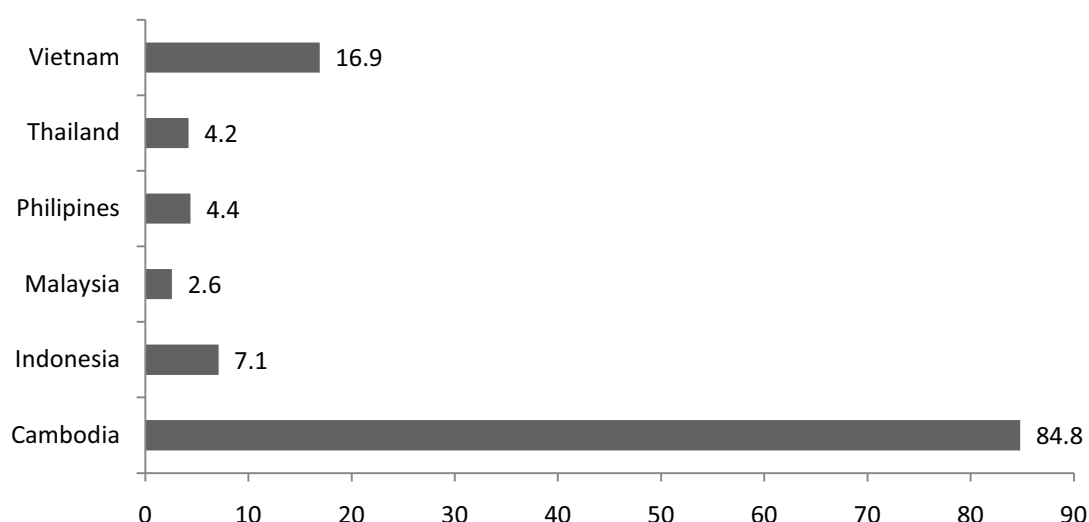
¹¹⁶⁵ Ibid.

¹¹⁶⁶ Ibid.

domestic textiles meant that Indonesian clothing exports were not always cheaper.¹¹⁶⁷

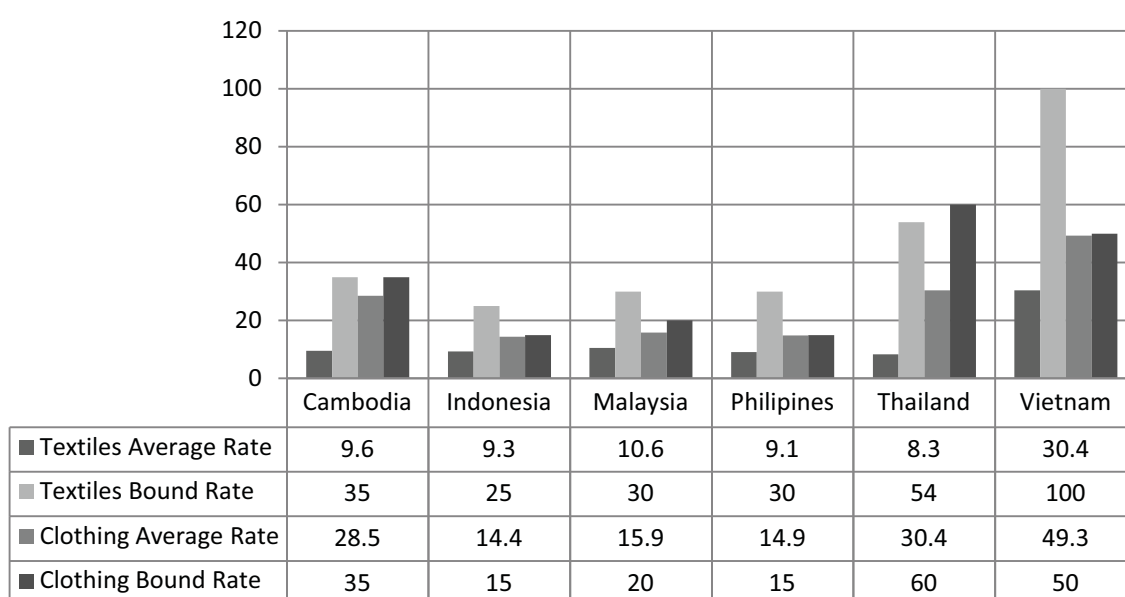
**(Figure 4.19) Percentage of Share in Total Merchandise Exports 2008-2009
(Textiles & Clothing)**

Source: WTO, *International Trade Statistics 2009*, Tables II.65 & II.70
<http://www.wto.org/english/res_e/statistics_e/its2009_e/its09_merch_trade_product_e.htm>



**(Figure 4.20) Comparison of Average & Bound MFN Tariff Rates
Maintained by ASEAN (in Percentage)**

Source: WTO, *World Tariff Profiles 2009*
<http://www.wto.org/english/res_e/booksp_e/tariff_profiles09_e.pdf>



¹¹⁶⁷ Hill, (Ibid).

By mid-1990s, Indonesia accounted for 2.1% of total world exports in T&C.¹¹⁶⁸ At this juncture, Indonesia had also diversified its export destinations i.e. Japan absorbed 10% of Indonesian clothing exports, EU share grew to 30%, whilst there was a decrease in the US share of Indonesian clothing to 20%.¹¹⁶⁹

Prior to quota expiration, there were mixed opinions about the possible effects on Indonesian T&C industries.¹¹⁷⁰ The typical fears were against China's domination leading to the erosion of Indonesia's market share in the developed markets. Within Indonesia, some entrepreneurs viewed quota expiration as an event that would purge the quota dependent, weak firms from the sector.¹¹⁷¹ These industrialists, in the past, called upon the Indonesian government for continued improvement in investment policies, adoption of measures to counter rising labour costs as well as easy access to capital for industrial modernisation in order to remain competitive in the post-ATC period.¹¹⁷²

Closer to quota expiration, Indonesia was viewed as being disadvantaged in terms of preferential treatment since the US did not extend GSP treatment to Asian textiles producers (with an exception only in the case of bilateral FTA) and the EU did not include Indonesia amongst the beneficiaries of its preferential trade regimes.¹¹⁷³

Indonesia also lacked proximity to the developed countries. In theory, this meant that African producers under AGOA, Caribbean producers under CBI/CBTPA and Euro-Mediterranean countries held an edge over Indonesia

¹¹⁶⁸ According to WTO Annual Report 1996, cited by Dicken & Hassler, above n 1160, 265.

¹¹⁶⁹ Ibid, 266.

¹¹⁷⁰ See for example ICTSD Bridges Weekly Trade News Digest, 'Countries Consider Adjustment Costs Of Textile Quota Phase-Out' Volume 8, Number 32 (29 September 2004); Zakki Hakim, 'Textile Sector to Struggle after Quota Termination' *the Jakarta Post* (28 December 2004).

¹¹⁷¹ Hakim, Ibid.

¹¹⁷² Ibid.

¹¹⁷³ William James, David Ray & Peter Minor, 'Indonesia's Textiles and Apparel: The Challenges Ahead' (2003) 39 (1) *Bulletin of Indonesian Economic Studies* 93, 95.

in the US and the EU markets respectively. Perhaps this is also displayed by a quick review of export statistics for years 2001-2004 for the EU/US markets (see Tables 4.2 and 4.3) where Indonesia posted a mixed performance.

In the US market, this performance may well be due to the high level of duties maintained by the US towards Indonesian origin products e.g. in 2001 for Indonesian MMF clothing the average duties were around 20%.¹¹⁷⁴ By contrast, global average duties for US imports were 12.5% and NAFTA countries only paid 0.9% duty.¹¹⁷⁵ Similarly, effective duties on US clothing imports in 2001 amounted to 0.5% for NAFTA compared to 18.2% for Indonesia.¹¹⁷⁶

Furthermore, in cotton clothing average overall duties on imports into the US were 10.2%, for NAFTA members it was 0.2% but ranged from 15%-17% for developing countries (such as Indonesia) that fell outside the preferential regimes.¹¹⁷⁷ In spite of these barriers to market access, the post-ATC performance of Indonesia in the US market was better than expected. For the EU market, post-ATC figures returned a mixed trend (see Tables 4.2 and 4.3).

In the US market, according to the US OTEXA figures for July 2007 to July 2008, Indonesia managed to maintain its market share by recording only a slight drop in growth rate of -0.04% (see Table 4.1A). Indonesia posted a much better performance than Mexico (a preferential supplier that experienced a decline of -11.04% in the same period). This illustrates the negative effects of ROO that are part of the US preferential trade agreements (see Chapter 3 for discussion). At this stage, Indonesia enjoyed a 4.41% market share of the US market ranking amongst the Top-10 exporters in this sector to the US (see Figure 4.5A). Indonesia performance appears to be fairly respectable when compared to Philippines, Thailand, Hong Kong and Pakistan all of which

¹¹⁷⁴ Ibid citing USITC database figures for 2001.

¹¹⁷⁵ Ibid.

¹¹⁷⁶ Ibid.

¹¹⁷⁷ Ibid.

recorded declines of -16.27%, -0.98%, -12.88% and -2.97% respectively (see Table 4.1A).

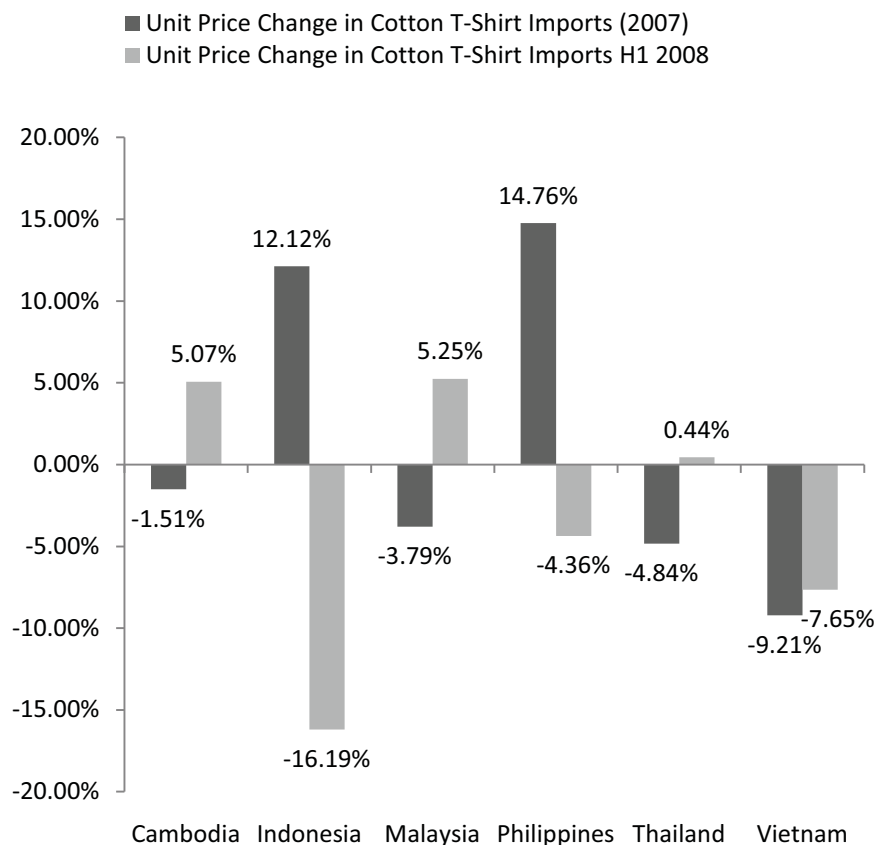
In the all important cotton T-shirts category (OTEXA Categories 338, 339 and 340), Indonesian exporters recorded increases between years 2006 and 2007 in terms of value of exports (refer to Annex-3). The growth in this category continued in 2008 and 2009 (after lapse of trade restraints on China and during the economic slowdown in the US) (see Annex-3). However, when the overall export figure is considered, by mid-2008 it became apparent that Indonesian exports were not surging, partially due to decline in the US market for reasons of economic slowdown and partially due to increased competition from Vietnam and other Asian producers. Despite Vietnam's success, China's reduced competitiveness was thought to benefit Indonesian exports since its currency depreciated, making Indonesian exports cheaper for importers and retailers.¹¹⁷⁸

Against this backdrop, the Indonesian cotton T-shirts exports recorded a 12.12% increase in prices for 2007 (see Figure 4.21). However, increased competition from Vietnam and China resulted in a price drop of -16.19% recorded in the first half of 2008 (see Figure 4.21). This not only demonstrates an attempt by the Indonesian manufacturers to stay competitive and match prices with regional rivals but also shows that with the anticipated lifting of reimposed restraints on China in end-2008, manufacturers were willing to match prices in order to cling onto their share in the US market.

¹¹⁷⁸ EmergingTextiles.com, 'Indonesian Clothing Industry Confronted with Rising Production Costs' (Country Report) (25 June 2008) < <http://www.emergingtextiles.com/?q=art&s=080625-country-report-indonesia&r=search&n=1> > at 26 January 2009.

(Figure 4.21) Percentage Change in Price for T-Shirts from ASEAN/Far-East Countries in the US Market (2007) & First Half 2008

Source: EmergingTextiles.com, 'US Cotton T-shirt Imports in First Half 2008'



Indonesia's performance must be assessed in the categories where China faced restrictions under safeguards until December 2008. In order to do so, Annex-3 takes into consideration some of the main categories of exports by Indonesia where China was restrained under the US safeguards. Annex-3 demonstrates that Indonesia's gains as a result of safeguards imposed on China have been limited to a few categories. However, as a result of the safeguard restrictions, China's growth in the US T&C market slowed, thereby enabling Indonesia to stay in the US market as a major exporter without experiencing any major loss of market share.

The gains came in cotton T-shirt categories of 335, 338, 339 and 340. Indonesia also performed well in categories 348, 638, 639 and 659 (see Annex-3). In rest of the categories, Indonesia's performance shows decline. After lapse of restraints on China and in the period where there were no new trade restrictions, only categories 338, 339 and 639 have recorded growths (see the 2009 figures in Annex-3). In the rest of the categories, Indonesian exports suffered moderate declines as compared to China's healthy performance. Overall, between April 2009 and April 2010, US OTEXA figures show that Indonesia experienced a slight decline of -1.24% (see Table 4.1B). By April 2010, Indonesia managed to increase its share of the US T&C market to 5.03% (from 4.41% in July 2008) (see Figures 4.5A and 4.5B).

Therefore, it can be said that Indonesian exporters managed to record growth in some categories and partially benefitted from the trade restraints on China. What must be kept in mind is that the aim of the reimposed US restraints on China was not prevention from entering the US market but to slow Chinese T&C exports in order to aid adjustment in the post-ATC US market. These restraints, therefore, allowed an opportunity for other exporters to increase their market share before Chinese exports were free from any other restrictions except tariffs. The same rationale was adopted in the EU market as well where Indonesia's performance was less impressive than in the US. In 2006-07, the growth rate of total T&C exports by Indonesia to the EU stagnated, while Bangladesh, Pakistan, Vietnam and Thailand recorded growth (see statistics in Table 4.3).

According to *Eurostat* figures for 2007, Indonesia took 2.2% and 2.1% share of the EU textiles and clothing market respectively (refer to Figures 4.8 & 4.10). The overall growth rate of Indonesian T&C exports between years 2004 and 2007 was 8.4% for textiles and -10.2% for clothing (see Figures 4.9 and 4.11). A major reason behind the lacklustre Indonesian performance may be the combined competition Indonesian exports face from Euro-Mediterranean

preferential suppliers (Turkey, Romania, Tunisia and Morocco) and Asian manufacturers (Bangladesh, China and India).

This performance came during the EU-China MOU and the Shanghai Agreement (refer to the case study on China for discussion). The first quarter figures for 2010 in the EU market show a further decline in market share of Indonesia from 2.1% to 1.65% (compare Figures 4.10 and 4.12). This decline may also be explained by attributing Indonesia's decline to the after effects of the global financial crisis that depressed demand for clothing. However, when the Chinese expansion in market share is considered, this explanation seems inadequate and reveals Indonesia's lack of competitive strength in the EU market in terms of preferential access and proximity.

Overall, these figures demonstrate that Indonesia has managed to survive and record growth in the post-ATC US market but has registered mediocre performance in the EU market. However, these figures must be assessed by keeping in mind the post-ATC strategy of diversification in export products by the Indonesian manufacturers.¹¹⁷⁹ The T&C industries have endeavoured to move from over-reliance on the low-end market segment and to higher value added segments in order to compete with China.¹¹⁸⁰ This response of the Indonesian manufacturers highlights their supply diversification capacity as well as product differentiation that are central features of the EU/US consumer markets.¹¹⁸¹ One indication of diversification strategy is to venture into other Asian LDCs for manufacturing clothing using Indonesian textiles in order to capitalise on declining import tariffs pursuant to ASEAN agreements.¹¹⁸² This strategy is pursuant to the Akamatsu flying geese model and Kojima's pro-trade FDI (see the Introduction) which refers to economic growth through regional transmission of technology and investment.

¹¹⁷⁹ World Bank, 'Indonesian Textiles and Apparel: A New Dawn for a "Sunset Industry"', Financial & Private Sector Development Technical Note, Issue No.4 (September 2007).

¹¹⁸⁰ Ibid.

¹¹⁸¹ Ibid.

¹¹⁸² EmergingTextiles.com, above n 1178.

If viewed from this perspective, Indonesia, in this instance, is an example of a country that transplants its textiles capabilities in other Asian LDCs in order to indirectly target a developed market through use of inputs rather than directly competing. In other words, a recipient country (Asian LDC in this example) benefits from investment in localised textiles inputs and donor country benefits by remaining competitive in a sector longer. This is an emulation of strategies followed earlier by Japan and other Asian NICs.

Indonesia cannot only serve as a donor country but it may yet act as a recipient country as well e.g. it has been reported that nine major clothing manufacturers in China are considering relocation of their operations to China with the possibility of creating up to 200,000 jobs.¹¹⁸³ This move would not be unprecedented since a Korean manufacturer already operates in Indonesia engaging around 65,000 workers.¹¹⁸⁴ This investment can be explained from the Chinese perspective if the rising wages are considered (see case study on China). Thus, instead of relocating inland (where wages are also on the rise, albeit slowly), major Chinese manufacturers aim to relocate regionally in order to maintain their competitiveness.

An interesting observation from this development is that China has started experiencing a shift in its comparative advantage and this has triggered a move towards higher value added sectors (see the case study on China). This shift has come almost within a year of removal of all trade restraints on Chinese T&C (with the exception of the PSS). If current trends continue, soon China will expand and diversify its T&C industries on the now familiar pattern of Japan and other Asian NICs consistent to Akamatsu and Kojima's postulation (see discussion of the flying geese model in the Introduction).

¹¹⁸³ Just-Style, 'Indonesia: Chinese Firms Eye Major Plant Investments' (17 April 2010).

¹¹⁸⁴ Ibid.

Another dimension of the diversification strategy followed by Indonesia is venturing into other developed markets such as Japan and Canada.¹¹⁸⁵ In 2007, whilst the *Economic Partnership Agreement* (EPA) between Japan and Indonesia was being negotiated, 58% of textiles and 81% of clothing imports into Japan came from China.¹¹⁸⁶ Indonesia's share in this figure was 6% and 0.6% for textiles and clothing respectively.¹¹⁸⁷ Japan, imported US \$ 5.821 Billion worth of textiles and US \$ 22.541 Billion worth of clothing in 2005 and represents a viable market for Indonesia to break into.¹¹⁸⁸

(Figure 4.22) Diversification of Indonesian Textiles Exports to Developed Economies 2005-2008

Source: WTO, *International Trade Statistics 2006-2009*
<http://www.wto.org/english/res_e/statis_e/statis_e.htm>;
ITCB <<http://www.itcb.org/Trade.htm>>

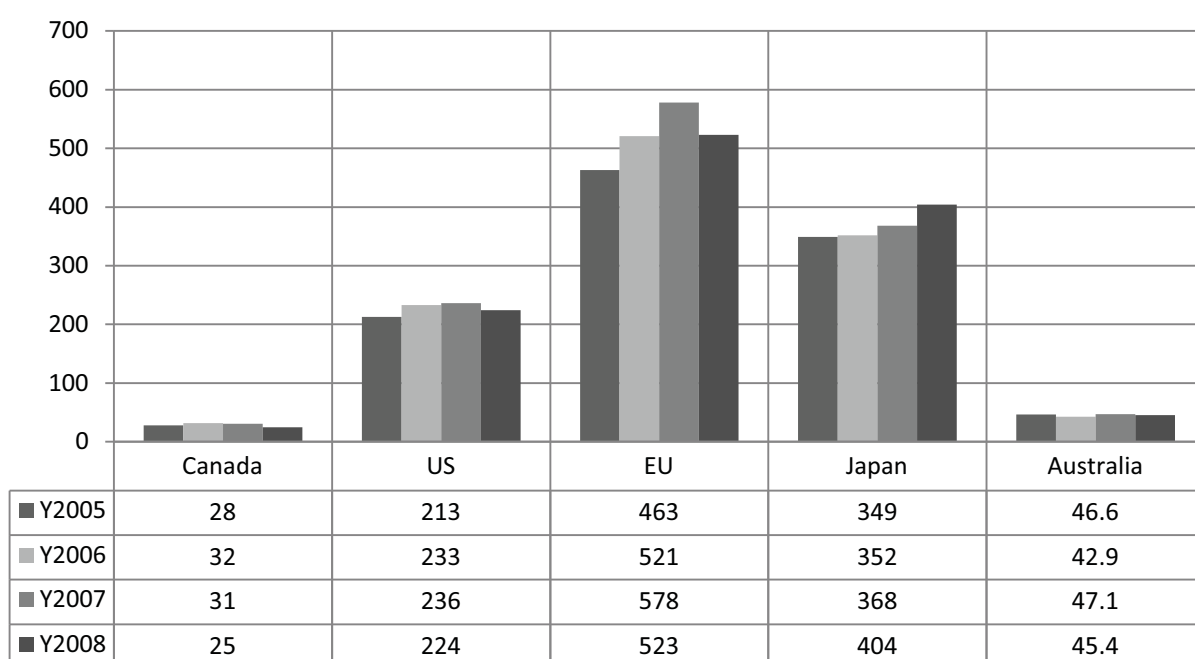


Figure 4.22 and 4.23 summarise the post-ATC performance of Indonesia's T&C industries in other developed economies. A quick view of these statistics underscores the export posture of the Indonesian T&C industries towards the

¹¹⁸⁵ Just-Style News, 'Indonesia's makers eye trade deal with Japan' (24 January 2007).

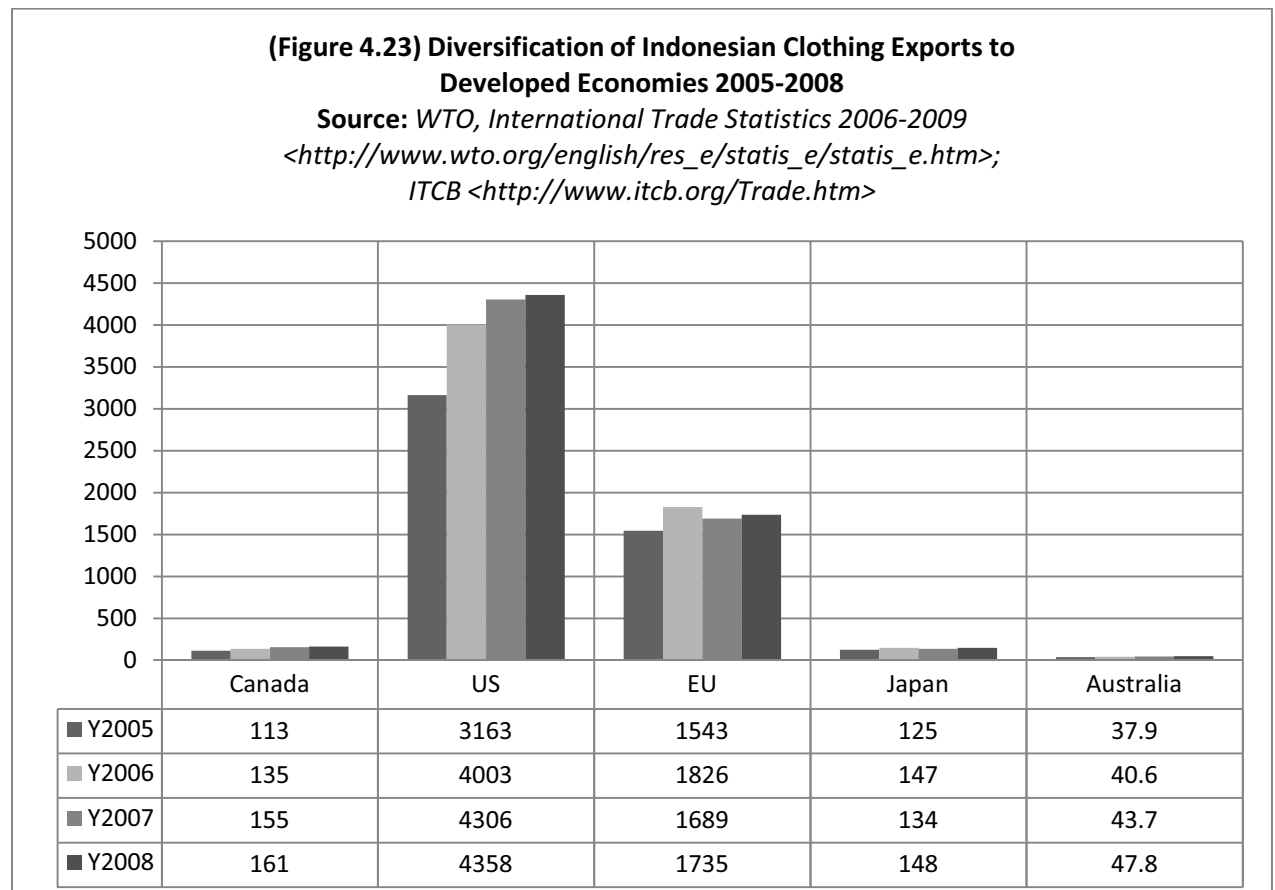
¹¹⁸⁶ Ibid.

¹¹⁸⁷ Ibid.

¹¹⁸⁸ WTO, *International Trade Statistics 2006*

<http://www.wto.org/english/res_e/statis_e/its2006_e/its06_toc_e.htm> at 24 January 2009.

US and the EU markets. Exports of textiles to Australia, Canada and Japan recorded steady increase until 2007. Thereafter, exports to Canada and Australia register a decline while exports to Japan continue to increase (see Figure 4.22).



For exports of clothing, statistics show a steady rise in exports to Canadian, Australian and Japanese markets but the quantum has yet to reach the same level as the EU and the US markets (see Figure 4.23). Indonesia enjoys geographical proximity to the Australian market but the size of the Australian market is smaller as compared to the US/EU markets, therefore, reliance on this market is of limited potential.

In addition to product diversification and capitalising on safeguards on China, Indonesia's survival strategies in the post-ATC period features extensive upgrade of industrial infrastructure by investing in advanced plant machinery

to boost production.¹¹⁸⁹ Possible measures recommended by analysts include reduction of tariffs and taxes on medium and high-quality intermediate products that are required as inputs in the clothing manufacturing process, remedying complicated customs regulations, improving exporters access to working capital, supporting WTO measures on reduction of tariffs in order to mitigate disadvantage of non-preferential access and entering into bilateral or regional free trade arrangements.¹¹⁹⁰

4.6 VIETNAM

T&C have formed a critical element of Vietnam's export growth in recent years (comprising 16.9% of the country's total merchandise exports in 2008-2009) (refer to Figure 4.19). But what is more remarkable is the astounding pace of growth in a sector which until recently was amongst the most regulated in world trade. Vietnam is a centrally planned economy and initiated economic reforms in the mid-1980s,¹¹⁹¹ shedding its traditional agrarian economy and moving towards-labour intensive manufacturing sectors with particular emphasis on export of manufactured goods.¹¹⁹² The T&C sector forms the core of the export oriented economic policy (similar to Asian NICs and Japanese model).¹¹⁹³

Vietnam in the past targeted the Soviet/Communist bloc countries as its primary export market for T&C exports. After the collapse of the Soviet Union and the opening up of the EU/US markets as well as the entry of Vietnam into the WTO in 2007, Vietnamese export policies are consistently aligned with the rest of the ASEAN countries.

¹¹⁸⁹ World Bank, above n 1179.

¹¹⁹⁰ James et al, above n 1173, 101.

¹¹⁹¹ Khalid Nadvi & John Thoburn, 'Challenges to Vietnamese Firms in the World Garment and Textile Value Chain, and the Implications for Alleviating Poverty' (2004) 9 (2) *Journal of the Asia Pacific Economy* 249, 256.

¹¹⁹² World Bank, 'Vietnam 2010; Entering the 21st Century' (Vietnam Development Report, 2001) (World Bank Vietnam, Hanoi) 12.

¹¹⁹³ Khalid Nadvi & John Thoburn, 'Vietnam in the Global Garment and Textiles Value Chain: Impacts on Firms and Workers' (2004) 16 *Journal of International Development* 111, 112.

The measure of Vietnam's success can be gauged from the fact that prior to signing the *Bilateral Trade Agreement* (BTA) with the US in 2000, Vietnam was excluded from the US market for political reasons and also faced steep tariffs due to its non-membership of the WTO.¹¹⁹⁴

Being a “latecomer” to the T&C sector, Vietnam had to quickly adapt to increased global competition due to the impending quota expiration and the imminent dominance of China.¹¹⁹⁵ A further challenge was adapting the local labour and environmental standards in line with international standards in order to attract foreign buyers.¹¹⁹⁶ Since Vietnam lacked geographical proximity to the EU/US market, enhancing labour productivity was critical in order to reduce lead times for final delivery of clothing products to foreign customers.¹¹⁹⁷

Similar to other LDCs, the T&C sector is important for Vietnam not only in terms of export earnings but has significant implications for poverty growth and domestic employment levels.¹¹⁹⁸ Abundance of labour resources has predictably resulted in the predominance of garment manufacturing in the Vietnamese economy. However, Vietnam also has a viable domestic textiles industry that is geared towards complimenting the local clothing production although the exports of textiles are considerably less.¹¹⁹⁹

¹¹⁹⁴ The US BTA was signed on 13 July 2000 but entered into force on 10 December 2001. It effectively restored mutual MFN status and requires Vietnam to undertake various market oriented reforms. The MFN status reduced US tariffs on Vietnamese exports from 40% to approximately 3% (CRS, ‘The Vietnam – US Textile Agreement Debate: Trade Patterns, Interests and Labor Rights’ (21 June 2002), 2); According to the World Bank, the average tariff reduction on all Vietnamese exports, as a result of the US – Vietnam BTA, was from 35% to 5% (World Bank Vietnam, ‘Implementing Reforms for Faster Growth and Poverty Reduction’ (Vietnam Development Report 2002) 27); see generally the text of the US – Vietnam BTA which is available online: http://www.ustr.gov/assets/World_Regions/Southeast_Asia_Pacific/Vietnam/asset_upload_file917_10731.pdf at 20 November 2008.

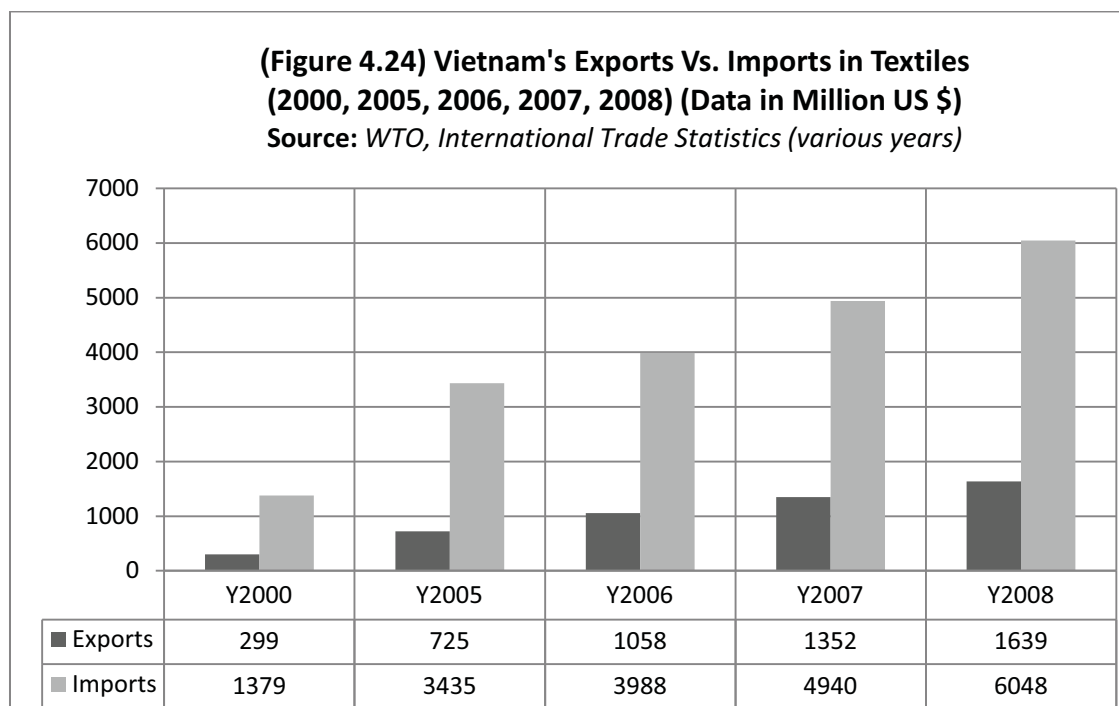
¹¹⁹⁵ Hal Hill, ‘Export Success Against the Odds: A Vietnamese Case Study’ (2000) 28 (2) *World Development* 283, 286; Nadvi & Thoburn, above n 1193, 112; Nadvi & Thoburn, above n 1191, 290.

¹¹⁹⁶ Nadvi & Thoburn, above n 1191, 250.

¹¹⁹⁷ Ibid.

¹¹⁹⁸ Nadvi & Thoburn, above n 1193, 112.

¹¹⁹⁹ Ibid; Nadvi & Thoburn, above n 1191, 253.



Possessing strong backward linkages is a strong attribute for any economy concentrating on T&C exports. However, as Nadvi and Thoburn point out, in Vietnam the problems stem from the heterogeneous nature of the textiles industries that is divided into state owned enterprises, private local firms and wholly owned foreign firms.¹²⁰⁰ These enterprises have varying ties to the markets internationally and to the Vietnamese industries domestically.¹²⁰¹ The resulting complications have inevitably affected export performances of the two sectors.¹²⁰² In the past Vietnamese textiles industries were criticised by local clothing producers as being unable to meet “the various demands of foreign buyers for specific fibre content, fabric construction, design, finish, quality and competitive prices.”¹²⁰³

¹²⁰⁰ Ibid; Ibid, 113.

¹²⁰¹ Ibid; Ibid.

¹²⁰² Ibid, 112.

¹²⁰³ Mekong Project Development Facility (MPDF), ‘Vietnam’s Garment Industry: Moving up the Value Chain’ (Private Sector Discussion No.7) (Revised 2000) 5; see also, Vu Quoc Huy, Vi Tri Thanh, Nguyen Thang, Cu Chi Loi, Nguyen Thi Thanh Ha, Nguyen Van Tien, ‘Trade Liberalisation and Competitiveness of Selected Industries in Vietnam Project: Analysis of Qualitative Factors Affecting Competitiveness of Textile and Garment Firms in Vietnam’ (2001, Institute of Economics, Hanoi/International Development Research Center, Canada) 21.

Ideally this should have resulted in low tariffs for textiles local clothing manufacturers to have easy access to fabric and other inputs but to the contrary, Vietnam maintains one of the highest average tariff rates for textiles imports in the region (at 30.4% in 2008-2009, see Figure 4.20).¹²⁰⁴

High tariffs reflect a dual attempt by Vietnamese policymakers to provide protection to the local textiles industries that are dominated by large, inefficient state owned enterprises (SOEs) and also to attract investment in the textiles sector since high tariffs often serves to bring investors in capital-intensive sectors. In spite of the high tariffs, Vietnam is a large net-importer of textiles (as is evident by Figure 4.24) with imports for textiles standing at US \$ 4940 million in 2007, further increasing to US \$ 6048 million in 2008.

Reportedly there have been improvements in the quality of fabric as investments from Korea and Taiwan enabled establishment of cotton and synthetic fabric production.¹²⁰⁵ Growth in productivity was also registered since the 1990s when the textiles SOEs downsized resulting in much improved productivity and profitability.¹²⁰⁶

Overall, Vietnam's export performance has been nothing short of spectacular. The total T&C exports grew from a total of US \$ 2.12 Billion in 2000 and then to US \$ 5.406 Billion in 2005.¹²⁰⁷ In 2007, Vietnam exported US \$ 8.538 Billion worth of T&C products to the world.¹²⁰⁸

Vietnam also stands out distinctly when compared to its neighbours, the majority of whom compete aggressively in the US market more than the

¹²⁰⁴ According to WTO World Tariff Profiles 2008, these levels have been maintained (see WTO, World Tariff Profiles 2008, http://www.wto.org/english/res_e/booksp_e/tariff_profiles08_e.pdf) at 28 November 2008.

¹²⁰⁵ Interview of a foreign buyer cited in Nadvi & Thoburn, above n 1193, 117.

¹²⁰⁶ Ibid, 119 & 120.

¹²⁰⁷ WTO, above n 4; see also WTO, International Trade statistics 2001

<http://www.wto.org/english/res_e/statis_e/its2001_e/its01_toc_e.htm> at 29 July 2010.

¹²⁰⁸ WTO, above n 1157.

EU.¹²⁰⁹ For instance after the Soviet collapse, Vietnam primarily exported to non-quota restrained markets such as Japan (which took in 42.2% of Vietnamese T&C exports in 1996).¹²¹⁰ Vietnam's penetration of the Japanese market, a non-quota restrained market that is characterised by highly discerning consumer base, is a testament to the high quality of Vietnamese goods.

Furthermore, Vietnamese exports to Japan are expected to benefit from the *Vietnam-Japan Economic Partnership Agreement (VJEPA)* that aims to eliminate tariffs on 92% of goods traded between the two nations over a ten year period.¹²¹¹ More specifically, Vietnamese garments (along with agricultural and marine products) would be entitled to tax reduction or exemption.¹²¹² The VJEPA also establishes a bilateral dialogue mechanism for the T&C sector.¹²¹³

As the case study further demonstrates, Vietnam has registered an impressive growth over the ATC era in the US market (1995-2004) and this impressive performance has continued (refer to Tables 4.1A and 4.1B). From the initial reliance on the EU as the preferred-quota restrained market, the balance of exports shifted to the US e.g. the US share in Vietnam's total T&C exports in 2007 was 52.21%, whilst EU's share was 20.42%.¹²¹⁴ Only a decade earlier EU took 43.3% of Vietnamese T&C exports.¹²¹⁵

Since Vietnam was not a member of the WTO before 2007, quota expiration did not have a typical effect on the country's exports because it was reliant evenly on MFA-restricted and non-MFA markets. Further relief was provided from both the EU and later on from the US (prior to its accession to the WTO in 2007) that had a positive impact on the T&C exports. Vietnam's shift of export

¹²⁰⁹ Hill, above n 1195, 289.

¹²¹⁰ Ibid.

¹²¹¹ Bilaterals.org, 'Vietnam Ratifies FTA with Japan'

<<http://www.bilaterals.org/spip.php?article14912>> at 21 April 2009.

¹²¹² Ibid.

¹²¹³ Ibid.

¹²¹⁴ Hill, above n 1195, 289-290 (Ibid); Nadvi & Thoburn, above n 1191, 254 (Ibid).

¹²¹⁵ Hill, Ibid; Nadvi & Thoburn, Ibid.

reliance to the US market came in the years 2001-2002. Table 4.2 highlights the explosive growth of Vietnam's T&C exports to the US market after the *US – Vietnam Bilateral Trade Agreement* (USBTA) was concluded in 2001. Also note the consequent shift in Vietnam's exports to the EU market from 2000 onwards till 2003. The exports of T&C to the EU market from Vietnam in 2001 and 2002 were US \$ 754.7 Million and US \$ 728.2 Million respectively (see Table 4.3).

The USBTA effectively levelled the playing field between Vietnam and recipients of preferential treatment under AGOA, NAFTA and CBI/CBTPA regimes. The positive effects of the USBTA on Vietnam's performance in the US market are also illustrated by the extent of tariff relief extended to Vietnamese T&C products. Prior to the USBTA, the average tariffs for clothing exports were as high as 60%.¹²¹⁶ The USBTA reduced these to 5%.¹²¹⁷ As a result, Vietnam that was ranked at 64 amongst the countries exporting T&C to the US in 2001 rose to the Top-five exporter by 2007.¹²¹⁸

Responding to this significant surge in exports to the US, quotas were imposed on Vietnam from 1 May 2003 on all major export categories. These measures failed to deter further exports e.g. Vietnamese exports to the US in 2004 were US \$ 2720 million and in the first year since quota expiration the growth in exports to the US market continued unabated with exports of US \$ 2881 million in 2005 (refer to Table 4.2).

By the first quarter of 2008, Vietnam became the second largest supplier of T&C to the US after China.¹²¹⁹ Only a year earlier Vietnam was ranked fifth largest supplier and this growth came despite a Vietnam-specific monitoring programme that was established at the insistence of the US industry to

¹²¹⁶ Nadvi & Thoburn, above n 1191, 255; CRS, above n 1194, 6.

¹²¹⁷ Nadvi & Thoburn, Ibid; CRS, Ibid.

¹²¹⁸ Nadvi & Thoburn, Ibid; CRS, Ibid.

¹²¹⁹ Just-Style, 'Vietnam Soars to US Second Largest Apparel Supplier' (11 September 2008).

constantly review import figures and self-initiate anti-dumping proceedings if there is any evidence of injurious dumping.¹²²⁰

Vietnam achieved a respectable 35.56% growth from July 2007 to July 2008 (see Table 4.1A) in the US market. At this stage, Vietnam occupied 5.21% share of the US T&C market (see Figure 4.5A). Table 4.1A further demonstrates that Vietnam was by far the fastest growing exporter to the US despite existence of quotas and a country-specific monitoring programme. Vietnamese exports overcame preferential and proximate suppliers such as Mexico and Canada, displaced established exporters such as Pakistan, Thailand and Indonesia, whilst competing effectively against China and India.

After expiration of the reimposed restraints on China in December 2008, Vietnam's growth in the US market stagnated at 0.31% (considering figures from April 2009 to April 2010) (see Table 4.1B). However, this performance came during the economic slowdown in the US market. Also, the unimpressive growth figure assumes more importance when compared with other leading suppliers of T&C to the US market, all of whom recorded negative growth with the exception of China. By April 2010, Vietnam's share of the US market stood at 6.69% (second only to China with 39.78%) (Refer to Figure 4.5B).

Considering Vietnam's post-ATC performance, the question is how did Vietnam compete so well? One answer may be in examining the prices of Cotton T-shirts in the US export market. This category is not only heavily competitive but was also quota restrained in the past. It is also a good indicator of price based competition especially in the post-ATC period.

Figure 4.21 considers percentage change in prices of this item for ASEAN producers in the US export market for 2007 and the first half of 2008 (during

¹²²⁰ This programme was announced by the US Secretary of Commerce, Carlos Gutierrez in September 2006 which entails review of import data from Vietnam to determine whether there is sufficient evidence to warrant self-initiation of antidumping proceedings against Vietnam (see <http://ia.ita.doc.gov/download/vietnam-textile-monitoring/vtm-index.html> at 21 November 2008); See also Just-Style, Ibid.

subsistence of restraints on China). Vietnamese T-shirt exporters reduced their prices by -9.21% in 2007 and in first six months of 2008 their prices declined by a further -7.65% (to be amongst the lowest in the ASEAN region with the exception of Indonesia).

By contrast, unit price change in the same category for Chinese exports (with which Vietnam vies for share in the US market) was 10.80% in 2007 and 12.16% in first half of 2008, reflecting a combination of increased cost of production, rising currency and labour costs.¹²²¹ Similarly, Mexico (a proximate preferential treatment recipient under NAFTA) experienced an increase in unit price by 2.78% in the first half of 2008¹²²² whilst its exports to the US declined by 11.04% from July 2007 to July 2008 (refer to Table 4.1A).

Statistics also show that Vietnam was, by far, the biggest beneficiary of trade restraints imposed by the US on China (discussed above). Annex-3 considers some of the major categories where the US grants preferential treatment to Vietnam and where China was placed under restraints.¹²²³

In majority of the OTEXA Categories growth was recorded until 2008 (see Annex-3). If this performance is compared with other ASEAN producers, the statistics do not demonstrate any extensive capitalisation of safeguards on China (compare Indonesia, Philippines and Thailand with Vietnam). Whilst the growth in China's exports in these categories has always outpaced other exporters, any increase in exports is an indication of capitalisation of safeguards on China by another exporter.

¹²²¹ EmergingTextiles.com, 'US Cotton T-shirt Imports in First Half of 2008' (3 October 2008) <<http://www.emergingtextiles.com/?q=art&s=081003-clothing-us-cotton-T-shirt-import&r=us-clothing-import&n=21>> at 29 January 2009.

¹²²² Ibid.

¹²²³ Refer to USBTA (with Visa Arrangement and Amendments). This Agreement first limited export of Vietnamese clothing to the US in May 2003 (see Article 4). The categories under quotas are listed under Annex B to the USBTA (see text of the USBTA at <<http://www.tcc.mac.doc.gov/cgi-bin/doit.cgi?226:64:620517626:1:353>> at 21 November 2008).

Additionally, increase is also noticeable in the non-restrained Categories 641 and 642 (see Annex-3). The only declines noticeable in Annex-3 are in categories 352 and 640 due to competition from Thailand and China. However, in 2009 Vietnam managed to increase Category 352 exports to the US at the expense of Thailand (compare Category 352 data for Thailand and Vietnam in Annex-3). Therefore, as far as the statistics go, Vietnam certainly took advantage of the restraints on China and managed to increase its exports to the US market as compared to other regional exporters.

Furthermore, under the Vietnam Monitoring Programme, the US Department of Commerce after conducting annual review of Vietnamese imports into the US concluded that there was insufficient evidence to self-initiate an antidumping investigation.¹²²⁴ This conclusion came after comparison of trends in unit values and import levels with other suppliers of these products to the US such as Bangladesh, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, India, Indonesia, Pakistan, Thailand, Cambodia, Macau, Malaysia and the Philippines.¹²²⁵

After shifting of export concentration to the US market, EU represents the second largest target market for Vietnam where its clothing exports had a market share of 1.9% in 2007 (see Figure 4.10). By first quarter of 2010, Vietnam managed to increase this market share 2.07%. Although Vietnam lodged a healthy growth rate of 76.8% over the years 2004 to 2007, the value of exports is less than half of the exports to the US in value terms (compare Vietnam's export performance in Tables 4.2 and 4.3).

In the first half of 2008, EU clothing imports (HS Chapter 61 & 62) from Vietnam were US \$ 517 Million, increasing from US \$ 484 Million in 2007 (a

¹²²⁴ US Department of Commerce Press Releases dated 26 October 2007 and 6 May 2008
<<http://ia.ita.doc.gov/download/vietnam-textile-monitoring/vtm-index.html>> at 21 November 2009).

¹²²⁵ Ibid.

value change of 6.82% over the first half of 2007).¹²²⁶ Similar to the US market, Vietnamese clothing exports to the EU were priced much lower than other ASEAN exporters. This low price level has been consistently maintained since 2004 as compared to the rest of the ASEAN producers. However, unlike the US market where foreign buyers extensively sourced from Vietnam, EU retailers and buyers have yet to express the same level of satisfaction with Vietnamese manufacturers, therefore, the export value of Vietnamese merchandise remains low.

It must also be kept in mind that Vietnam not only has to compete in the EU market against other Asian exporters but also has to deal with proximate exporters such as Turkey, Romania, Bulgaria, Tunisia and Morocco. One possible explanation of the low volume of exports from Vietnam may be its concentration on low value added merchandise, unlike Turkey and Tunisia that are manufacturers of high-end products.¹²²⁷

Vietnam's main advantage is low labour costs. In 1994, Vietnam's labour costs were estimated at US \$ 0.40/hour.¹²²⁸ By 2008, Vietnamese labour costs were US \$ 0.38/hour (refer to Figure 4.15) while labour costs in China increased from US \$ 0.5/hour to US \$ 1.08/hour in some coastal regions.¹²²⁹ It was these

¹²²⁶ EmergingTextiles.com, 'Vietnam Clothing Exports Further Surging but..' Country Report (25 September 2008) <<http://www.emergingtextiles.com/?q=art&s=080925-clothing-vietnam-country-report&r=vietnam&n=1>> at 27 January 2009; EmergingTextiles.com 'EU Clothing Imports in First Half 2005-2008 – Origins', Statistical Report (23 September 2008) <<http://www.emergingtextiles.com/?q=art&s=080923-clothing-eu-import&r=eu-clothing-import&n=16>> at 29 January 2009.

¹²²⁷ EmergingTextiles.com, 'EU Clothing Imports per Category and Origin: Unit Prices in 1st Quarter 2008', Statistical Report (1 July 2008) <<http://www.emergingtextiles.com/?q=art&s=080701-clothing-eu-import&r=eu-clothing-import&n=26>> at 29 January 2009; see also Textiles Intelligence, 'Bulgaria: Europe's Fastest Growing Textile and Clothing Producer Gears up for Further Expansion', Press Release (June 2007); see also Nebahat Tokatli, 'Asymmetrical Power Relations and Upgrading Among Suppliers of Global Clothing Brands: Hugo Boss in Turkey', (2007) 7 *Journal of Economic Geography* 67 outlining Turkey's evolution from a venue for cut-make-trim operations to high value added merchandise for the EU market.

¹²²⁸ Estimates by Werner International Inc. cited by Hill, above n 1195, 296.

¹²²⁹ EmergingTextiles.com, 'Apparel Manufacturing Labor Costs in 2008', Statistical Report (23 May 2008) <<http://www.emergingtextiles.com/?q=art&s=080523-clothing-labour-cost&r=free&n=1>> at 29 January 2009.

labour costs that attracted Asian NICs to invest in the proximate market of Vietnam at a time when costs in other ASEAN manufacturers were rising.¹²³⁰

A major disadvantage faced by Vietnamese industry, in the past, was a lack of direct links with the foreign buyer.¹²³¹ This made the industry reliant on intermediaries for production orders. Whilst this mode of manufacturing may give retailers an advantage in terms of lowering cost of production, it leaves manufacturers vulnerable to price pressure from intermediaries and foreign retailers.¹²³² The manufacturers, in order to maintain competitive pricing, are forced to cut wages which has a severe human impact in terms of social costs.¹²³³ One indication of the vulnerability of the Vietnamese producers in the triangular manufacturing system is that many manufactures are unaware of their destination market.¹²³⁴ To remedy this situation in the public sector industries, *Vinatex* (a conglomerate representing SOEs) has played a key role in establishing direct links between manufacturers and foreign buyers.¹²³⁵

Another effort towards raising the quality and increasing the value-added content of Vietnamese clothing is the move from basic cut-make-trim (CMT) operations to free-onboard (FOB) model, whereby the manufacturer is also responsible for sourcing fabric and recovers the cost in form of the final delivery price to the foreign buyer.¹²³⁶ This model favours the local textiles industries as well and perhaps that is why Nadvi and Thoburn report that three-quarters of SOEs are engaged in both CMT and FOB production.¹²³⁷

With the end of safeguards on China and of the Vietnam Monitoring Programme in the US, Vietnamese producers have recorded strong growths

¹²³⁰ Hill, above n 1195, 296.

¹²³¹ According to a survey of Vietnamese industry in 2004, half of the firms reported no knowledge of their final destination market (Nadvi & Thoburn, above n 1193, 116).

¹²³² Ibid.

¹²³³ Ibid.

¹²³⁴ Ibid.

¹²³⁵ Ibid, 117.

¹²³⁶ Ibid.

¹²³⁷ Ibid.

despite the recession in the US market.¹²³⁸ Along with Vietnam and China, Bangladesh also posted a healthy growth in some of the major clothing categories in the US market e.g. according to EmerginTextiles.com, Bangladesh and Vietnam managed to increase their exports to the US in Category 347/348 (Cotton Trousers for Men/Boys and Women/Girls) by 34% and 19% in volume terms in January 2009, whilst exports from preferential CAFTA suppliers declined by 52%. Similarly, in MMF categories (647/648), Chinese and Vietnamese exports increased by 31% and 16.4% in volume terms in the same period.¹²³⁹ Growth was also recorded in categories 638/639 (MMF knit shirts) with China recording 53% and Vietnam 27% growth in volume terms.¹²⁴⁰

With no trade restrictions being imposed in 2009-2010 and with markets slowly recovering after global recession, Vietnam is set to resume its position as a major supplier of T&C to the developed markets. Witnessing the stellar growth of Vietnam and through maintenance of high tariffs on textiles imports, foreign investors (especially those based in Asian NICs) may bring further investment into the T&C sector of Vietnam. This will further boost performance of the Vietnamese T&C industries.

4.7 OTHER ASIAN MANUFACTURERS

Post-ATC performance by other Asian T&C manufacturers is also illustrative of the issues raised in Chapter 3. In particular, the performance of Asian LDCs deserves some attention. These countries are mostly reliant on garment production and depend extensively on OPP trade. This dependency meant that labour costs, proximity, preferential treatment, production capabilities and product diversification became critical factors after quota expiration.

¹²³⁸ EmerginTextiles.com, 'US Apparel Imports in Major Categories: January 2009' (Statistical Report) (10 February 2009), available online: <http://www.emergintextiles.com/?q=art&s=090210-clothing-us-import&r=us-clothing-import&n=26> (29 January 2009).

¹²³⁹ Ibid.

¹²⁴⁰ Ibid.

Prior to quota expiration, most LDCs were predicted to be casualties in the post-ATC period, especially if these countries did not receive preferential treatment. The pre-expiration predictions certainly came true in the case of Maldives and Nepal. These countries became the first casualties of the quota expiration process. These countries possessed no indigenous production of cotton, no vertical integration in their respective industries and had high dependence on imports.¹²⁴¹ The product concentration was on clothing exports.¹²⁴² The existence of clothing manufacture in these two countries was directly due to the quotas under MFA.¹²⁴³

The quota system had allowed the Nepalese clothing industries to be insulated against foreign competition and as a result producers did not diversify their product base.¹²⁴⁴ Even after imposition of safeguards on China, Nepalese industry did not show any signs of recovery.¹²⁴⁵ The only viable export item is the traditional Nepalese traditional handicraft goods, which carry niche importance in the western markets, but this category was never under quotas and therefore, unaffected by quota expiration.¹²⁴⁶

In hindsight, Nepal and Maldives represent a classic illustration of “quota hopping” in a “footloose” sector. Clothing manufacturing came as a result of investment by entrepreneurs that constantly scoured the world for regions with unutilised quotas from where they could carry out OPP for exports.¹²⁴⁷ This issue was discussed in Chapter 3 and these two countries provide a good example of how OPP activities in certain countries have been adversely hit by expiration of quotas.

¹²⁴¹ Adhikari & Weeratunge, above n 692, 122 (Ibid).

¹²⁴² Ibid.

¹²⁴³ Ibid.

¹²⁴⁴ Appelbaum, above n 2, 44; Appelbaum, above n 495, 49; Haté et al , above n 426, 22-23.

¹²⁴⁵ Adhikari & Yamamoto, above n 6, 192.

¹²⁴⁶ Adhikari & Weeratunge, above n 692, 118.

¹²⁴⁷ Haté et al , above n 426, 22; Appelbaum, above n 2, 44; Adhikari & Weeratunge, above n 692, 117; Ratnakar Adhikari & Chatrini Weeratunge, ‘Textiles and Clothing Sector in South Asia; Current Status and Future Potential’ Briefing Paper No. 4 (2007) (South Asia Watch on Trade, Economics & Environment), 1-2.

Maldives and Nepal are not isolated examples of this trend. The expiration of quotas questions the continued viability of OPP operations in other parts of the world such as Africa (under AGOA) and Caribbean (CBI/CBTPA).¹²⁴⁸ With quota expiration, distance and time become critical barriers against continued OPP operations unless, in Audet's words, "the margin of preferential duty exceeds the difference between the OPP-related cost and the logistical cost incurred for competitive suppliers."¹²⁴⁹ Therefore, OPP is only a feasible option where the OPP-recipient country is located in proximity to the OPP-initiator country.¹²⁵⁰ This is especially true in the light of the growing trends of lean retailing, where quick turnaround and short lead times demand that production is sited closer to the primary market.¹²⁵¹

Proximity coupled with preferential access and low labour costs allowed the Caribbean producers to survive the post-ATC scenario in face of stiff competition from Asian competitors.¹²⁵² Conversely, it was the lack of proximity and not low labour costs and preferential access that spelled doom for the Maldives and Nepalese clothing industries and some African beneficiaries under AGOA. This is demonstrated by the poor performance of AGOA recipient countries in the post-ATC period (see Annex-2). Another illustration of this proposition is the closing down of apparel manufacturing sites in Botswana and Lesotho that were established to take advantage of trade opportunities presented under the US AGOA regime.¹²⁵³ This can be further illustrated by a comparison in the US market of preferential and non-preferential LDC exporters in the post-ATC period.

Annex-2 takes into account major CBI/CBTPA producers, AGOA/Sub-Saharan Africa producers that are beneficiaries under the 'special clothing

¹²⁴⁸ Heron, above n 365, 13.

¹²⁴⁹ Audet, above n 545, 275.

¹²⁵⁰ Audet, *Ibid*; Heron, above n 535, 277.

¹²⁵¹ Heron, *Ibid*.

¹²⁵² Although their performance is not as impressive as South Asian LDCs (see Annex-2); Heron, *Ibid*.

¹²⁵³ Audet, above n 545, 275; ICTSD Bridges, 'Post-Quota Textile Trade Starts to Take Shape' Vol.9, No. 2 (26 January 2005).

rule'¹²⁵⁴ and the Asian LDCs. Review of the figures reveals that Bangladesh, Cambodia, Sri Lanka and Vietnam have out-competed LDC producers that enjoy proximity to the US market and beneficiaries under preferential treatment regimes such as AGOA, CBI/CBTPA with the exception of Honduras (which nevertheless only bests Sri Lanka and Cambodia but not Bangladesh and Vietnam).

Furthermore, drastic decline of Maldives and reduction of exports from Nepal are highlighted vis-à-vis other LDCs in the context of diminishing future of OPP in the post-ATC period for countries that do not enjoy proximity to the US. Also note Namibia's dramatic decline in the US market, which illustrates the negative consequences of a quota induced investment into clothing sector of a country that possesses no competitive advantage in manufacturing T&C.

When performance of Dominican Republic, Honduras and El Salvador's are compared to African producers under AGOA, proximity factor emerges as a decisive factor where there are competing producers that are all recipients under various preferential regimes.

Annex-2 also confirms the counter-productive effects of stringent ROO incorporated within the preferential regimes operated by the US that African or Caribbean based clothing exporters have to comply with. These ROO

¹²⁵⁴ The 'Special Apparel Rule' under the AGOA regime enables lesser-developed beneficiary sub-Saharan African countries to use non-US fabric and yarn in clothing wholly assembled in their countries and while qualifying for duty- and quota-free treatment until September 30, 2012. Exports under the Special Rule are subject to a cap (AGOA limits imports of clothing made with regional or third country fabric to a fixed percentage of the aggregate square meter equivalents (SME) of all clothing articles imported into the United States. For the year beginning October 1, 2006, the aggregate quantity of imports eligible for preferential treatment under these provisions is an amount not to exceed 6.44% of all clothing articles imported into the US. Out of this, clothing imported under the Special Rule for lesser-developed countries is limited to an amount not to exceed 3.5% of clothing imported into the US in the preceding 12-month period. Apparel articles entered in excess of these quantities are subjected to otherwise applicable tariffs. The duty-free cap is not allocated amongst eligible countries and is filled on a "first-come, first-served" basis). For the purposes of this preferential treatment regime, Lesser-developed countries are those with a per capita gross national product of less than \$1500 a year in 1998 as measured by the World Bank (Source: <http://www.agoa.gov/eligibility/clothing_eligibility.html> at 29 September 2008)

actually end up favouring Asian LDCs that are not similarly constrained by ROO. Figures in Annex-2 vindicate this view.

Sri Lanka and Bangladesh emerged as survivors of the post-expiration process. These countries were originally predicted as victims of trade liberalisation but managed strong performance in the EU/US markets. These countries adopted different post-ATC strategies that enabled them to weather the increased competition following quota expiration.

Bangladesh adapted the mass-produced, low-value added strategy that utilises abundant labour resources (see Figure 4.15). Various 2007-08 statistics demonstrate that Bangladesh experienced growth in its T&C exports (see Tables 4.1A, 4.3, 4.4 and Figures 4.5A, 4.5B, 4.6, 4.10, 4.11 & 4.12). According to the Bangladeshi industry sources, in the first two years of quota expiration, the overall T&C exports doubled from US \$ 6.2 Billion in 2004 to US \$ 12 Billion in 2007.¹²⁵⁵

Bangladesh also benefitted from GSP treatment status from the EU. In 2007-2008, it ranked amongst the Top-5 exporters of clothing to the EU. In 2007, Bangladesh held a market share of 7.6% in 2007 with a growth rate of 17.8% for years 2004-2007 (See Figures 4.10 & 4.11). This market share further increased to 8.48% according to Q1, 2010 figures (see Figure 4.12). However, as discussed in Chapter 3, preferential treatment recipients could achieve greater market penetration leading to higher growth rates in the same period if certain rules requiring local content and transformation are liberalised. Liberalisation eventually came in the EU ROO which allows Bangladeshi exports to enter the EU market on a duty free basis.¹²⁵⁶ EU ROO imposes two steps of production that are easily satisfied by the knit apparel producers as compared to the

¹²⁵⁵ Tewari quotes interviews conducted in Dhaka, Bangladesh in 2007 (Tewari, above n 1131, 7).

¹²⁵⁶ EmergingTextiles.com, 'EU's Cotton T-Shirt Imports from Bangladesh in First Half 2006-2009' (Statistical Report) (24 November 2009) <<http://www.emergingtextiles.com/?q=art&s=091124-eu-T-shirt-import-bangladesh&r=bangladesh&n=1>> at 21 July 2010.

woven apparel industry.¹²⁵⁷ Current EU ROO has also encouraged foreign investment in the yarn industry.¹²⁵⁸

The export performance of Bangladesh is undermined by shortcomings in infrastructure, bureaucratic hurdles and long lead times.¹²⁵⁹ Another disadvantage is that Bangladesh is highly dependent on cotton imports to keep the clothing production lines running. Bangladesh is further hampered by limited product diversity. Most production concentrates on low-end clothing products like knit T-shirts, men's and boys' cotton knit and non-knit shirts, men's and boy's trousers, wool pullovers and MMF fibre products.¹²⁶⁰

More recently, Bangladeshi garment workers have been striking for increased minimum wages.¹²⁶¹ Unless this dispute is resolved to the satisfaction of all stakeholders, foreign sourcing from Bangladesh may shift to other suppliers in the region such as Cambodia or Vietnam. Also note that any increase in labour costs may affect Bangladesh's competitiveness in the global sourcing markets.

Unlike Bangladesh, Sri Lanka has established itself as an "ethical producer" of clothing with some of the highest paid wages in the region (see Figure 4.15).¹²⁶² Sri Lanka pursued the strategy of concentrating on niche markets that led to diversification in Sri Lankan clothing exports from the standard low-value added clothing to specialised products such as women's intimate apparel and body armour for military clients.¹²⁶³ Compliance with the ILO and environmental standards has further benefited the Sri Lankan manufacturers.

¹²⁵⁷ EmergingTextiles.com, 'The Yarn and Knitwear Alliance in Bangladesh' (Country Report) (25 November 2009) < http://www.emergingtextiles.com/?q=art&s=091125-bangladesh-country-report&r=chk&user=u_ghori&pw=uziel10&emt看.x=0&emt看.y=0 > at 29 July 2010.

¹²⁵⁸ Ibid.

¹²⁵⁹ Rubayat Jesmin, 'Maximising the potentials of Bangladesh's export to the EU market' (2008) 6 *Asia Europe Journal* 519, 527.

¹²⁶⁰ Jesmin, Ibid, 526; Haté et al, above n 426, 25; Adhikari & Weeratunge, above n 692, 128-132; Tewari, above n 1131, 38-41; Appelbaum, above n 2, 43.

¹²⁶¹ See for example Just-Style, 'Bangladesh: Talks held over garment wage increase' (29 April 2010).

¹²⁶² Tewari, above n 1131, 7-8; Adhikari & Weeratunge, above n 1247, 1

¹²⁶³ Lanka Page, 'Bullet-Proof Jackets New Weapon in Sri Lankan Export Armoury' (2 September 2006) < <http://lankapage.wordpress.com/2006/09/02/bullet-proof-jackets-new-weapon-in-sri-lanka-export-armoury/> > at 29 September 2008.

Sri Lanka's emphasis on high value added items meant its products did not experience the decline in prices predicted in the post-ATC period when competition intensified competition between exporters forced countries to lower their prices.¹²⁶⁴

Sri Lanka received preferential treatment from the EU from under the EU GSP/EBA regimes. The eligibility of GSP+ program is typically based upon issues such as progress towards implementation of higher labour and environmental standards. These standards motivated Sri Lankan exporters to develop a certification program aimed at proving ethical practices.¹²⁶⁵ These exporters realise that it is the GSP+ preferences that has enabled the Sri Lankan industry to weather the increased competition in the post-ATC period.¹²⁶⁶ To this end, clothing exporters developed ethical trading through a label called "Garments without Guilt" and a certification system managed by Swiss group SGS.¹²⁶⁷ Sri Lankan eligibility was eventually withdrawn by the EU due to allegations of human rights violations (see Chapter 3). As of Q1 2010, Sri Lanka enjoyed a 2.01% market share in the EU's clothing market, increasing its share from 1.80% in 2007 (see Figures 4.10 and 4.12). By comparison, Sri Lanka held 1.42% share in the US T&C market as of April 2010 (see Figure 4.5B).

The impact of the discontinued GSP eligibility is expected to adversely affect Sri Lankan market share given the fact that it does not enjoy low-labour costs as compared to other Asian manufacturers. Additionally, withdrawal of GSP benefits means that clothing producers would be less inclined to uphold higher labour standards if there is no longer a direct benefit in the form of preferential market access. These changes are unlikely to affect Sri Lankan

¹²⁶⁴ South Asian Yearbook 2006

<http://www.undprcc.lk/publications/trade/Centad_Yearbook_T_and_C_Chapter_RA_CW.pdf> 121 at 30 January 2009.

¹²⁶⁵ Adhikari & Weeratunge, above n 1247, 6; See generally Dilshani Samaraweera, 'Made in Sri Lanka, Ethical Garments', *Financial Times* < <http://sundaytimes.lk/060827/ft/3.0.html>> at 27 September 2008.

¹²⁶⁶ Adhikari & Weeratunge, Ibid; Samaraweera, Ibid.

¹²⁶⁷ EmergingTextiles.com, 'Waiting for renewal of 3-Year EU's GSP-Plus Provision; Sri Lanka's Exports Falling to U.S., Surging to E.U.' Country Report (27 May 2008); Adhikari & Weeratunge, Ibid; see also, *Garments Without Guilt* < <http://jaaf.eureka.lk/>> at 27 September 2008.

share in the US market. This is due to the fact that Sri Lanka exported to the US market without any preferential treatment.

Apart from the question of pricing, there are other factors limiting Sri Lanka's productivity and progress in this sector. One factor is that Sri Lanka lacks vertically integrated production due to a shortage of textiles production facilities and heavy concentration on specialised clothing production. This means that Sri Lankan exporters import most of their inputs which often results in longer lead times in fashion and time-sensitive clothing categories (see discussion in Chapter 3).¹²⁶⁸

Performance figures in the US market of Sri Lanka and Bangladesh also demonstrate that the US clothing retailers are looking towards Asian producers more than they are looking to African and Caribbean exporters to fill their orders in the post-ATC period.¹²⁶⁹ Not being bound by stringent ROO to source their inputs from US sources enables Bangladesh and Sri Lanka to source their import needs from competitive Asian textiles suppliers.

Cambodia is another LDC that was predicted to be a potential casualty of the quota expiration process.¹²⁷⁰ Cambodia is another example of "quota hopping" in the T&C sector. Investment came from entrepreneurs in China, Taiwan, Hong Kong and Korea that were on the lookout for manufacturing sites with abundant low cost labour and unused quotas in the EU/US markets.¹²⁷¹

¹²⁶⁸ ILO, above n 4, 50.

¹²⁶⁹ Bangladesh and Vietnam were considered the most popular sourcing destinations according to 37.6% and 31.1% respectively by respondents to a sourcing survey conducted by Just-Style (see Just-Style, 'Proximity Rates Highly in Sourcing Choice' (5 July 2010)).

¹²⁷⁰ According to ATMI estimates conducted prior to quota expiration, Cambodia was projected to lose US \$ 676 Million worth of clothing exports to China (ATMI, above n 426, 12); see also 2006 estimates by NCTO which projected losses of Cambodian textiles & clothing exports worth US \$ 1,313 Million due to combined effects of quota elimination and expiration of safeguards on China; For comments on Cambodia's unexpected performance immediately after quota expiration see Munir Ahmad, 'Textile and Clothing; One Year of Evidence' (Asia-Pacific Trade and Investment Initiative, UNDP, WTO Ministerial Conference in Hong Kong, 16 December 2005).

¹²⁷¹ Hall, above n 376, 23-24; USAID, 'Measuring Competitiveness and Labour Productivity in Cambodia's Garment Industry' (June 2005) 3
<<http://www.nathaninc.com/nathan2/files/ccLibraryFiles/File/000000000029/Cambodia%20Garment%20Sector%20Main%20Report%20Nathan.pdf>> at 25 September 2008.

Investment flowed throughout the 1990's (during the MFA and the ATC regimes) and this resulted in a mass migration of workers from rural areas into urban areas similar to the industrial revolution in the UK as highlighted in Chapter 1.¹²⁷² Sourcing by foreign retailers constitutes a critical lifeline for Cambodia's clothing dependent economy e.g. in 2004-05, 40% of clothing exports from Cambodia were sourced by the US brand 'Gap' for its Banana Republic and Old Navy fashion lines.¹²⁷³ Dependence on sourcing raised concerns that with quota expiration, retailers would source exclusively from China especially considering the fact that labour costs in Cambodia were higher than China by 25% at that point in time.¹²⁷⁴

According to OTEXA statistics, Cambodia held a 2.58% market share of the US export market in July 2008 (see Figure 4.5A). Table 4.3 records the constant growth of Cambodian T&C exports to the US market from 2000 to 2008. In 2009, Cambodian exports to the US experienced a considerable decline (attributable to the contraction in market due to the global financial crisis). As a result of this decline in exports, Cambodia's share of the US market dropped to 2.31% by April 2010 (see Figure 4.5B).

Similarly in the EU market, Cambodia's exports grew by 5.9% from 2004 to 2008, increasing its exports from US \$ 646.5 Million in 2004 to US \$ 814.3 Million in 2008.¹²⁷⁵ In value terms, Cambodia exports more clothing to the US rather than the EU market (compare Tables 4.3 and 4.4). In the EU market, Cambodia faces tough competition from Bangladesh, Vietnam, China, Sri Lanka, Indonesia and Thailand as well as proximate clothing producers such as Turkey.

¹²⁷² Dr. John Hall, 'Human Rights and the Garment Industry in Contemporary Cambodia' (2000) 36 *Stanford Journal of International Law* 119, 128.

¹²⁷³ Appelbaum, above n 495, 54; UNDP, above n 433, 89; Hall, above n 376, 24; USAID, above n 1271, 4.

¹²⁷⁴ Appelbaum, Ibid; UNDP, Ibid.

¹²⁷⁵ ITCB, 'EU (27) Imports of Textiles and Clothing from Top-60 and Some Other Selected Suppliers: 1999 – 2008' <<http://www.itcb.org/Trade.htm>> at 26 July 2010.

Nevertheless, the EU represents a major export destination for Cambodian garment exports notwithstanding the minor market share of 0.7% in the EU according to ITCB statistics for 2008.¹²⁷⁶ The statistics do, however, indicate that Cambodia, contrary to pre-expiration estimates, has managed to survive the post-ATC increase in competition.

The Cambodian post-ATC strategy revolves around marketing itself as an ethically conscious clothing manufacturer. It is to this endeavour that Cambodian clothing industry owes its post-ATC survival e.g. combined clothing exports to the US and EU in 2007 reached US \$ 3.2 Billion and US \$ 3.32 Billion in 2008.¹²⁷⁷ The basic rationale behind the policy to improve labour standards was not only to appeal to the socially-conscious foreign retail corporations but also the increasingly socially-aware consumers in the developed markets. The projection is simple and effective; Cambodia offers low-labour costs, continued sourcing would keep the factories running and many of the world's poorest would keep their jobs.

It is noteworthy that with the expiry of the quotas in 2005, the ability of the US to directly monitor labour standards in Cambodia diminished.¹²⁷⁸ However, as a result of this programme, Cambodian exporters realised that in terms of productivity and efficiency they would not be able to compete with much better organised producers unless the country's appeal as an ethical producer of garments is maintained.¹²⁷⁹

¹²⁷⁶ Ibid.

¹²⁷⁷ Calculated from ITCB and OTEXA Figures.

¹²⁷⁸ See generally Samnang Chea & Hach Sok, 'Cambodia's Accession to the WTO: 'Fast Track' Accession by a Least Developed Country', *Managing the Challenges of WTO Participation: CASE STUDY 8* <http://www.wto.org/English/res_e/booksp_e/casestudies_e/case8_e.htm#fnt17> at 26 September 2008; Elizabeth Becker, 'Cambodia's Garment Makers Hold Off a Vast Chinese Challenge' *The New York Times* (12 May 2005) <<http://www.nytimes.com/2005/05/12/business/worldbusiness/12cambodia.html>> at 17 September 2008; Daniel Ten Kate, 'New World Order; Can Cambodia's Garment Industry Survive?' *the Cambodia Daily* (6 September 2003) <http://www.camnet.com.kh/cambodia.daily/selected_features/new_world_order.htm> at 17 September 2008.

¹²⁷⁹ Chea & Sok, Ibid; Becker, Ibid; Kate, Ibid.

Philippines is another exporter that established a T&C industry as a result of opportunities generated by the quota system. It primarily targeted APEC economies in particular the US market. Possessing no cotton base, high labour costs and dependent on imports, Philippines experienced decline with expiration of quotas. Table 4.3 clearly shows a gradual decline in the US imports from the Philippines from US \$ 2289 Million in 2000 to US \$ 1090 Million in 2009 with a particular decline visible after quota expiration (the only exception being 2006 when the exports reached US \$ 2085 Million) and then falling to US \$ 1794 Million in 2007 (See Table 4.3). By July 2008, the market share of the Philippines T&C exports to the US stood at 1.77% (See Figure 4.5A) which fell to 1.21% by May 2010.¹²⁸⁰

The sudden peak in exports to the US in 2006 may well be due to the safeguards imposed upon China by the US. These restraints allowed an opportunity for the exporters to move in and capture additional market share of the US market in segments where China was restrained. Another reason for the sudden growth spike may be the increased specialisation of manufacturers in product categories 338 and 339 in which US imports from the Philippines rose 32% and 75%, respectively after recording increases in 2005.¹²⁸¹ However, this increase was not maintained in 2007. Table 4.14 tracks the value of US imports in these categories and shows a clear decline in export of categories where growth was registered in 2006 e.g. in category 338, imports fell from US \$ 160.87 Million in 2006 to US \$ 53.843 Million in 2009. Similarly in category 339, imports declined from US \$ 347.332 Million in 2006 to 136.468 Million (see Table 4.14). Decline in other categories (347, 336, 340 and 341) that constituted main items of exports by Philippines to the US is also noticeable from Table 4.14. This decline came in years 2006-2007 when China was under TS restrictions as part of the US – China MOU (see case study on China for discussion).

¹²⁸⁰ According to OTEXA import data <<http://otexa.ita.doc.gov/MsrcTRY.htm>> at 6 August 2010.

¹²⁸¹ EmergingTextiles.com, 'US Apparel Imports from the Philippines in 2006', Country Report (9 April 2007) <<http://www.emergingtextiles.com/?q=art&s=070409-clothing-philippines&r=philippines&n=1>> at 30 January 2009.

Philippines is a good example of a country that owed establishment and survival of T&C industries due to the incubation provided by the quota system. As soon as the incubation ceased, decline in export levels are immediately noticeable. Additionally, this case study also underscores that countries cannot compete on the sole basis of preferential access in the quota-free environment.

Amongst the developing countries in Asia, Malaysia displays advanced characteristics of a country that has moved on from T&C manufacturing to investing in other countries along the lines of developed countries and Asian NICs. Figure 4.23 shows that Malaysia is least reliant on T&C exports as compared to other ASEAN nations under consideration. This can be explained by the fact that Malaysia is a relatively advanced economy in the region that concentrates on a wide range of sectors.

Malaysia's T&C industry's formation and prosperity are a good example of geographical dispersion as a result of quotas imposed on another country, which often induces industrial relocation to another country (facing little or no restrictions). In the case of Malaysia, it was the imposition of quotas on Hong Kong's clothing industries that acted as a catalyst in establishing T&C industries in the country.¹²⁸² This cycle continued further when Malaysia attracted quotas and the spill over reached other countries in Asia.¹²⁸³

During quotas, Malaysia quickly expanded output to unrestricted categories (if quotas were imposed on these categories then the level of exports formed the base level for the new quotas).¹²⁸⁴ Similar to other developing countries, quotas encouraged product diversification and a move to higher value added items

¹²⁸² Sara Douglas, 'The Textile Industry in Malaysia: Coping with Protectionism' (1989) 29 (4) *Asian Survey* 416, 433; David Birnbaum, 'How Hong Kong Beat the Textiles Quotas' *The Wall Street Journal* (5 January 1987) 13.

¹²⁸³ Douglas, Ibid.

¹²⁸⁴ Ibid.

for export.¹²⁸⁵ It was thought that with gradual relaxation of MFA quotas throughout the ATC regime, Malaysia would benefit along with other developing countries as well, especially with the increased shift in production of textiles from Asian NICs to ASEAN.¹²⁸⁶ However, this view has to be examined in light of actual growth of the Malaysian T&C industry during the phase out of quotas and the performance in the post-ATC period.

Malaysia targets the US market more for its exports over the EU. This observation is also supported by investments by Malaysian entrepreneur's in African beneficiary countries under the AGOA regime in order to capitalise on the preferential treatment for T&C exports from these countries to the US e.g. Malaysia was one of the investor countries in clothing production sites in Lesotho (along with Taiwan, China and Mauritius).¹²⁸⁷

A better known illustration of such investment endeavours is the investment in Namibia by Malaysia's Ramatex Group of US \$ 50 Million in Namibia in 2001.¹²⁸⁸ The central aim of this investment was to develop vertically integrated facilities, encompassing fibre manufacture, knitted clothing, spinning, knitting, dyeing and printing of fabrics.¹²⁸⁹ However, this project failed and Ramatex Group pulled out of Namibia after closing down its operations in 2007-08.¹²⁹⁰ It was criticised for using the country as a temporary

¹²⁸⁵ Ibid; Zakariah Rashid, 'Malaysia's Textile and Clothing Industry' in 'The Effects of Liberalisation in Asia's Textiles, Clothing and Electronics Industries' (Background Papers, Chapter 2, Studies in APEC Liberalisation) 4.

¹²⁸⁶ Rashid, Ibid, 4-5.

¹²⁸⁷ ICTSD Bridges Weekly Trade News Digest, 'Post-Quota Textile Trade Starts to Take Shape' Vol.9 (No.2) 26 January 2005.

¹²⁸⁸ EmergingTextiles.com, 'Ramatex selects Namibia instead of South Africa' (27 June 2001) <<http://www.emergingtextiles.com/?q=art&s=010627-comp&r=namibia&n=1>> at 26 January 2010; see also 'History' of the Ramatex Group on its official website: <<http://www.ramatex.com.my/history.htm>> at 28 September 2008.

¹²⁸⁹ EmergingTextiles.com, 'Ramatex selects Namibia instead of South Africa' (27 June 2001) <<http://www.emergingtextiles.com/?q=art&s=010627-comp&r=namibia&n=1>> at 26 January 2010.

¹²⁹⁰ Herbert Jauch, 'The Ramatex Closure In Namibia: Hard Lessons To Be Learned' (14 March 2008) <<http://www.namibian.com.na/2008/March/columns/08F0362BB6.html>> at 25 September 2010; Foreign Direct Investment, 'AGOA Extension to Boost US-Africa Textile Trade' <http://www.fdimagazine.com/news/fullstory.php/aid/59/AGOA_extension_to_boost_US-Africa_textile_trade.html> at 29 September 2010

production site to take advantage of preferential access under AGOA without any regard for labour welfare.¹²⁹¹

This example yet again highlights the “footloose” nature of the T&C sector where investors come to take advantage of any preferential regimes only to withdraw with increased competition in the post-ATC period. Annex-2 demonstrates the weak export performance of African T&C manufacturers when compared to South Asian and Caribbean LDCs.

The impact of withdrawal by Ramatex Group from Namibia is also noticeable from Annex-2 (Namibia’s exports fell from US \$ 28.6 Million in 2007 to US \$ 800.00 in 2008.). This example is yet another reinforcement of the issue raised in Chapter 3 whereby quota expiration has made preferential treatment regimes (such as CBPTA and AGOA) redundant as freer competition develops. With the end of quotas and gradual reduction of tariffs, many developing countries are opting for the FTA alternative as means of ensuring market access to the developed countries.

Malaysian T&C industries may benefit from the proposed *US-Malaysia FTA* which, according to one report, will shift the post-quota investment balance from China back to Malaysia.¹²⁹² Additionally, Malaysian textile industry may benefit from the proposed EU-ASEAN ‘Minus FTA’ (which excludes Laos, Burma and Cambodia).¹²⁹³ However, these measures may be too little too late as Malaysia has already climbed the ladder to other sectors of manufacturing and has largely lost comparative advantage in producing T&C.

Thailand is another example of an Asian manufacturer that received Japanese investments triggered by the VER restrictions by the US (as part of the LTA

¹²⁹¹ Jauch, Ibid; Foreign Direct Investment, Ibid; NewsTracker, ‘3,000 Jobs Will Be Lost in Malaysian Textile Factory Closedown’ (10 March 2008) <<http://www.theshebeen.org/economy/7771-namibia-3-000-jobs-will-lost-malaysian-textile-factory-closedown.html>> at 29 September 2008.

¹²⁹² Bilaterals.org, ‘Textile FDI shifting from China to Malaysia’ (23 January 2007) <http://www.bilaterals.org/article.php3?id_article=6983> at 29 September 2008.

¹²⁹³ Bilaterals.org, ‘EU-ASEAN minus FTA expected in three years’ time’ (6 August 2008) <http://www.bilaterals.org/article.php3?id_article=12879> at 29 September 2008.

regime – see Chapter 1).¹²⁹⁴ During the MFA quotas, Thailand recorded steady growth rates in T&C exports e.g. in total textiles exports, Thailand's growth rate between 1980 and 1990 was 64.44%, rising from US \$ 330 Million worth of exports in 1980 to US \$ 928 Million in 1990.¹²⁹⁵ Similarly, Thailand increased its share in the world clothing market from 0.7% in 1980 to 3% in 1991 (exporting US \$ 3.7 Billion worth of clothing) with an average annual change of 27%.¹²⁹⁶

These figures lend credence to the view that quotas under the MFA benefitted Thailand by restricting like-exports from other more established competitors in the lucrative developed markets. However, within a few years time, growing exports from Thailand eventually attracted quotas from the US from 1985 and beyond.¹²⁹⁷ This negatively hampered growth of Thai T&C industries, although the country continued to benefit from quota rents under the MFA regime.¹²⁹⁸

Restrictions under the MFA regimes on mass-produced items also forced manufacturers to shift onto higher value added items as well as to diversify into non-MFA/non-quota restrained markets such as countries in the middle-east, Japan and Singapore.¹²⁹⁹ This is yet another illustration of the paradoxical effects that quotas had on the industrial development of the developing countries.

Amongst the Asian manufacturers, Thailand ranks as the most expensive in terms of labour costs (see Figure 4.15). Yet it has effectively competed in the post-ATC environment. Thailand not only targets the EU/US market but has diversified into other markets as well

¹²⁹⁴ See generally Hikoji Katano, 'Japanese Enterprises in ASEAN Countries', Research Institute for Economics and Business Administration (1981), Kobe University, Japan.

¹²⁹⁵ GATT, 'International Trade; Trends and Statistics' (Geneva, 1995) 119.

¹²⁹⁶ GATT, 'International Trade; Trends and Statistics' (Geneva, 1992) 61.

¹²⁹⁷ Suphat Suphachalasai, 'Export Growth of Thai Clothing and Textiles' (1990) 13 (1) *the World Economy* 51, 60-61, 69.

¹²⁹⁸ *Ibid.*

¹²⁹⁹ *Ibid.*, 69-70.

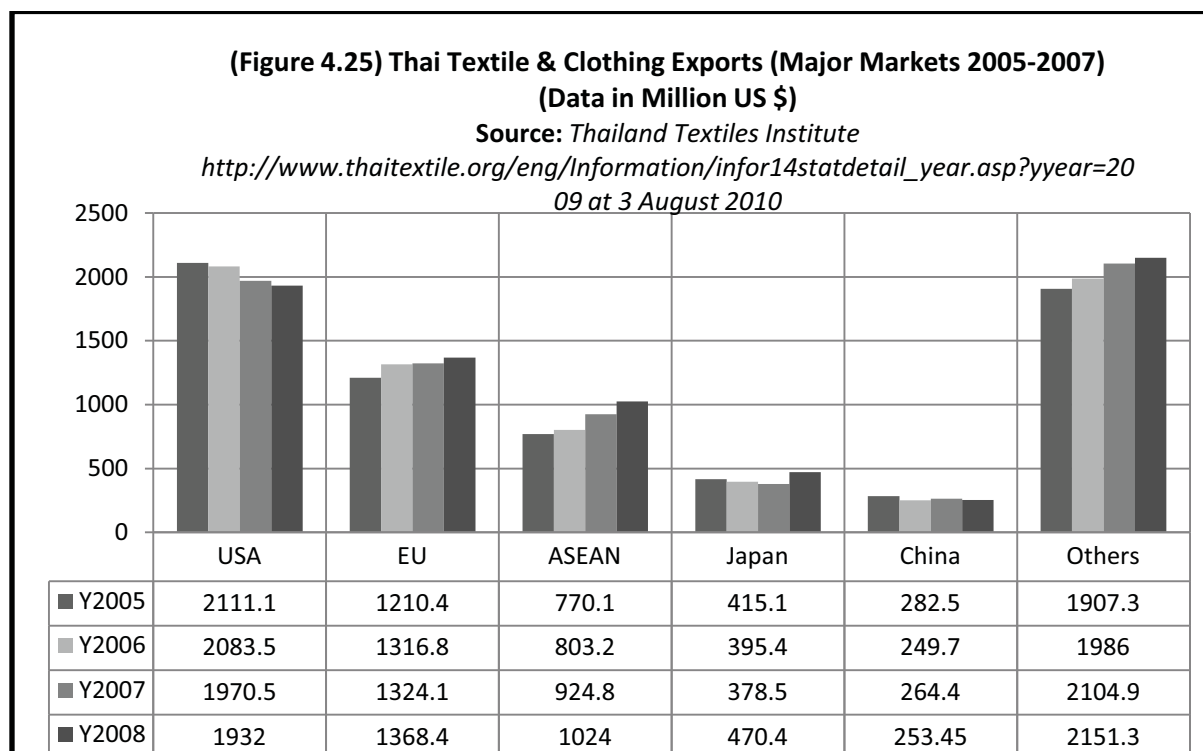


Figure 4.25 highlights Thai exports of US \$ 1907.5 Million worth of T&C to other countries in 2005. This grew further to US \$ 2104.9 Million in 2007. It is also interesting to note that whilst the overall exports to the US have declined in the post-ATC period (2005-2007), exports to other countries registered substantial increase in 2007 so that the overall value of exports to other markets exceed exports to the US and the EU. Figure 4.25 also shows that while Thai exports to the US has continued to fall in the US, new markets have opened up (see T&C exports by Thailand in 2008 to EU, ASEAN, Japan and Other markets).

Another factor in Thailand's success in diversification is due to its focus on regional trade. Thailand is a major supplier of fabrics to other Asian countries (especially to the LDCs that concentrate on clothing production). Since the EU extends preferential treatment to T&C exports from Asia as well (unlike the US), EU's relaxation of its ROO to allow regional cumulation (see Chapter 3)

has enabled Thailand to supply neighbouring clothing producers such as Bangladesh, Cambodia and Laos with competitively priced textiles.¹³⁰⁰

Thailand's gains are attributable to the liberalised intra-ASEAN preferential trade regime.¹³⁰¹ This regime enables ASEAN textiles producers to recoup losses from intensifying competition in the multilateral trade arena and a non-liberalised South Asian regime where the T&C sector are protected behind high tariff barriers (see Figure 4.14).

4.8 CONCLUSION

Since quota expiration and the integration of the T&C sector into the WTO/GATT framework, many producers (not just in Asia) underwent a readjustment process. One view in this context is that since Asia was a major victim of the quota system, it is only fair that Asian producers should excel in T&C trade at the expense of those countries that prospered under the previous system.¹³⁰² However, the reality is not that simple. Millions of people in the poorest of countries in Africa, Caribbean, Latin America and other parts of the world are dependent on this sector for their livelihood. The liberalised trading environment for T&C offers them little.

The case studies in this chapter have attempted to analyse the accuracy of major pre-expiration estimates, upon which many developing and least developed countries based their future adjustment plans. The statistics examined in this chapter reveal a story quite different from what was foretold prior to the "cataclysmic" end of quotas.

The case studies raise a number of issues relevant for this thesis. As far as China is concerned, the case studies have highlighted the comprehensive penetration of not just the EU/US markets but other markets of the world as

¹³⁰⁰ Ratnakar Adhikari & Yumiko Yamamoto, 'Flying Colours, Broken Threads: One Year of Evidence from Asia after Phase out of Textiles and Clothing Quotas', Tracking Report (Asia-Pacific Trade and Investment Initiative, UNDP Regional Centre in Colombo, 2005), 36.

¹³⁰¹ Adhikari & Yamamoto, above n 6, 214; Adhikari & Yamamoto, Ibid.

¹³⁰² Adhikari & Yamamoto, Ibid, 37.

well. This post-ATC dominance attracted a predictable protectionist response from the EU and the US in the form of reimposed quotas on China after quota expiration. However, due to the inbuilt quota growth rate within the EU/US MOU's with China, combined with low labour costs, high productivity, extensive infrastructure and the production capabilities, the reimposed restraints only delayed the inevitable dominance of China in these markets.

China may yet attract trade restraints under the PSS and anti-dumping measures calculated according on the basis of non-market economy clause in the WTO Agreement on Anti-dumping. But if the past is any judge, such restrictions do little to stop a T&C producer that possesses advantage in manufacturing a wide array of T&C products on a competitive basis.

Since China targets developed as well as developing economies, the developing countries may still chose to adopt trade restraints against Chinese T&C imports in order to protect their local industries. Indeed, China remains the greatest target of Anti-dumping measures in the T&C category (see Chapter 5).

From a purely theoretical perspective, China provides an illustration of the flying geese style of regional transmission of T&C industries. With the recent floatation of the Yuan and the increase in labour costs, China may experience loss in its competitive position. This may trigger the 'flying geese' transmission by Chinese T&C industries to countries that offer cheaper production costs. Such transmission ensures the continued survival of the Chinese textiles industries while China transitions to other sectors of manufacturing quite similar to Japanese textiles industries a few decades ago that underwent a similar transition (see Chapter 1).

Furthermore, Chinese corporations may also invest in other countries that enjoy preferential access to the EU/US markets (similar to the Kojima's pro-trade FDI). This investment would likely have the objective of manufacturing

clothing using Chinese made textiles in the recipient country. However, this development is subject to certain factors such as continued eligibility of a developing country to receive preferential treatment and maintenance of tariffs (that may likely be reduced if NAMA negotiations are successfully concluded).

Pakistan represents a country that has the potential to dominate T&C trade in post-ATC T&C trade but has so far managed lacklustre performance. Quotas masked the manufacturing strengths of Pakistan and induced artificial diversification into manufacturing activities where there was little or no comparative advantage. The liberalised trading environment suits Pakistan in certain value added categories which quotas had suppressed. This is demonstrated by the superior performance in bed linen, cotton yarn, towels and cotton denim fabric categories. Conversely, manufacturers that concentrated on categories purely due to availability of quotas have experienced declines (see comparison in Tables 4.6 and 4.7). However, with the possible signs of 'flying geese' transmission of certain clothing industries from China, Pakistan may well be one of the recipients of the categories jettisoned by the Chinese clothing industries. This view receives further support from the fact that Pakistan possesses a large cotton base and some level of vertical integration in its T&C structure.

If this regional transmission does occur, Pakistan's falling clothing exports will receive a significant boost. In order to attract this investment, Pakistan's entrepreneurs have to overcome two major shortcomings. Firstly, adopt measures to ensure availability of yarn for local clothing manufactures and, secondly, to increase productive capacities by adopting the DTS model of manufacturing. The case studies highlights how the typical Pakistani manufacturer follows trade magazines and advice from 'experts' to gauge the manufacturing trends rather than maintaining off-shore offices that can effectively liaise with foreign clients, conduct marketing and offer up to date information on manufacturing trends and business prospects. This model has

successfully been followed by the successful Pakistani manufacturers in the post-ATC period.

When DTS practices are read in conjunction with the Porter's theory of competitive advantage (see the Introduction), the future of Pakistan as a successful T&C manufacturer also becomes clearer. The adoption of the DTS model corresponds with the *creation* part of competitive advantage theory. As this model becomes standard practice, competitive advantage is *sustained*. The role of the state is to facilitate the creation and sustenance of competitive advantage. The case study on Pakistan has already highlighted the general dissatisfaction of the industries with the post-ATC measures taken by the Government of Pakistan. Although, the new *Textile Policy 2009-2014* seems to be an improvement, unless Pakistan supplements this policy initiative by liberalising its tariff structure, the value added industries will continue to suffer from input shortages and Pakistan will, resultantly, continue to export textiles products.

From the 'flying geese' and Kojima's pro-trade FDI perspective, lack of liberalisation will also mean that regional investment will be channelled towards more liberalised countries instead (such as ASEAN countries). The case study on Pakistan shows that larger industries are more willing to support market liberalisation as compared to the small and medium sized entrepreneurs. The sensitive nature of the T&C industry has meant that the policymakers are reluctant to take any steps that may affect the smaller manufacturers. Pakistan also lacks the resources to compensate and readjust the industry segments that are inevitable affected by trade liberalisation process. Hence the reluctance and lack of resources undermine the growth and diversification of Pakistan's T&C industries.

As far as the pre-expiration predictions are concerned, the widespread economic disruption did not occur and that many "victims" have proven to be survivors and that many "winners" are either struggling or have become

“victims” e.g. Bangladesh and Sri Lanka have managed to record strong growths in some of the major categories in the developed markets. These two countries have adopted different post-ATC strategies with varied success i.e. Bangladesh has concentrated on low value-added, mass produced clothing items. Sri Lanka, on the other hand, has adopted a two prong strategy of diversification to higher value added categories and promotion of an ethical manufacturing practices, thereby appealing to socially conscious retailers and increasingly aware consumers in developed countries. This strategy was also adopted by Cambodia, although Cambodian producers have not diversified into the higher value added segment of clothing exports like Sri Lanka.

The case studies have also discussed the demise of the T&C industry in Nepal and the Maldives. These producers lacked a cotton growing base and did not possess any vertically integrated industries. Therefore, they were entirely dependent on textiles imports while manufacturing clothing solely on the basis of low labour costs in order to avail unused quotas in the developed markets. These LDCs owe the existence of T&C industries simply because of the incubated environment created by the quotas. As soon as that incubation ceased, their T&C industries withered within a short time span. In this respect, pre-expiration predictions did come true.

Regarding growth and survival of the LDCs considered in the case studies in this article, one may raise the issue that Bangladesh, Sri Lanka and Cambodia owe their success to the preferential trade regimes extended to them by the developed countries and that in the absence of preferential treatment margin, these producers would not be able to compete with China, India or other vertically integrated competitors regionally or globally. This point can be countered by comparing Asian LDC performance with LDCs in Africa, Caribbean and Latin America that receive preferential treatment into the EU and the US market. The comparison in Annex-2 demonstrates that Asian LDCs like Bangladesh and Sri Lanka that do not get any preferential treatment for

their clothing exports to the US market have fared much better than many of the preferential entry recipients such as AGOA and CBI/CBTPA exporters.

The statistics considered in the LDC comparison explode the myth of proximity being a key to success in the post-ATC environment. The statistics demonstrate that proximate exporters to the US have not fared any better than ones to the EU (see Tables 4.2, 4.3 and Annex-2). While proximity is an advantage in terms of reduced lead times and reduced transport costs, it cannot be the sole basis of competing in the post-ATC trading environment. Proximity does not appear to outweigh the cheap, abundant and efficient labour that is a major advantage enjoyed by some of the Asian producers considered in the case studies.

The LDC comparison (see Annex-2) underscores the negative effects of the ROO incorporated within the preferential trade schemes adopted by the developed countries e.g. it is clearly evident that AGOA and CBI/CBTPA beneficiaries struggle under the restrictive ROO that requires them to use US origin inputs in order to qualify for preferential treatment for their clothing exports. Yet this does not discount the value of enjoying preferential access to the developed markets in this sector, therefore, the post-ATC strategy employed by LDCs involves controlling any possible advantage for preferential entry (be it GSP schemes or bilateral FTAs) and complementing this with domestic advantages of low labour costs and adherence to high ethical standards.

Amongst the developing countries, India has largely fulfilled its “destiny” by recording healthy growth trends in the EU/US markets. The pre-expiration prediction that countries with vertically integrated T&C industries would fare better than import dependent producers has proven true as is evident by India’s performance along with Pakistan, Thailand and Indonesia (although their performance is not impressive as India).

Amongst the developing countries, the Philippines stands out as another example of producers that grew dependent on quotas for their T&C exports to the developed countries. Such countries seem to benefit only when restraints were imposed on producers with comparative advantage in T&C manufacturing e.g. exports increased to the US coinciding with safeguards on China and then gradually dropping again. Another factor going against the Philippines is the high labour costs which are the primary grounds of competition amongst the T&C exporters. Malaysian industries also experienced decline, however this did not significantly affect the Malaysian economy because this sector is of secondary importance. Malaysia achieved little success as an investor in other countries that enjoy preferential entry to the developed market. However, regional orientation of investment policies in line with the flying geese model and Kojima's pro-trade FDI model may hold the key to success for economies that have transitioned from T&C manufacturing to investment. This view receives further support from the positive experience of Japan and the Asian NICs. More recently, Indonesia seems to be the latest beneficiary of the flying geese model/Kojima's pro-trade FDI type investment, with China considering a major investment in the Indonesian T&C sector.

Thailand is another success story that focused on regional trade and diversifying its exports to other developed country markets in order to reduce dependency on the EU/US markets. In adopting this strategy, Thailand has experienced increased export volumes in spite of being one of the most expensive venues in terms of labour costs.

Vietnam has surprisingly emerged as an unlikely winner of quota expiration. It drastically increased its exports to the EU/US markets, taking full advantage of low labour costs, safeguards on China and a favourable currency balance. Vietnam also endeavoured to maintain labour standards that have become increasingly important in the global T&C trade. Moreover, Vietnam's move towards adoption of the FOB delivery model (similar to the success of the DTS

model in Pakistan) appears to be a major factor behind its solid export performance. Vietnam's performance has impacted exports of preferential exporters to the US such as Honduras, Mexico and others in the CBI/CBTPA and AGOA regimes.

The statistics also tell that the anticipated Chinese tsunami of exports was somewhat exaggerated and many countries that were predicted to drown have actually survived and thrived. Despite the TS that were in effect an extension of the quota system, China's export performance has been impressive in the EU/US market. However, there are indications that due to recent rises in wages, Chinese exports would no longer enjoy the comparative advantage in terms of low labour costs. If the rising trend in labour costs continues then perhaps China too would diversify into higher value added items or onto other sectors of production along the same lines as other developed countries. For the near future, Chinese domination of this sector is all but inevitable.

Pre-expiration analysis also focused on a reduction in prices and fall in wages for many producer countries. This was to give rise to socio-economic issues as countries engaged in a "race to the bottom" to compete for the lowest possible labour costs. However, the statistics tell another story. There was no wholesale slashing of prices and many Asian countries that experienced increases in exports to the EU/US markets also saw increase in prices for their merchandise. These figures also reveal that countries benefitting under quotas did experience price declines corresponding with an overall decline in their exports to the EU/US markets.

The case studies have also highlighted the impact on OPP because of quota expiration e.g. Malaysia's ill-fated attempt to capitalise on AGOA preferential schemes in Namibia, the demise of industries in Maldives and Nepal. Pakistan was cited as an example of a country that possessed the labour and productivity capacity but unable to compete due to supply side constraints and the inability to offer DTS /full-package service (with some exceptions).

Overall, in the post-ATC period, it is expected that the OPP-extending countries would favour venues that offer combination of low labour prices, high labour productivity, political stability, product diversity, preferential entry, low entry tariffs and presence of support infrastructure. Countries that compete solely on the basis of proximity or preferential entry or labour cost alone will be unlikely to be able to compete effectively in the increasingly competitive global T&C market.

The statistics have also shown that regional integration and reducing tariff barriers to forge closer regional utilisation of inputs is the way forward. This is illustrated by leading performance of the ASEAN exporters compared with South Asian producers (where garment producers in Bangladesh and Sri Lanka prefer to source from China and ASEAN textiles producers rather than India and Pakistan). For South Asia to forge ahead and remain competitive in the coming years, a regional FTA along the same lines of ASEAN FTA must be concluded. Whilst South Asian countries have concluded SAFTA, it remains ineffective in the T&C sector due to sector-specific exclusions. Reducing tariffs and increasing intra-regional trade will give exporters the cost advantage that is currently unavailable due to protectionist interests. Trade in this important sector of the global economy is expected to undergo further changes as new players emerge and older players graduate to other sectors of exports, thus reducing reliance on T&C.

CHAPTER 5

ASSESSING THE USE OF SAFEGUARDS & ANTI-DUMPING AS TRADE REMEDY MEASURES

5.1 INTRODUCTION

With the integration of the T&C sector into the WTO/GATT framework, safeguards and anti-dumping may replace quotas as the preferred market protection mechanisms. Chapters 1 and 2 have highlighted how domestic interests in the past drove organised protectionism leading to the discriminatory quota system. In the increasingly competitive post-ATC period, many countries may protect their T&C sectors by resorting to these trade remedies. The aim of this chapter is to examine the possible use of safeguards and anti-dumping measures as instruments of regulating import of T&C products. This use may be by developed countries against developing countries or between developing countries.

This chapter examines both trade remedies individually and explores their nexus with the global T&C trade. The central idea behind this chapter is to explore possible utilisation of these trade remedies by WTO members that is not violative of WTO rules but serves to legitimately protect domestic industries.

This chapter will not delve extensively into the WTO regime on safeguards but will instead focus on application of safeguards with respect to the T&C sector. Therefore, the chapter begins with a quick overview of the T&C specific ATC safeguards and other regimes before reviewing possible application of safeguards as a trade remedy in the post-ATC environment. A review of safeguards will be conducted according to two possible scenarios of applications i.e. developing countries to developing countries ("developing-to-developing") and developed countries to developing countries ("developed-to-developing"). Possible theoretical rationale that may provide the basis of

future application of safeguards will be briefly discussed as well. The fundamental issue being examined in this section of the Chapter will be: *do safeguards really 'safeguard' domestic T&C industries?*

A similar exercise will be undertaken for anti-dumping measures. After briefly highlighting WTO jurisprudence and the main characteristics of the WTO Agreement on Anti-dumping, the focus shifts towards the application of this trade remedy in global T&C trade. This section explores the increasing use of anti-dumping measures by developing countries against other developing countries in textiles and allied manufacturing sectors. This chapter also advances an alternative way of explaining the possible use of anti-dumping measures that may assist in anticipating future use of this trade remedy in the T&C sector. Additionally, this chapter examines Pakistan both as a user, and a target of, anti-dumping measures to highlight various issues underpinning the use of anti-dumping measures.

The section on anti-dumping will utilise statistics from the Global Anti-dumping database to illustrate use of anti-dumping measures in textiles and related sectors from 1980-2009. This exercise will help in identifying primary users and the main targets of anti-dumping measures in the T&C sector. The aim behind this review is to investigate if anti-dumping measures as opposed to safeguards would be the preferred trade remedy in global T&C trade.

5.2 SAFEGUARDS

5.2.1 Overview

Safeguards are trade measures designed to protect domestic industries from economic damage caused by unexpected increase in imports.¹³⁰³ Such damage may include negative effects on prices and decreased production, leading to

¹³⁰³ Lester & Mercurio, above n 17, 521.

adverse impact on employment levels.¹³⁰⁴ Safeguards remedy the situation by temporarily increasing bound tariff levels or quota restrictions.¹³⁰⁵

Safeguards appear somewhat contradictory to the basic aim behind the multilateral trading system i.e. to increase global trade flows by minimising trade restrictions and other restrictive measures.¹³⁰⁶ In other words, increase in imports is a natural corollary to trade liberalisation and therefore, the very idea that there should be an institutionalised mechanism to curtail this growth in trade undermines the basic aim behind the creation of the WTO.¹³⁰⁷

The reality, however, is that the countries require a “safety valve” by which domestic industries interests can be protected, because without this there would be little enthusiasm for trade liberalisation.¹³⁰⁸ This reality is crystallised in the *WTO Agreement on Safeguards* (the “Safeguards Agreement”) and, more specifically in the T&C context, the ATC Safeguards (discussed in Chapter 2). Moreover, the extra-sensitivity of the T&C sector meant that there were country-specific safeguard regimes in place such as the *China Textile Safeguards* (TS) and the *China Product Specific Safeguards* (PSS).

Another perspective on safeguards is that they provide a temporary “breathing space” for industries in the importing economy to adjust to foreign competition.¹³⁰⁹ How effectively the protection-seeking industries capitalise on this facility is an entirely separate issue that deals with industrial restructuring in response to competing imports.

¹³⁰⁴ Ibid.

¹³⁰⁵ Ibid.

¹³⁰⁶ Ibid.

¹³⁰⁷ Ibid; see also UNCTAD, Course on WTO Dispute Settlement - Module 3.8, ‘Safeguard Measures’ (UNCTAD/EDM/Misc.232/Add.16) 3; see generally Joseph Michael Finger, *Legalized Backsliding: Safeguard Provisions in the GATT* in Will Martin and L. Alan Winters (Eds), *The Uruguay Round and Developing Countries* (Cambridge University Press, 1996), 316-340; Alan Sykes, ‘The Safeguards Mess: A Critique of WTO Jurisprudence’, (2003) 2 (3) *World Trade Review* 261, 262-263.

¹³⁰⁸ UNCTAD, Ibid.

¹³⁰⁹ See for example Michael J. Hahn, ‘Balancing or Bending? Unilateral Reactions to Safeguard Measures’ (2005) 39 *Journal of World Trade* 301, 303; Lester & Mercurio, above n 17, 521; see also Islam, above n 3, 320.

Unlike anti-dumping measures and countervailing duties (applied in response to *unfair* trade conduct) application of safeguards is not done under any presumption of unfairness.¹³¹⁰ Rather, in applying safeguards, the trade and import pricing is deemed fair but the sharp increase in imports that cause serious injury or threatens to cause serious injury to the domestic industry (manufacturing like products) is targeted through safeguard measures.¹³¹¹

The unilateral discretion of the national authorities in implementing safeguards increases the likelihood of adapting this remedy for protectionist purposes, especially to shield ailing industries from foreign competition.¹³¹² Such application, in the short term, often benefits the local interests but, in the longer run, negatively affects trade liberalisation, restricts exports, discourages open competition and forces consumers to pay higher prices.¹³¹³

Since the expiration of the ATC, the general safeguard regime of the WTO (the Safeguards Agreement and GATT Article XIX) allows WTO Members to suspend trade concessions where sudden and unexpected surge in imports causes serious injury or threatens to cause injury to the domestic industries manufacturing like products.¹³¹⁴ The requirement for the imposition of safeguards is based on establishing a causal link between serious injury and the import of the goods in question, with a report of the measures taken transmitted to the WTO Committee on Safeguards.¹³¹⁵

Table 5.1 summarises the important differences between the Safeguards Agreement and the ATC Safeguards. One noticeable difference between the two is that WTO Members cannot single out individual exporters for imposition of safeguards as was the case under the ATC. Also, the restrained

¹³¹⁰ Islam, Ibid.

¹³¹¹ Ibid.

¹³¹² Ibid.

¹³¹³ Ibid.

¹³¹⁴ Article 2.1 of the Safeguards Agreement.

¹³¹⁵ Articles 4.2(b) & 11 of the Safeguards Agreement.

countries may retaliate or request compensation for imposition of safeguards which deter over-enthusiastic use of safeguards.¹³¹⁶

(Table 5.1) ATC and the Safeguards Agreement Comparison		
(Source: adapted from Kim & Reinert, above n 997, 157)		
<i>Provision</i>	<i>ATC Safeguards</i>	<i>Safeguards Agreement</i>
Legal Basis	Article 6	GATT Article XIX & WTO Agreement on Safeguards
Invocation	Article 6.2 (threat of or actual damage caused by increased imports to the domestic industries).	Article 2.1 (in such increased quantities, absolute or relative to domestic production and under such conditions which causes serious injury to the domestic industries).
Causal Link	Article 6.2 (Serious damage or actual threat must be caused by increased imports and not by other factors such as shift in consumer preferences, technological advancements).	Article 4.2 (no attribution of injury to the increased imports if factors other than increased imports are causing injury to the domestic industries at the same time).
Discrimination	Single countries could be targeted.	Countries cannot be singled out. Imported product to be targeted.
Transparency	Notification requirement to the TMB.	Notification to the Committee on Safeguards
Growth in Quotas	Article 6.8 (growth must not be lower than actual export or import level during 12 month period terminating 2 months preceding to the month in which the request for consultation was made). Article 6.13 (Quota growth can be by 6% per year).	Article 5.1 (not below than average of imports in the previous 3 representative years for which data was available) Article 7.4 (no specific rate specified but the restraint level must be lower than previous years)
Duration	Article 6.12 (up to 3 years).	Article 7 (4 years with option of one-time extension for 4 additional years).
Retaliation/ Compensation	Not available.	Article 8.1 (Compensation available for adverse effects of safeguards on the restrained country).

¹³¹⁶ Article 8 of the Safeguards Agreement; Kim & Reinert, above n 1003, 160; see also Yan Luo, 'Special Safeguards Against China at Quota-Free Textiles and Clothing Trade: Unilateral Restrictions with Multilateral Face?' (2006) 3 *Manchester Journal of International Economic Law* 69, 73.

The Safeguards Agreement should not, however, be viewed as a much improved alternative to the ATC (especially from the perspective of the exporting nations). This is because safeguard measures can be imposed for up to 8 years as opposed to 3 years in the ATC (see Article 7 of the Safeguards Agreement) and also because the ATC specified an annual quota growth rate of 6% during subsistence of the safeguards, whereas the Safeguards Agreement is ambiguous by not specifying growth rates (refer to Article 7.4 of the Safeguards Agreement).

The sector-specific safeguards under the ATC expired with quota expiration. Under the ATC, 55 safeguard actions were taken by countries against T&C imports, out of which 26 were taken by the US alone.¹³¹⁷ Perhaps this demonstrates the extent that protectionist interests went to extract maximum mileage out of a transition regime after which competition increased and the use of discriminatory safeguards was reduced.

The *US – Combed Cotton Yarn*¹³¹⁸ was the most notable case that emerged from WTO jurisprudence on safeguards. In the case, the AB stated that the "the definition of the *domestic industry* must be product-oriented and not producer-oriented and that the definition must be based on the products produced by the *domestic industry* which are to be compared with the imported product in terms of their being like or directly competitive."¹³¹⁹

The AB found the product approach superior to the producer approach taken by the US.¹³²⁰ This case also highlights AB's view on discriminatory standards in evaluation of injury by national authorities. The AB stated that non-consideration by national authorities of import data from regional trade partners undermines the multilateral trading system.¹³²¹

¹³¹⁷ Kim & Reinert, Ibid, 156 & 158.

¹³¹⁸ *US - Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan* (WT/DS192/AB/R) ("US – Combed Cotton Yarn case")

¹³¹⁹ See Paragraph 85 of the AB Report, *US – Combed Cotton Yarn* case.

¹³²⁰ See also Paragraphs 82-87 of the AB Report, *US – Combed Cotton Yarn* case.

¹³²¹ See Paragraphs 125-126 of the AB Report, *US – Combed Cotton Yarn* case.

In addition to the ATC safeguards available as a remedy in the pre-expiration period, importing countries could also resort to China-specific safeguards that were expressly part of China's WTO accession. These safeguards (referred to as the TS) were immediately utilised in the post-ATC period by the US and the EU to control imports from China (see discussion in Chapters 3 and 4).

Chapter 4 examined various statistics pertaining to the use of the TS by the EU and the US against Chinese imports (see in particular Tables 4.6, 4.7 and Annex-3). What has emerged from Chapter 4 is that the TS only delays the inevitable and China continues to be the leading exporter of T&C products to the developed economies. Also, where China's exports were restrained through safeguards, another exporter usually stepped in to fill the vacuum in the restraining economy (see e.g. performance of Indonesia and Vietnam discussed in Chapter 4). Therefore, the domestic industries seeking protection did not benefit significantly from the use of country-specific TS.

5.2.2 Assessing safeguards

Viewing safeguards as a remedy in the post-ATC period, two possible scenarios of application emerge i.e. developing-to-developing country and developed-to-developing country.

In the first scenario, a developing country that is substantially dependent on exports of T&C products imposes safeguards on imports of T&C products to protect its industries from imports originating from another developing country that is similarly keen on exporting its T&C products. Asian NICs are also included in this scenario. Such safeguard protection would be in addition to the protection through maintaining high tariff barriers or regulatory duties. However, in light of the WTO NAMA negotiations on lowering tariffs, safeguards would remain one of the residual protection alternatives for T&C industries in the importing economies.

In the second scenario, safeguards are used by a developed country that is not substantially dependent on exports of T&C products but is a primary target market for T&C exporters worldwide. This use by a developed country may be motivated by domestic political factors, pressure from import-competing industries and lobbying by preference receiving countries concerned about loss of market share to other exporters. Both of these scenarios will be explored individually in this chapter.

From a T&C perspective, the possibility of applying safeguards in a developing-to-developed scenario is unlikely given the fact that most developed countries are not as reliant on T&C industries. As discussed in previous chapters, the more-capital-intensive textiles industries have assumed a secondary importance in the economies of developed countries due to loss of comparative advantage over time. For example, the US share of textiles export in total merchandise exports for 2007 was 1.1% which fell from 1.4% in 2000. While the value of exports was still significant (US \$ 12.386 Billion), these figures show that textiles industries play a secondary role in the economies of the developed countries. Other examples include EU, Canada, Japan, Australia and New Zealand where textiles export share in total merchandise exports in 2007 was 1.5%, 0.6%, 1.0%, 0.2% and 1.1% respectively.¹³²²

The labour-intensive clothing industries in the developed countries have also declined due to higher wages and increased costs of production, therefore, this sector is now more active in the developing world.¹³²³ The exceptions are some industries that compete in the niche market or the higher-value added segment. Such products are never exported in high quantities that could merit imposition of safeguards and their manufacturers have generally resisted the

¹³²² WTO, above n 1157.

¹³²³ The comparative figure for US, EU (27), Canada and Japan's exports in clothing as a share of total merchandise exports in 2007 was 0.4%, 1.9%, 0.4% and 0.1% respectively (Ibid).

idea of outsourcing the labour intensive part to low-wage countries in order to preserve their niche importance.¹³²⁴

It is also important to note that countries importing textiles from developed countries do so in order to qualify for preferential treatment for their clothing products. As highlighted in Chapter 4, such developing countries maintain low tariffs to textiles and high tariffs against clothing imports. These countries are unlikely to apply safeguards against textiles imports from developed countries whilst their clothing sector is already protected by high tariffs. Hence, there is a less likelihood of applying safeguards in this scenario.

5.2.2.1 Scenario-1: Developing-to-Developing

The underlying rationale of the Safeguards Agreement is to reduce reliance on extra legal measures such as VERs for the protection of domestic industries, thereby introducing certainty to multilateral trading system.¹³²⁵ From a developing country perspective, being a major industry, top-employer and foreign exchange earner, the T&C industries wield considerable politico-economic clout and therefore, have the ability to bring about a protectionist response from the authorities in the importing country.¹³²⁶

In the post-ATC environment, if there is a sudden influx of damaging imports, the Safeguards Agreement provide developing economies with a clear advantage over the quota era ATC Safeguards by allowing compensation i.e. Article 8.1 states that imposing country would “...*maintain a substantially equivalent level of concessions.*”

This provision is critical to the interests of both exporter and the importer in this scenario since both countries are developing economies and would presumably be reliant on T&C exports. Clearly, the exporting country would

¹³²⁴ See for example Giorgio Navaretti, Anna Falzoni & Alessandro Turrini, ‘The Decision to Invest in a Low-Wage Country: Evidence from Italian Textile & Clothing Multinationals’, (2001) 10(4) *The Journal of International Trade & Economic Development* 451, 453-454 & 461.

¹³²⁵ Sykes, above n 1307, 272 & 274.

¹³²⁶ Ibid.

move swiftly to suspend concessions to the importing country, if exports were restrained by unjustified safeguards.

The compensation element mentioned above is obviously subject to negotiations between the restraining country and the exporting country. If the negotiations are unsuccessful, the exporting country does not have the right to retaliate for the first three years of the safeguard measure if:

- (a) *that measure is compliant with the Safeguards Agreement; and*
- (b) *that measure was in response to an absolute increase in imports.*¹³²⁷

Therefore, in the post-ATC era, it is more likely that the targeted developing country would be forced to compromise otherwise chances are that there would be nothing by way of compensation for them, a result which is as good as failed negotiations.

Additionally, the Safeguards Agreement increases the time-frame of imposition (four years with the option of increasing for a further four years, if necessary).¹³²⁸ Furthermore, any safeguard measure subsisting longer than one year is to be liberalised in regular stages i.e. there must be a specified growth quota that would be applied periodically to increase imports while safeguards last.¹³²⁹ These changes were intended to remedy the problem of extra-legal measures.¹³³⁰

One might hypothesise that since developing countries are simply keener in exporting to developed markets, such situations would not arise and that restraining economies would prefer anti-dumping duties rather than safeguards to satisfy their domestic industries should there be increased imports.

¹³²⁷ See Article 8.3 of the WTO Safeguards Agreement

¹³²⁸ See Article 7 (1) of the Safeguards Agreement.

¹³²⁹ See Article 7 (4) of the Safeguards Agreement.

¹³³⁰ Sykes, above n 1307, 272, 273.

This view may be reinforced with the reasoning that since imposition of safeguards under the Safeguards Agreement requires a determination of *"...increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten serious injury to the domestic industry that produces like or directly competitive products,"*¹³³¹ developing countries would immediately react to any influx of competing imports without waiting to meet the specified criteria.

Hence, anti-dumping duties offer a much effective solution to dissuade further imports of T&C products. Also, in national practice establishing injury in anti-dumping cases is based on an easier standard as compared to GATT Article XIX which forms the basis of safeguards actions under the WTO.¹³³²

This scenario may typically happen where a T&C reliant country, possessing a vertically integrated textiles sector that targets the input requirements of the local clothing sector, alleges injury due to import of cheaper textiles. This may be done for two reasons i.e. firstly, local textiles industries deliberately keep production levels low in order to artificially raise prices and secondly, these industries, fearing loss of market share, turn to national authorities alleging serious injury or threat of serious injury if protection was not extended to them.

A practical illustration that best describes the above scenario is the imposition by Pakistan of anti-dumping duties ranging between 0%-29.68% on Polyester Filament Yarn (PFY) imports originating from Indonesia, South Korea, Malaysia and Thailand in March 2006.¹³³³

¹³³¹ Article 2(1) of the Safeguards Agreement

¹³³² Joseph Michael Finger, 'GATT Experience with Safeguards; Making Economic and Political Sense of the Possibilities that the GATT Allows to Restrict Imports', (World Bank, Policy Research Working Paper 2000), 8.

¹³³³ National Tariffs Commission, Government of Pakistan, 'Report on Final Determination and Levy of Definitive Anti-dumping Duty on Import of Polyester Filament Yarn Originating In and/or Exported from the Republic of Indonesia, The Republic of Korea, Malaysia and the Kingdom of Thailand', A.D.C No.07/2005/NTC/PFY (16 March 2006) (hereinafter referred to as the "PFY Report").

Whilst this case concerns anti-dumping proceedings, it is pertinent to note that the affected parties did not apply for safeguards but rather applied for anti-dumping measures. This may be partially due to the fact that the application was made by four manufacturers out of nine operating in Pakistan at that time. When combined, these four manufacturers represented 43.06% of the domestic production of PFY in Pakistan, whilst the other five manufacturers were indifferent to the application and did not oppose it. The non-opposition was construed as tacit support by the relevant authority (the National Tariffs Commission (NTC), Government of Pakistan) which assumed this as an application made by the domestic industry since it was “supported by 100% of the total production of the like product produced by that portion of the domestic industry expressing its opinion.”¹³³⁴ Some countries view anti-dumping as the easier option than safeguards due to the comparative ease in proving dumping as opposed to proving the ambiguous serious injury or threat of serious injury.¹³³⁵ However, this ambiguous language may also serve local interests in certain cases.

5.2.2.1.1 Ambiguities in the use of safeguards

Alan Sykes highlights the ambiguities within the WTO Safeguards Agreement that makes interpretation and use of this remedy problematic.¹³³⁶ Although, Sykes comments on the general nature of the WTO Safeguards Agreement, the shortcomings highlighted in his arguments become important when analysing future use of safeguards in the developing-to-developing scenario. The first issue highlighted by Sykes is the lack of a clear definition of “serious injury” although the AB has broached this issue in a number of disputes.

¹³³⁴ See Paragraphs 2.2 & 2.4 of the PFY Report, Ibid (This case will be further elaborated in the section examining anti-dumping measures below).

¹³³⁵ Interview with Mohammad Arshad, Deputy Director (Investigation), National Tariffs Commission (NTC), Government of Pakistan (NTC Head Office, Islamabad, Pakistan, 31 October 2009). Arshad confirms that preferred remedy of local industries in Pakistan is Anti-dumping duties and safeguards are rarely applied for.

¹³³⁶ Sykes, above n 1307, 278-284.

In *Argentina – Footwear*, the AB inadequately dealt with this issue by simply citing Article 4.2 of the Safeguards Agreement and stating that all of the listed factors therein must be evaluated in every instance.¹³³⁷ The AB further stated that it was not necessary that every “relevant factor” demonstrate negative industrial growth but the “overall picture may nevertheless demonstrate significant overall impairment.”¹³³⁸

Here, Sykes highlights this unhelpful nature of Article 4.2 in explaining the use injury factors and refers to Article 4.2(b) of the Safeguards Agreement which states that “*When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.*” Sykes points out that no guidance is given on what amounts to “*factors other than increased imports*” that are causing injury to the domestic industry “*at the same time.*”¹³³⁹

Sykes further points out that the same issue also featured in *US – Wheat Gluten* where the AB again skirted the issue and failed to provide any concrete definition of “serious injury.”¹³⁴⁰ In this case, the AB stated that if any factors pertaining to “serious injury” were not raised by parties to the safeguard investigations, then the national authorities were under an obligation to consider these as well.¹³⁴¹ According to Sykes, there is no tangible criterion that emerges from these decisions. Whilst this is general WTO jurisprudence on safeguards, the effects of these pronouncements may be applicable to the quota free trade in T&C. Sykes arguments helps explain why developing countries may simply opt for anti-dumping measures because of the ambiguity created by the Safeguards Agreement.

¹³³⁷ See AB Report, *Argentina - Safeguard Measures on Imports of Footwear* (WT/DS121/AB/R) (1999), Paragraph 121; Sykes, above n 1307, 279.

¹³³⁸ Ibid, Paragraph 139; Sykes, Ibid.

¹³³⁹ Sykes, Ibid, 275.

¹³⁴⁰ Sykes, Ibid, 279-280.

¹³⁴¹ See AB Report, *United States - Definitive Safeguard Measures On Imports of Wheat Gluten from the European Communities* (WT/DS166/AB/R) (2001), Paragraph 55.

The second issue highlighted by Sykes is causation.¹³⁴² This issue was discussed by the dispute settlement panel in the *Argentina – Footwear* case, wherein it was stated that if causation was present, increase in imports “normally should coincide with a decline in the relevant injury factors.”¹³⁴³ The AB supported this view and declared that the relationship between the movements in imports and the movements in injury factors must be central to analysing causation and determination.¹³⁴⁴

Sykes queries if serious injury caused to the local industries are solely attributable to increased imports or if increase in imports only contributed to serious injury in conjunction with some other factors.

This issue was further considered by the AB in the *US – Lamb* case wherein the AB stated that the Safeguard Agreement does not require increased imports to be “sufficient” to cause, or threaten to cause, serious harm.¹³⁴⁵ The Safeguards Agreement also does not require that increased imports should solely be the cause or threaten to cause serious harm.¹³⁴⁶ Whilst this is confusing to say the least, the underlying rationale of this AB decision is to cover situations where increased imports have not contributed to serious harm but where serious harm is attributed erroneously to imports.¹³⁴⁷

Applying the analysis by Sykes to a T&C specific context, the question becomes: *what analytical method is to be employed by a restraining developing country against T&C imports from another developing country that is WTO compliant and which differentiates between the effects of increased imports and the effects of other factors causing injury?*

¹³⁴² Sykes, above n 1307, 280.

¹³⁴³ See Panel Report, *Argentina - Safeguard Measures on Imports of Footwear* (WT/DS121/AB/R) (1999), Paragraph 141.

¹³⁴⁴ Ibid, Paragraph 144.

¹³⁴⁵ Sykes, above n 1307, 281

¹³⁴⁶ See AB Report, *United States - Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, (WT/DS178/AB/R), Paragraph 170; Similar point was discussed in *US – Wheat Gluten Safeguards*, above n 1341, Paragraph 70.

¹³⁴⁷ Sykes, above n 1307, 281.

This question is difficult to answer since the effect of various AB decisions such as *US – Lamb Safeguards*, *US – Wheat Gluten Safeguards* and *US – Line Pipe Safeguards*¹³⁴⁸ is that the restraining country can employ any analytical process that is compliant with Article 4.2 of the Safeguards Agreement (bearing in mind that no guidance is given on what constitutes permissible methods). Sykes points out that the already rudimentary standard is further muddled by the AB's remarks that whatever analysis is conducted by the restraining country, it must be backed by adequate explanation.¹³⁴⁹

Yet another issue highlighted by Sykes that fuels ambiguity in the use of safeguards is the lack of clarity in determining “increased quantities” e.g. in *Argentina – Footwear Safeguards*, the AB stated that the imports must be in such increased quantity so as to cause or threaten to cause serious injury to the domestic industry for the safeguards requirement under Article 2.1 of the Safeguards Agreement and Article XIX of the GATT 1994 to be satisfied.¹³⁵⁰ In order to do this, the increase in imports must be “*recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause serious injury.*”¹³⁵¹

The AB offers no guidance on what amounts to *recent, sudden, sharp and significant*.¹³⁵² Minimal clarification came in the *US – Steel Safeguards* case where the AB re-affirmed the increased quantities test in *Argentina – Footwear*.¹³⁵³ The AB simply stated in the *US – Steel Safeguards* that “*competent authorities are required to examine trends in imports over the entire period of investigation.*”¹³⁵⁴ Thus, in the T&C specific context, the AB decisions do little in resolving the confusion on the issues of serious injury, causation and increased quantities of imports. Regardless of the ambiguous invocation criteria, these

¹³⁴⁸ AB Report, *United States - Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, (WT/DS202/AB/R), Paragraph 220.

¹³⁴⁹ Sykes, above n 1307, 283.

¹³⁵⁰ Ibid, 278 & 279.

¹³⁵¹ See AB Report, *Argentina – Footwear Safeguards*, Paragraph 131. This was reiterated by AB in *US – Steel Safeguards*, Paragraph 354.

¹³⁵² Sykes, above n 1307, 279.

¹³⁵³ Lester & Mercurio, above n 17, 526.

¹³⁵⁴ *US – Steel Safeguards*, Paragraph 355.

ambiguities often suit the interests of the restraining countries. In the post-ATC trade, this may mean protectionist use of safeguards to protect domestic T&C sectors by a developing country against T&C imports from another developing country.

5.2.2.1.2 Actual use of safeguards

In order to supplement the theoretical analysis by Sykes, this scenario can be practically illustrated by Peru's imposition of PSS on China's T&C exports.¹³⁵⁵ These actions were initiated in end-2003 and by the time these measures expired in June 2004, there was considerable pressure from China on Peru against application of the PSS.¹³⁵⁶ As a result further actions were taken under the WTO Safeguards Agreement.¹³⁵⁷

The shifting over from PSS to the standard WTO Safeguards Agreement was perhaps due to the anticipated risk of retaliation by China against Peruvian exports (part of the opposing argument adopted by the Peruvian exporters and industry interests).¹³⁵⁸ In addition to Peru, Brazil also moved to use safeguards on China's T&C exports targeting its economy, leading to a MOU signed in February 2006 limiting Chinese exports to Brazil.¹³⁵⁹

What emerges from imposition of safeguards on China by these developing countries (along with US and EU's use of safeguards discussed in Chapter 4) is a clear pattern of safeguards or threat of safeguards bringing China to the negotiating table and forcing it to voluntarily restrain its exports. Thus the value of safeguards lies not only in restricting market access to protect

¹³⁵⁵ Kim & Reinert, above n 997, 166.

¹³⁵⁶ Ibid.

¹³⁵⁷ Ibid.

¹³⁵⁸ Joseph Micheal Finger & Julio Nogués, 'Safeguards and Anti-Dumping in Latin American Trade Liberalization', (Policy Research Working Paper 4680, World Bank, July 2008), 27-28.

¹³⁵⁹ Brazzil Magazine, 'Brazil Slaps Quotas on Chinese Textiles', 10 February 2006 <<http://www.brazzilmag.com/content/view/5513/>> at 21 August 2009; see also HKTDc, 'Brazil goes for China-specific safeguards', 22 November 2005 <<http://www.hktdc.com/info/mi/a/imm/en/1X003EL9/1/International-Market-News/Brazil-goes-for-China-specific-safeguards.htm>> at 21 August 2009.

domestic producers but also “convincing” the foreign exporters to “voluntarily” restrain exports or face further action.

The same example may be used to anticipate future of application of safeguards in the developing-to-developing context. However, since the primary export orientation in T&C trade is from developing to developed countries, safeguards in the post-ATC period may not be employed extensively as a market protection measure. This is simply due to the fact that developing countries are interested in exporting more to the previously quota restrained markets of the EU and the US. Any export earnings from targeting other developing countries nets less profits.

5.2.2.2 Scenario-2: Developed-to-Developing

This scenario covers the trade flow of T&C from developing countries to developed economies where the importing country uses safeguards to protect domestic industries from T&C imports. This occurred in the form of TS on China soon after expiration of quotas. There is still some likelihood of developed countries using safeguards against imports from developing countries, especially in labour intensive clothing sector, where developing countries possess a significant advantage over developed countries in terms of low costs.

Since developed countries are usually the primary target markets for T&C products from developing countries, it is likely that safeguards will continue to be used by developed economies as a market protection mechanism. However, as the case studies in Chapter 4 demonstrate, safeguards only provide a temporary respite from foreign competition and are not a long term solution to competing with imports from more efficient producers.

After the lapse of the ATC in 2005 and the TS in 2008, the two remaining safeguards at the disposal of developed countries are the China-specific PSS and the WTO Safeguards Agreement. As discussed in the previous section, the

ambiguities in the WTO Safeguards Agreement suits local interests due to lack of clarity (which makes it easier for the restraining countries to apply safeguards as a preliminary measure against imports from developing countries). Thereafter, protection can be through anti-dumping measures or, in the case of China, through anti-subsidy countervailing duties.¹³⁶⁰

In exploring this scenario, it is important to review US and the EU safeguards against China in the post-ATC period until 2008. This may be used as the basis for assessing the future effectiveness of the PSS that China will continue to face until 2013. It is interesting to note that the EU and the US did not impose any China-specific safeguards prior to 2005.¹³⁶¹ However, immediately after quota expiry the EU and the US imposed extensive restrictions on Chinese T&C exports (discussed in Chapter 4).

5.2.2.2.1 EU use of safeguards

The EU parliament did little to hide its focus on Chinese T&C imports after quota expiration whence it identified this sector as posing the “greatest immediate challenge to the EU of all sectors of Chinese growth.”¹³⁶²

The EU incorporated the TS (Paragraph 242 of the Working Party Report on China’s Accession) into EU law by inserting Article 10a in Regulation (EEC) No. 3030/93. Paragraph 242 (a) reads:

*In the event a WTO Member believes that imports of Chinese origin of textiles and clothing products covered by the ATC as of the date the WTO Agreement entered into force, were, due to market disruption, **threatening to impede the orderly development of trade** in these products, such Member could request*

¹³⁶⁰ Luo, above n 1316, 73.

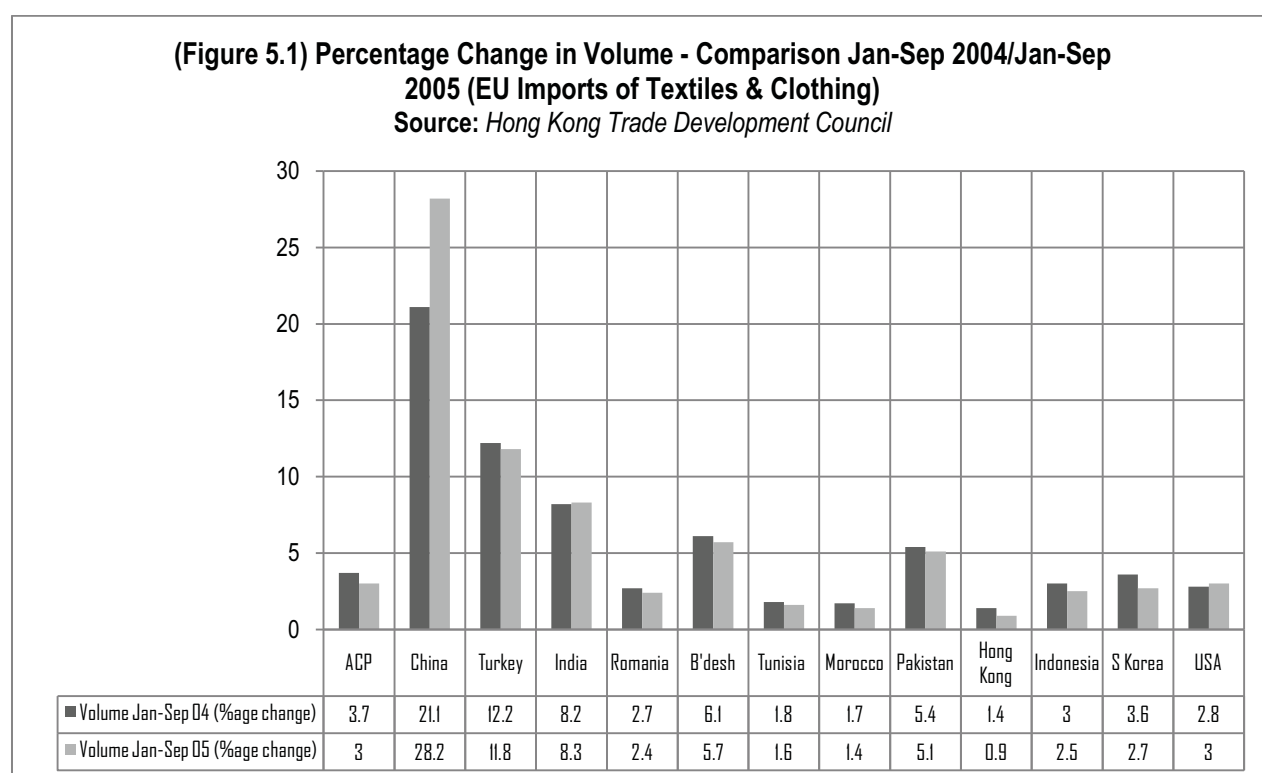
¹³⁶¹ The US initiated four TS proceedings but these did not lead to any safeguards being imposed (Ibid).

¹³⁶² European Parliament, Committee on International Trade, *Report on Prospects of Trade Relations between the EU and China*, (2005/201 5(INI), 5 September 2005), 16 quoted by Anna Comino, ‘A Dragon in Cheap Clothing: What Lessons can be Learned from the EU – China Textile Dispute?’ (2007) 13(6) *European Law Journal* 818, 819-820.

*consultations with China with a view to easing or avoiding such **market disruption**.* (emphasis added)

The EU extended the meaning of “*threatening to impede the orderly development of trade*” in this Regulation by claiming that this term was not defined in WTO or EU law.¹³⁶³ Instead the EC stated that it would:

*“...take into account as a main indicator the existence of a **rapid rise or surge in imports**, in absolute or relative terms. A **small percentage change cannot be considered sufficient to trigger the application of the TSSC**. The increase must be rapid and steep, in a way that it can be considered as a significant alteration of trade patterns in a given product or group of products.”*¹³⁶⁴ (emphasis added)



In reality, the EU’s interpretation of “*rapid rise or surge in imports*” was expanded to include not just the EU domestic producers but also producers

¹³⁶³ EC, ‘Notice on the Application of Article 10a of Council Regulation (EEC) No. 3030/93 Concerning a Textiles Specific Safeguard Clause, [2005] OJ C101/2.

¹³⁶⁴ Ibid, Paragraph 4b.

based in third countries i.e. even if the EU's domestic industries are not being affected by surge in imports, any affect on third country exporters that target the EU market will be sufficient grounds for imposition of safeguards.¹³⁶⁵ If trade statistics from period January – September 2005 are compared with January – September 2004 (see Figure 5.1), it is evident that China recorded a volume growth of 28.2% (January – September 2005) as compared to 21.1% in the same period in the preceding year. It is noteworthy that this growth came during months when EU-China MoU (June 2005) was in force. It was exactly this growth that prompted EU to withhold Chinese imports at quaysides which led to the Shanghai Agreement (see Chapter 4 for discussion).¹³⁶⁶

But what is interesting is that this growth in volume terms by China came at the expense of traditional exporters to the EU e.g. Tunisia, Morocco, Romania and Turkey. The overall volume growth in absolute terms for the EU market only grew by 4.9%¹³⁶⁷ which hardly qualifies for “rapid rise or surge in imports” and contradicts the statement in the same paragraph that a “small percentage change cannot be considered sufficient to trigger the application.”¹³⁶⁸ Therefore, the reason behind EU's imposition of TS on China was not the immediate protection of EU's domestic industries but to protect third country suppliers that were dependent on sourcing textiles from the EU in order to qualify for preferential treatment.¹³⁶⁹

Indirectly, this can be said to protect EU's industry interests since the satellite importers of EU's textiles keep an otherwise inefficient and expensive industry running. These importers source their inputs from the EU to produce clothing destined for the EU market. The EU's application of safeguards is, therefore, to protect this symbiotic relationship.

¹³⁶⁵ Comino, above n 1362, 825.

¹³⁶⁶ Murawski, above n 1025, 150-151.

¹³⁶⁷ See HKTDC, *Business Alert – EU; EU Textile Trade Statistics Show Jump in Chinese Imports* <<http://www.hktdc.com/info/mi/a/baeu/en/1X00BYGQ/1/Business-Alert-%E2%80%93-EU/EU-textile-trade-statistics-show-jump-in-Chinese-imports.htm>> at 21 August 2009.

¹³⁶⁸ Comino, above n 1362, 824.

¹³⁶⁹ Ibid, 825.

The WTO Safeguards Agreement, TS and PSS do not contain any provisions that cover protection of third country T&C industries since the rationale behind these regimes is the protection of domestic producers from market disruption caused by sudden and rapid surge in imports.¹³⁷⁰ This expanding of the language and its meaning by the EU in the case of TS may affect how PSS will be employed until 2013 against China.

The PSS procedure in EU law is closer in concept and application to the general safeguards regime in the EC, which is not viewed as the preferred trade remedy as compared to anti-dumping.¹³⁷¹ The PSS Rules in the EC law do not allow for private right of complaint and requires qualified majority for decisions as opposed to simple majority in anti-dumping.¹³⁷² However, if recent history is considered, any threat of safeguards under ATC, WTO Safeguards Agreement or the TS has lead to China agreeing to exercise 'voluntary' control over its T&C exports (something which *prima facie* violates the WTO prohibition on VERs).¹³⁷³

If PSS is compared with TS and the WTO Safeguards Agreement, the relaxed application criteria immediately becomes apparent i.e. the standard is based on 'material injury' instead of 'serious injury' as is the case under WTO GATT Article XIX.¹³⁷⁴ Moreover, Section 16 violates the fundamental principle of non-selectivity enshrined in the WTO Safeguards Agreement.¹³⁷⁵

Additionally, as pointed out by Hoogmartens, WTO Members can also limit imports from China due to significant trade diversion caused by other members' measures taken under Section 16 of China's Accession Protocol,

¹³⁷⁰ Luo, above n 1316, 85.

¹³⁷¹ See discussion in Marco Brockers, 'The Special Safeguards Clause in WTO Trade Relation with China: (How) Will it Work?' in Mitsuo Matsushita and Dukgeun Ahn (eds), *WTO and East Asia: New Perspectives* (London, May 2004), 47.

¹³⁷² Luo, above n 1316, 86.

¹³⁷³ Comino, above n 1362, 825.

¹³⁷⁴ *Ibid.*

¹³⁷⁵ *Ibid.*

which potentially could lead to a 'cascade of trade restricting measures against China.'¹³⁷⁶

Due to this deviation from the traditional GATT/WTO framework, the accrual of benefits to China's after its accession to the WTO have been delayed. However, what emerges from the EU's action of employing safeguards to protect third country exporters (something not envisioned, or indeed contained in China's Accession Protocol or the Working Party Report) is a precedent which may be applied in the future against any exporter with increasing comparative advantage in T&C.

How and why would this happen? The answer lies in tracking the eventual shift of comparative advantage that China enjoys in manufacturing T&C products. Currently, China is experiencing a considerable increase in labour costs. As history demonstrates, clothing manufacturing shifts according to wage levels (see discussion in Chapter 4). Whilst Chinese textiles industries will remain competitive for years to come, rising wages means sooner or later there would be a loss of comparative advantage in clothing manufacturing in favour of other countries. Vietnam has already demonstrated the capacity to capture any market share that emerges due to trade restrictions (see Chapter 4).

The question, therefore, becomes that when this does happen will the EU utilise the same strategy to protect non-competitive satellite importers of its textiles by imposing safeguards against an exporter that would then enjoy comparative advantage similar to China? In other words, what is the potential future application of safeguards in the developed-to-developing scenario?

The answer is unclear. The EU has not indicated that it will continue to apply safeguards to protect satellite importers of EU's textiles that cannot effectively

¹³⁷⁶ Jan Hoogmartens, *EC Trade Law Following China's Accession to the WTO* (Kluwer Law International, 2004), 111.

compete with Asian T&C exporters in a non-regulated environment. These proximate suppliers are essential for the future of EU's textiles industries.¹³⁷⁷

Despite the end of quotas, even within the EU, there are countries that continue to maintain strong textiles sectors e.g. Germany and the Netherlands specialise in technical textiles and chemical fibres with industrial applications.¹³⁷⁸ The more retail-focussed clothing industry, on the other hand, is another story. With the exception of Italy (that concentrates on niche marketing for high end clothing), major clothing manufacturers within EU such as Spain and France started experiencing job losses and declines with the end of quotas.¹³⁷⁹ Additionally, the EU is also mindful of the interests of the new EU Member states (e.g. Romania and Bulgaria) that are still reliant on T&C industries. These countries are threatened by imports from China and other Asian manufacturers and therefore, this is from where future EU market protection action may potentially spring. Perhaps all of this explains why the restraints imposed on China (pursuant to the EU-China MOU and the Shanghai Agreement) were mainly on clothing more than textiles (see Chapter 4 for discussion).

5.2.2.2.2 US use of safeguards

A review of the US application of safeguards on China in the post-elimination period might also help in developing a hypothesis regarding future application of safeguards by developed countries against exporters from developing countries.

The US authorities wield broad discretion in assessing material injury and the standards of establishing injury are very liberal e.g. in applying restraints against imports of Brassieres and Other Body Support Garments (Categories

¹³⁷⁷ EU exported US \$ 80.618 Billion worth of textiles in 2007 which grew from US \$ 70.468 Billion in 2005. In 2007, EU's market share in the world was 33.9% as compared to China with 23.5% (WTO, above n 1157).

¹³⁷⁸ Comino, above n 1362, 829.

¹³⁷⁹ For example clothing industry in Spain experienced a cut in 55,000 jobs since 2003 (Figures cited by Comino, Ibid).

349/649 & 620) from China, US authorities considered 2% production decline and loss of 3% market share by the US Brassieres and Other Body Support Garments industries between the first quarter of 2004 and the first quarter of 2005 as a sufficient sign of material injury.¹³⁸⁰

Also, the US authorities considered the increase of imports from the world to the US market as a factor in determining whether imports from China caused "market disruption."¹³⁸¹ Employing this element as a factor did not feature in the published US procedures and this deviation from published practice is yet another reflection of the wide discretion exercised by US authorities.¹³⁸² According to Yan Luo, increase of imports from the world is not a direct indicator of "material injury" to the US industries and it also does not prove increasing market share of Chinese import.¹³⁸³

As a further indication of the favourable bias towards domestic producers, the US authorities compared price of imports from China in 2005 with prices of Chinese imports in 2004 and price of imports from the "rest of world."¹³⁸⁴ Yan Luo again points out that prices of Chinese import in 2004 was not an indicator of the "market price" since these prices were distorted by quotas and that price comparison data shows that Chinese imports were not causing "market disruption" on price aspect since substantial reduction in price was a result of liberalisation of T&C trade upon quota expiration rather than purely due to increased imports from China.¹³⁸⁵

¹³⁸⁰ CITA, 'Announcement of Request for Bilateral Textile Consultations with the Government of the People's Republic of China and the Establishment of Import Limits for Certain Cotton and Man-made Fiber Brassieres and Other Body Supporting Garments (Category 349/649) and Other Synthetic Filament Fabric (Category 620), Produced or Manufactured in the People's Republic of China', (1 September, 2005) <<http://otexa.ita.doc.gov/fr2005/chisa8.htm>> at 21 August 2009.

¹³⁸¹ Ibid.

¹³⁸² CITA, 'Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China', (68 FR 27787) 21 May 2003 <http://otexa.ita.doc.gov/Safeguard_procedures.pdf> at 21 August 2009.

¹³⁸³ Luo, above n 1316, 82.

¹³⁸⁴ Ibid.

¹³⁸⁵ Ibid.

Even more controversial than the above application of safeguards against China was the acceptance of threat based applications by the US authorities, which were heavily opposed by the US retail industry and importers. This opposition materialised in the form of an action against relevant US authorities in December 2004 in the US Court of International Trade (USCIT) (*US Association of Importers of Textiles and Apparel Vs United States*).¹³⁸⁶ This action sprang from the announcement of the US CITA and US Department of Commerce in September 2004 that safeguards based on threat of market disruption were permissible under the China TS. This announcement contradicted earlier statements that explicitly stated that US regulations giving effect to TS on China were to be applied on cases of *actual* market disruption rather than *threat* of market disruption.¹³⁸⁷

Briefly, this action challenged the legality of the safeguard applications based on the threat of market disruption which according to the petitioners was a clear violation of existing procedures and hence impermissible.¹³⁸⁸ The petitioners sought a preliminary injunction from the USCIT to prevent CITA from considering safeguards application based solely on threat of market disruption.¹³⁸⁹ The USCIT granted the petitioners preliminary injunction but on appeal to the US Court of Appeals for the Federal Circuit (USCAFC) this injunction was reversed on the grounds of that there was abuse of discretion by the USCIT, petitioners failure to establish “a fair chance of success on the merits” and controversy not being ripe for review.¹³⁹⁰ Therefore, USCAFC’s decision effectively allowed the resumption of US authorities reviewing safeguards application based on threat of market disruption.¹³⁹¹

¹³⁸⁶ See *US Association of Importers of Textiles and Apparel Vs United States* (04-00598) 350 F. Supp. 2d 1342, Court of International Trade (30 December 2004) (the “US-ITA I”).

¹³⁸⁷ GAO, ‘US-China Trade; Textile Safeguard Procedures Should be Improved’, GAO-05-296 (April 2005), 25.

¹³⁸⁸ US-ITA I, above n 1359, 1346-1347.

¹³⁸⁹ Ibid, 1344.

¹³⁹⁰ See *US Association of Importers of Textiles and Apparel Vs. United States* (05-1209) 413 F.3d 1344, 1348, 1349, 1353 & 1354 US Court of Appeals for the Federal Circuit (14 February 2005) (the “US-ITA II”).

¹³⁹¹ See generally William Gillon, ‘US – China Trade: Opportunities and Challenges: Textile Trade with China – The Challenge of Textile Safeguards’, (2005) 34 *The Georgia Journal of International and Comparative Law* 119, where Gillon comments that Paragraph 242 of the Working Party Report refers

The USCIT's decision resulted in huge influx of Chinese imports into the US market since this coincided with quota expiry which meant that the start of 2005 was without any quota restraints or safeguards.¹³⁹² What emerges from a review of this decision in light of the US trade policy is the possibility that US authorities may target imports of any country under the threat based criteria if these are found to be harming the domestic US T&C sector.

In addition to the TS, US legislated PSS into US law vide Section 421 of the *Trade Act 1974*. Since quota expiration, there were six investigations conducted under PSS but none related to T&C. These investigations pertained to imports from China of manufactured metal goods.¹³⁹³

Out of these six, US ITC found injury to the domestic industries in three cases and recommended application of safeguards to the President. In these three cases, ITC's positive finding was based on the following factors:¹³⁹⁴

- Falling production and employment levels;
- Decline in domestic industries coinciding with rising imports from China;
- Rapid increase in imports from China were a significant cause of material injury and were causing market disruption;

The US President wields statutory discretion in providing relief unless there are national economic or security reasons against doing so.¹³⁹⁵ In these three cases the US President decided not to impose safeguards contrary to the recommendation of the USITC. The reasoning cited by the President is summarised in Table 5.2. The denial of relief by the President highlights the

to "existence or threat of market disruption" and therefore, this indicates that the "threat" of market disruption was a proper consideration for member countries.

¹³⁹² Ibid, 129.

¹³⁹³ GAO, 'US-China Trade: The United States Has Not Restricted Imports under the China Safeguard', GAO-05-1056 (September 2005), 12.

¹³⁹⁴ Ibid, 13.

¹³⁹⁵ This broad discretion was affirmed in June 2004 by the USCIT in *Motion Systems Corp. Vs. Bush*, 342 F. Supp. 2d 1247 (C.I.T. 2004).

political character of safeguards and this becomes an important factor in deciding the future utility of safeguards as a remedy in international trade.

(Table 5.2) Summary of Reasons Cited by the US President in Denial of Relief (Source: Adapted from US GAO, above n 1387, 16)	
Case	Reasons
<i>PEDESTAL ACTUATORS</i>	<p>Imposition of safeguards will not benefit the domestic producing industry and would result in shifting of imports from China to other offshore sources;</p> <p>The cost of safeguards to other users and consumers substantially outweighs the benefits to applicants/producers;</p> <p>Relief would affect disabled and elderly purchasers of mobility scooters and electric wheelchairs;</p> <p>Relief would affect workers in other industries that have a significantly larger number of workers than the domestic pedestal actuator industry.</p>
<i>WIRE HANGERS</i>	<p>Imposition of additional tariffs on Chinese imports would affect domestic producers dependent on them in an uneven manner;</p> <p>Domestic producer's adoption of adjustment strategies.</p> <p>Domestic producer's dominant share of the market and the opportunity to adjust to competition from Chinese imports even without import relief.</p> <p>Strong likelihood of production shifting to third countries.</p> <p>Additional tariffs will result in uneven impact on domestic distributors of wire hangers.</p> <p>Additional tariffs would negatively affect small dry-cleaning businesses.</p>
<i>WATERWORKS FITTINGS</i>	<p>Safeguards will be ineffective since imports from third countries will replace Chinese imports;</p> <p>Relief will affect US Consumers more than the domestic producers;</p> <p>Domestic producers already enjoyed a strong competitive position in the US market;</p> <p>In 2002-03 import levels were relatively stable in volume terms. Slight decline in value terms and therefore not warranting safeguards protection.</p>

Even though these products are not T&C, it is noticeable that the practical effect of any safeguards imposed on China is not market protection but rather, these safeguards would merely enable third country exporters that compete with China to capitalise on these restraints. In other words, the domestic industries still lose market share to foreign suppliers. If applied to the T&C sector, it becomes apparent that this is exactly what happened when China was restrained under the US-China MoU in 2005-06 (see Chapter 4 for discussion). Trade statistics considered in the case study on China demonstrate that in categories where China was restricted, Vietnam stepped in to take additional market share (see Annex-3). In many categories, Chinese imports continued to grow despite restrictions.

Moreover, it is also evident that interests of the domestic industries are not the only grounds of consideration by the US President. If this perspective is applied to T&C, it becomes apparent that US consumer's interests as well as those of the retail industries cannot be ignored for too long in favour of the US textiles and cotton industries.

Therefore, as far as the US experience is concerned both TS and PSS on China proved to be ineffective in regulating imports from China into the US market (be it T&C or any other products). Prior to expiry of TS in December 2008, TS and PSS could not be applied simultaneously since these were mutually exclusive. After 2008, it is likely that PSS would be utilised as tool of market protection against China. However, previous experience in applying PSS shows the realisation within the US political and governmental circles that PSS on China are, in reality, ineffective since another exporter would step in to fill in any gap left in the market and also because PSS would prove to be counter-productive.¹³⁹⁶ In support of this argument, the US GAO cites interviews with legal representatives of the US producers who expressed their reluctance in applying for safeguards since the President would likely reject these on

¹³⁹⁶ GAO, above n 1387, 19.

political considerations.¹³⁹⁷ Similar concerns were expressed by the *US – China Economic Security Review Commission* that considered safeguards as not being an efficacious remedy due to the President’s refusal to impose such a measure.¹³⁹⁸

5.2.2.3 Rationale behind safeguards & future application in T&C trade

Regardless of the economic efficiency and the actual effectiveness of safeguards as a trade remedy, the fact is that this measure exists in the GATT/WTO framework. Therefore, the question from a T&C context is what is the rationale behind use of such an unpopular and ineffective measure when it actually does not “safeguard” the importing economy? (Refer to arguments in preceding section and case studies in Chapter 4).

Alan Sykes and others have attempted to explain the possible rationales behind application of safeguards.¹³⁹⁹ These are summarised in Table 5.3. Whilst these rationales are applicable to the entire safeguards regime of the WTO, its particular effects in case of the T&C sector will be assessed to determine how safeguards will be used in the future as a market protection mechanism.

(Table 5.3) Theoretical Rationales for Safeguards	
Source: Sykes, above n 1307, 284-291; Trebilcock & Howse, above n 3, 312-314.	
Rationale	Summary
Safeguards as ‘ compensation ’	Trade and economic liberalisation brings uneven effects for different groups. Safeguards acts as a compensatory mechanism for such groups.
Safeguards as a measure to restore ‘ efficiency ’ to domestic industries	Domestic industries require additional investments and trade protection to restore competitiveness with foreign imports. Safeguards provide time for local industries to raise investments in order to improve their competitiveness.
Safeguards as a	Plain implementation of safeguards leads to no gain rather increases the

¹³⁹⁷ Ibid.

¹³⁹⁸ Ibid.

¹³⁹⁹ Sykes, above n 1307, 284-291; See also John H Jackson, William Davey & Alan Sykes, *International Economic Relations*, (4th Ed. Minneapolis: West Group), 211-216; Henrik Horn & Petros Mavroidis, ‘Review of the WTO *US – Lamb Dispute*’, (WTO, American Law Institute Conference on Principles of Trade Law, 2003); Trebilcock & Howse, above n 3, 312-314 .

measure to reduce 'adjustment' costs	costs of protectionism. Therefore, safeguards have to be implemented in such a manner that they slow the decline in local industries.
Safeguards as a 'political' instrument	Trade concessions that affect local industries lead to political pressures on governments/politicians in office. Safeguards can be imposed on imports to relieve this pressure, thereby dissipating political pressure being exerted by local industry groups and trade unions.

As Sykes points out, safeguards are not an ideal compensatory mechanism for groups that suffer in wake of trade liberalisation.¹⁴⁰⁰ This observation is equally applicable in the T&C sector where, for example, in spite of US application of safeguards in the form of US-China MOU, the domestic textiles industries continue to record employment losses.¹⁴⁰¹ This MOU was signed on 8 November 2005 and was valid until 31 December 2008. If employment figures between these dates from US textiles, textiles products and clothing manufacturing sectors are considered, the employment decline becomes apparent. This leads to the conclusion that application of safeguards on Chinese T&C exports did not lead to any positive impact on the US employment levels (see Table 5.4).

(Table 5.4) Decline in US Employment Levels in Textiles & Clothing Industries (December 2005 – December 2008) during subsistence of the US – China MOU.		
Source: <i>US Bureau of Labour Statistics Database</i>	All Employment (in Thousands)	
Sectors	Dec'2005	Dec'2008
Textile Product Mills	173.6	141.2
Textile Mills	239.6	183.5
Apparel	208.0	136.8

The decline in employment levels cannot solely be attributed to foreign imports since there are other factors such as rising labour costs, increased input costs, global demand and investment that are involved as well. Nevertheless, influx of cheaper imports are a major factor behind this decline,

¹⁴⁰⁰ Sykes, Ibid, 285.

¹⁴⁰¹ For example from January 2005 to January 2009, the total US employment in Textiles Mills declined from 226800 to 133600. Similar decline in the same period was witnessed in Textile Product Mills sector where employment level fell from 177800 to 137400 and also in Apparel where the decline was from 264400 to 178900 (Source: US Bureau of Labour Statistics Database).

therefore, these figures can be used to advance the argument that the first possible rationale behind application of safeguards is not very convincing.

GATT Article XIX was never envisioned safeguards as a compensatory mechanism but was rather viewed as an instrument to be applied in cases where there were “unforeseen developments.”¹⁴⁰² Applying this to the T&C sector, it is noticeable that the “unforeseen developments” along with, the non-contemplated “substantial and material change” in circumstances was the exact line of reasoning taken by the sponsors of the *Istanbul Declaration* (see Chapter 2) who collectively argued for safeguards against China. These countries feared that that in the increasingly competitive post-ATC environment, they would lose market share to China and other manufacturers unless quotas or any other form of artificial suppression was introduced on China.

Declining industries facing growth in imports also find it difficult to raise capital for investments in infrastructure, technological upgrade, research and development.¹⁴⁰³ Therefore, these industries often resort to making demands for trade protection while they make efforts to restore their competitiveness (or so they claim).¹⁴⁰⁴ In case of declining T&C industries there is little or no evidence to suggest that safeguards have been used under this rationale, either by developed countries or developing countries that were dependent on quotas for their T&C trade. Hence, this analysis by Sykes seems inapplicable to T&C trade, although this does not discount the possibility that in the future, declining industries pressure their governments into taking safeguard actions purely on the grounds of improving competitiveness and restoring efficiency of the domestic T&C sector.

Another rationale forwarded by Sykes, Jackson, Horn and Mavroidis is a variation of the preceding rationale i.e. safeguards can be employed to enable

¹⁴⁰² Sykes, above n 1307, 286.

¹⁴⁰³ Ibid.

¹⁴⁰⁴ Ibid, 286-287.

adjustment within the importing economy where one sector is declining rapidly.¹⁴⁰⁵ This rationale postulates that by using safeguards, the importing country retards the labour lay-off rate, whilst simultaneously attempting to divert the idle labour resources into growing industries. Sykes further adds that safeguards might not be the most ideal instrument to perform this function and cites subsidies as a better alternative to encourage hiring of the laid off workers.¹⁴⁰⁶

Applying this rationale to T&C industries leads to a varied result that depends on the development status of the countries e.g. the US can afford to re-train textiles workers and help them find alternative employments.¹⁴⁰⁷ The same can be said about the EU. Therefore, these two importers may potentially employ safeguards in the quota free environment under this rationale. However, this rationale becomes less convincing in the case of developing countries since they lack the financial resources to offer suitable alternative employment to their surplus labour force. Examples of such countries are quota-dependent manufacturers such as Turkey and Mexico. Such countries have the option to use safeguards for protecting domestic T&C industries from any foreign competition.

The final and the more convincing rationale proffered by Sykes is termed as the “political” rationale for applying safeguards.¹⁴⁰⁸ Sykes writes that trade agreements are contracted by political officials who seek to promote their mutual welfare by structuring trade agreements in a manner that advances their “political fortunes by attracting voters, campaign contributions or other manifestations of political support.”¹⁴⁰⁹ Sykes continues to explain that

¹⁴⁰⁵ See for example discussion in Trebilcock & Howse, above n 3, 313-314.

¹⁴⁰⁶ Sykes, above n 1307, 288.

¹⁴⁰⁷ US House Committee on Ways and Means, ‘Expanded Trade Adjustment Assistance Will Save Jobs’, (5 February 2009) <<http://waysandmeans.house.gov/News.asp?FormMode=release&ID=858>> at 27 August 2009; See also Knowledge @ Wharton, ‘An End to Global Textile Quotas: Watch China Sew Up the Market’, (9 February 2005) <http://knowledge.wharton.upenn.edu/printer_friendly.cfm?articleid=1133> at 27 August 2009.

¹⁴⁰⁸ See also Finger & Nogués, above n 1358, 33 who comment that a “safeguard action responds to a political situation” as opposed to anti-dumping which is a “technical matter.”

¹⁴⁰⁹ Sykes, above n 1307, 288.

political gains from trade agreements such as increased market access benefit exporters that in turn reward the political officials who also gain from benefits accruing to consumers and import-dependent domestic industries as a result of cheaper imports.¹⁴¹⁰ However, Sykes acknowledges, that benefits of trade liberalisation are uneven for import-competing industries that do not stand to benefit from trade liberalisation, therefore, an “ideal trade agreement from the standpoint of political officials will maximize the net political gains relative to political costs.”¹⁴¹¹

Import-competing industries pressurise political officials into adopting safeguards. Import-dependent industries generally oppose such measures. If the protected industries do not undertake significant restructuring during the protection period, then these industries continue to be unprepared for eventual market liberalisation that follows after the lapse of the measure. With the expiration of the safeguards, these industries will be unable to compete with efficient foreign producers.¹⁴¹² For the domestic industries, safeguard protection might also backfire since foreign competitors tend to become more efficient during subsistence of safeguards and this efficiency grants them an edge over the domestic industries when the safeguards lapse.¹⁴¹³

This explanation corresponds with the “woes” of the EU/US T&C industries over the decades since STA came into force that introduced quotas. Even while the end of the quota system was approaching, many experts continued to call for economic reform, diversification into other sectors and restructuring.¹⁴¹⁴ On the other hand, the industry interests in the developed economies persisted with their political pressure for further protection, all the while ignoring the need to restructure in order to compete with China and other foreign

¹⁴¹⁰ Ibid.

¹⁴¹¹ Ibid.

¹⁴¹² Hahn, above n 1307, 303.

¹⁴¹³ Ibid.

¹⁴¹⁴ Thomas Fuller, ‘Quotas: Much Ado, Little Gain’, *International Herald Tribune* (27 September 2005); Phillip Thornton, ‘Mandelson Orders Inquiry after Surge in Chinese Textiles Exports to Europe’, *the Independent (London)* (23 April 2005).

importers.¹⁴¹⁵ Due to this lack of preparation, as soon as quotas lapsed China predictably unleashed its full comparative advantage in T&C, which eventually resulted in the EU-China/US-China MOU incorporating safeguards restraints as well as flurry of activity on part of countries accustomed to protection by the quota system (see Chapter 2).

The above rationales put forward by Sykes and others, although general in nature, have been assessed through the lens of the T&C sector that is of critical importance to developing countries/LDCs. These countries themselves are divided into producers that were constrained under quotas and those that only grew because they were dependent on them.

After lapse of quotas, the T&C sector continues to enjoy priority treatment in most developing countries/LDCs, typically attracting more protection than any other sector in the national economy. This means that safeguards, as one market protection alternative, may well be used by developing countries to guard their T&C sector. However, as the review of the two possible application scenarios have demonstrated, there are inherent defects in the safeguards regime that impact on the implementation, effectiveness and long-term utility of using safeguards. Additionally, the protection afforded by such measures is only temporary and market liberalisation is inevitable. Thus, as far as the developing countries are concerned, it is more likely that protection of domestic the T&C sectors would be either through maintaining high tariff barriers or through anti-dumping action.

As far as the developed countries are concerned safeguards are expected to be used only by the EU and the US and not by other countries that have liberalised their T&C markets (e.g. Australia, Canada and Japan). Within the EU and the US, the future use of safeguards very much depends on the political influence of the T&C industries on the political establishment.

¹⁴¹⁵ Fuller, Ibid; Thornton, Ibid.

In case of the EU, which remains the leading exporter of textiles in the world due to its technological edge, safeguards would likely be used to protect satellite exporters of clothing, using EU origin fabrics and other inputs. This has been demonstrated above by the EU's action in protecting third party interests and may be termed as "indirect incubation" of economies that were dependent on quotas.

The EU's domestic clothing market was, in the recent past, restricted by safeguards on China but, as with all safeguards, this relief was temporary and only delayed the eventual market liberalisation. Any future application of safeguards will not result in protection of the EU's domestic industries since it is clearly noticeable from trade statistics that the restrained exporter's market share is simply displaced by another supplier that is not under safeguard restraints. This undermines the long term utility of employing safeguards as a market protection measure.

In the US, textiles industries are in a continued state of decline and the protection extended to them via safeguards has proven to be ineffective. Job losses have not ceased or even considerably reduced and imports have increasingly penetrated the US economy to the detriment of domestic producers. Similar to the EU, the US textiles industries are kept running through multiple preferential trade regimes that encourage use of US inputs by developing countries. Similar to the EU, safeguards only delayed the inevitable dominance in the US market of China and other exporters of T&C with comparative advantage to the detriment of preferential exporters. Therefore, the utility for T&C safeguards is limited in the US context, unless the US follows the EU's example of imposing safeguards to promote export by third countries.

5.3 ANTI-DUMPING

5.3.1 Overview

In simple terms, dumping is the selling of a product by the exporter in the importing economy below the total cost of that product.¹⁴¹⁶ In doing so, the exporter aims to exploit the consumer's price discrimination that exists across international borders i.e. ordinary consumers are most likely to opt for lower priced goods than similar goods priced higher.¹⁴¹⁷ Dumping adversely affects competing domestic industries that turn to often-sympathetic government authorities. These authorities are especially established to administer anti-dumping and other trade remedy laws to off-set 'unfair' pricing by foreign exporters.

The idea that foreign imports are 'unfair' if priced lower than domestic like products underpins the entire concept of anti-dumping duties.¹⁴¹⁸ This element is the distinguishing factor between safeguards (which address sudden and unexpected but not unfair increases in imports) and anti-dumping measures (which are ostensibly for use against unfairly priced imports).¹⁴¹⁹

The WTO Agreement on Anti-Dumping (the "AD Agreement") does not classify dumping as an unfair practice but is designed to regulate use of anti-dumping measures by countries.¹⁴²⁰ In other words, anti-dumping is one trade remedy option that countries can utilise to protect their domestic industries and the AD Agreement only applies if this remedy is adopted by a Member.¹⁴²¹ Such remedial action enables countries to take action against if dumped

¹⁴¹⁶ See Article 2:1 of the WTO Agreement on Anti-Dumping defines dumping where a product is introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country; Hoekman & Kostecki, above n 3, 315; Lester & Mercurio, above n 17, 465-466.

¹⁴¹⁷ Islam, above n 3, 194.

¹⁴¹⁸ Lester & Mercurio, above n 17, 465; Islam, above n 3, 320

¹⁴¹⁹ Lester & Mercurio, Ibid; Islam, Ibid

¹⁴²⁰ Islam, Ibid, 197; Hoekman & Kostecki, above n 3, 318.

¹⁴²¹ Hoekman & Kostecki, Ibid, 315.

imports are causing or threatening to cause material injury to import-competing domestic industries.¹⁴²²

Anti-dumping action can only be taken if it can be proven that dumping has caused or threatens to cause material injury to the domestic import-competing industries. In determining injury, consideration of positive evidence and objective examination of the volume of the dumped imports, their effect on prices in the domestic market, and the impact on domestic producers of like products must be made.¹⁴²³

It is necessary to establish a significant increase in dumped imports, whether in absolute or relative terms to production or consumption in the importing country for injury determination.¹⁴²⁴ To assist in such a determination, elements such as a significant price under-cutting, significant price depression or the level of the dumping margin are considered as well.¹⁴²⁵ The wording of Article 3.2 suggests that the investigating authorities must examine occurrence of all of the three price effects in the matter before them. However, only one of the three price effect must be established for the purposes of Article 3.2.¹⁴²⁶

The AD Agreement further illustrates injury indicators such as actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity, factors affecting domestic prices, extent of dumping margin, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments in order to assist in determining injury.¹⁴²⁷ However, this list is not exhaustive and none of the afore-mentioned factors can be taken to be decisive. Numerous WTO Panels have considered this element. For instance, the AB in *Thailand – H Beams* affirmed the observation in the Panel Report that "...factors listed in the

¹⁴²² Ibid, 315 & 317.

¹⁴²³ Article 3.1 of the AD Agreement.

¹⁴²⁴ Article 3:2 of the AD Agreement.

¹⁴²⁵ Ibid.

¹⁴²⁶ See for example WTO Panel Report, *Korea – Certain Paper* (WT/DS312/R), Paragraphs 7.242 & 7.253.

¹⁴²⁷ Article 3:4 of the AD Agreement.

mandatory list of factors in Article 3.4 must be evaluated by the investigating authorities ..."¹⁴²⁸

The same treatment can be found in *EC – Bed Linen*, where the Panel remarked that the use of the phrase "shall include" in Article 3.4 strongly suggested the mandatory nature of evaluation of the listed factors in that provision in all cases.¹⁴²⁹ The Panel further stated that:

*"...the authorities may not simply disregard such factors, but must explain their conclusion as to the lack of relevance or significance of such factors...Thus, we are of the view that every factor in Article 3.4 must be considered, and that the nature of this consideration, including whether the investigating authority considered the factor relevant in its analysis of the impact of dumped imports on the domestic industry, must be apparent in the final determination."*¹⁴³⁰

(emphasis added)

Neither the WTO AD Agreement nor the jurisprudence indicates how many of these elements need to be present in order to qualify for anti-dumping measure. Therefore, in national practice, it is often assumed that if majority factors are present that will lead to a positive finding of dumping. This issue will be further discussed below.

It is an essential element of the AD Agreement that dumped imports must be the cause of injury to the domestic industry.¹⁴³¹ This necessitates establishment of a causal link between dumped imports and the injury, based on evidence before the authorities.¹⁴³² It is also important that any other known factors that may be causing injury to the domestic industry must also be considered by the

¹⁴²⁸ WTO AB Report, *Thailand – H Beams* (WT/DS/122/AB/R), Paragraphs 121-125.

¹⁴²⁹ WTO Panel Report, *EC – Bed Linen* (WT/DS/141/R), Paragraph 6.154.

¹⁴³⁰ *Ibid*, Paragraph 6.62.

¹⁴³¹ Article 3:5 of the AD Agreement.

¹⁴³² *Ibid*.

national authorities and such external factors should not be attributed to the dumped imports.¹⁴³³

In short, the AD Agreement incorporates complex language and interconnected factors that have to be established to prove injury. According to Hoekman and Kostecki, this is due to compromises reached in the Tokyo and Uruguay Rounds of multilateral trade negotiations.¹⁴³⁴ The AD Agreement combines elements of national laws, practices of major WTO members, coupled with “periodic attempts by target countries to limit the protectionist biases inherent in the use of AD in most jurisdictions.”¹⁴³⁵

These attempts by victim countries still continue in sectors where developing countries are gradually building their comparative advantage. This has meant that with the expansion in global trade and the rise of Asian NICs, some developing countries have become frequent users of anti-dumping measures to shield their rising industrial sectors.¹⁴³⁶ This trend is in addition to the traditional use of anti-dumping measures by developed countries.

The oft cited argument in favour of anti-dumping measures is that it prevents predatory pricing. Robert McGee strongly refutes this view by stating that predatory pricing either does not exist or if it does, it benefits consumers.¹⁴³⁷ McGee further cites James Bovard who points out that in the last hundred years there has been no instance of predatory pricing based dumping in the US.¹⁴³⁸ Anti-dumping measures have often been termed a convenient tool of protectionism which negatively affects trade liberalisation and harms the

¹⁴³³ Ibid.

¹⁴³⁴ Hoekman & Kostecki, above n 3, 317.

¹⁴³⁵ Ibid.

¹⁴³⁶ Chad P. Bown, ‘The WTO and Antidumping in Developing Countries’, (2008) 20 (2) *Economics and Politics* 255, 263; see also Robert W. McGee, ‘Antidumping Laws as Weapons of Protectionism: Asian Case Studies’, (2008) 5(1) *Manchester Journal of International Economic Law* 36, 38 citing figures that show the rising number of anti-dumping investigations initiated by developing countries such as India, Argentina, Brazil; see further WTO, ‘WTO Secretariat Reports Surge in New Anti-Dumping Investigations’, (WTO Press Release 542, 20 October 2008) <http://www.wto.org/english/news_e/pr542_2.htm> at 22 August 2009.

¹⁴³⁷ McGee, Ibid, 40.

¹⁴³⁸ Ibid.

interests of consumers along with import-dependent industries. According to Finger, anti-dumping measures are:

“...straightforward protectionism that is packaged to make it look like something different. By calling dumping unfair, the presumption is that AD is fair and thus a good thing. This is good marketing, but bad economics. From an economic perspective there is nothing wrong with most types of dumping. AD is not about fair play. Its goal is to tilt the rules of the game in favor of import-competing industries.”¹⁴³⁹

In the context of the post-ATC trade in T&C, the use of anti-dumping measures represents an attractive option for import-competing industries. Prior to quota expiration, trade was primarily regulated through a combination of import quotas, safeguards and high tariffs. With quotas on T&C trade now abolished, the likelihood of global reduction in tariffs following successful conclusion of NAMA negotiations or due to regional FTAs, anti-dumping measures become a natural choice for import-competing industries and protectionist interests.

Anti-dumping measures also appear to be favoured above safeguards due to the decline in the utility and use of the former in domestic market protection (as examined in the preceding section). Moreover, anti-dumping enjoys a more favourable outlook with national authorities and import-competing industries since they allow for considerable government discretion in conducting investigations.¹⁴⁴⁰ All of these advantages and the fact that in national practice, anti-dumping measures are easier to impose and justify as compared to safeguards means that anti-dumping measures would likely be used for protecting T&C industries in the post-ATC period.¹⁴⁴¹ This argument will be further explored below.

¹⁴³⁹ Anti-dumping is referred to as “AD” in this quote (Joseph Michael Finger cited by Hoekman & Kostecki, above n 3, 322 & 323).

¹⁴⁴⁰ Bown, above n 1436, 263; Hoekman & Kostecki, above n 3, 323.

¹⁴⁴¹ Finger, above n 1332, 8; Ling Wei Chung & James Hartigan cite Wilfred Ethier who predicted as far back as 1982 that anti-dumping laws would become “the principal battleground” for protectionism

5.3.2 Assessing the use of Anti-dumping measures

As with safeguards, anti-dumping measures, in purely T&C specific context, can be applied in two scenarios i.e. developed-to-developing and developing-to-developing. Historically, anti-dumping measures were used by inefficient T&C industries in developed countries seeking protection against allegedly 'unfair' T&C imports and were readily granted by national authorities. However, as the volume of trade in T&C expanded, some developing countries have emerged as active users of anti-dumping measures as well. Their motivation is protection of their emerging industrial sectors, while seeking liberalisation in their target markets.

The AD Agreement mandates that member countries must create a WTO-compliant administrative mechanism for investigating anti-dumping applications.¹⁴⁴² According to Chad Bown, "the presence of an AD law and the economic incentives it creates imply that domestic industries vary in their need and ability to obtain import protection under this policy."¹⁴⁴³ Whilst, these remarks were made generally in the context of the wider use of anti-dumping measures, the intra-developing country application of anti-dumping measures in the T&C and allied sectors reveals some interesting facts.

In this context, Annex-4 summarises global anti-dumping measures taken in products that are constituents of the larger T&C trade (even while some of these products are classified as chemicals). These have been included since anti-dumping measures have the effect of raising prices of inputs such as fabrics and yarn. In other words, when chemical constituents are slapped with anti-dumping duties, prices of MMF and clothing are consequently affected.

amongst the developed countries (Ling Wei Chung & James Hartigan, 'Dumping in a Linder Model of Trade with Multiple Retail Channels', (2005) 9 (3) *Review of Development Economics* 325, 326).

¹⁴⁴² Bown, above n 1436, 255 (this is mandated by Article 18.4 of the WTO Anti-dumping Agreement).

¹⁴⁴³ *Ibid*, 256.

356 Another reason for inclusion is that clothing industries in some developing countries are heavily import-dependent. These industries have an important stake in the market protection process if their national authorities impose anti-dumping duties on textiles to appease local textiles industries but which, consequently, deny them access to cheaper foreign imports. In the long run, anti-dumping duties on textiles imports affect international competitiveness of local clothing industries. Table 5.5 summarises the number of anti-dumping actions in a country-wide manner from the data in Annex-4.

(Table 5.5) Summary of Usage (Anti-Dumping Measures in T&C related products) Source: <i>Calculated from Annex-4</i>		
Country	Applied AD Measures	Targeted in AD Measures
Argentina	22	1
Australia	18	1
Brazil	15	10
Canada	3	0
China	18	107
Colombia	25	2
EU	83	2
India	53	31
Indonesia	10	31
Japan	5	11
Malaysia	4	13
Mexico	19	7
Pakistan	9	18
Peru	41	1
Philippines	2	0
South Africa	18	0
South Korea	15	54
Taiwan	4	45
Thailand	1	23
Turkey	70	14
USA	18	16
Venezuela	2	0
Total	455	387

The first noticeable trend in Annex-4 is that Asian NICs and China stand out as the most frequently targeted countries. Asian NICs have developed a comprehensive industrial base in manufacturing textiles but have lost

comparative advantage in clothing manufacturing. These NICs have also adopted similar measures against each other as well.¹⁴⁴⁴

On the other hand, manufacturers such as Indonesia and China, that possess comparative advantage in T&C manufacturing, have been frequently targeted by countries experiencing decline after quota expiration (see e.g. Turkey's application of 70 AD measures mostly against China, Indonesia, Taiwan, and South Korea – see Table 5.5 and Annex-4).

Amongst the developed economies, EU's 83 actions (see Table 5.5) have also come against the same countries as targeted by Turkey, which may be a strong indicator of EU's desire to retain its primacy as the world's leading manufacturer and exporter of textiles by not only keeping out competitors but also as the foremost supplier of fabric to clothing manufacturers seeking access to its market.

In assessing anti-dumping as a market protection mechanism, it is important to determine its theoretical basis. Chad Bown propagates the endogenous trade policy theory to explain the use of anti-dumping measures.¹⁴⁴⁵ According to this theory, enacting domestic anti-dumping laws establishes an institutionalised system of trade protection from competing imports, accessible by any industry that is willing to expend resources in engaging legal and financial experts to evaluate data concerning alleged dumping causing injury to the local industries.¹⁴⁴⁶ Bown further describes the characteristics of industries that are more likely to pursue anti-dumping proceedings against competing imports and his analyses can be summarised as follows:¹⁴⁴⁷

¹⁴⁴⁴ This trend is not just limited to the T&C sector but is increasingly noticeable in 'South-South' trade (Chad P. Bown, 'Antidumping, Safeguards and other Trade Remedies' in Evenett, Simon J, Hoekman, Bernard & Cattaneo, Olivier (Eds) *The Fateful allure of Protectionism: Taking Stock for the G8* (Centre for Economic Policy Research, London, 2009) 31.

¹⁴⁴⁵ Bown, above n 1436, 265.

¹⁴⁴⁶ Ibid.

¹⁴⁴⁷ Ibid, 265-266, 272, 277, 278.

1. Larger industries are likely to pursue anti-dumping proceedings since they can afford the costs associated with such investigations.
2. Industries experiencing declining outputs and those susceptible to cyclical dumping¹⁴⁴⁸ are more likely to pursue anti-dumping measures to compete with imports.
3. Larger industries can influence policy-makers exploiting the national government's discretion in the evaluation of the injury criteria. Political influence can be gauged from factors such as industry size, financial capacity and importance in the national economy.
4. Industries with historical experience of their exports being subjected to Anti-dumping measures are likely to use these measures themselves. This may be used by way of retaliatory action or simply a learning experience from being subjected to anti-dumping proceedings in foreign jurisdictions.
5. Industries that have experienced macro-economic shocks as defined by currency fluctuations and decline in GDP growth are also likely to initiate anti-dumping investigations.

The endogenous trade policy theory is worded in general terms. Bown refers to the chemical and steel industries as the largest users of anti-dumping measures in his analysis.¹⁴⁴⁹ However, applying this analysis to T&C industry may give an indication on the future application of anti-dumping in this sector. The application and testing will be made according to two assessment scenarios similar to the exercise done in case of safeguards.

5.3.2.1 Scenario-1: Developing-to-Developing

The endogenous trade policy theory is analysed in the post-ATC environment, considering the experience of various developing countries. The aim is to test

¹⁴⁴⁸ Cyclical dumping is explained by Hoekman & Kostecki as dumping which is designed to “cover at least variable costs and maintain capacity during periods of slack demand” (Hoekman & Kostecki, above n 3, 318).

¹⁴⁴⁹ Bown, above n 1436, 285.

its viability in predicting the future application of anti-dumping measures in this scenario. As an illustration, Pakistan's imposition of anti-dumping duty on PFY imports from Indonesia, Korea and Thailand in 2006 is employed as a case study.

The investigation was conducted by the National Tariffs Commission (NTC), Government of Pakistan and pertained to alleged dumping from 1 January to 31 December 2004. The investigation period chosen was 1 July 2001 to 31 December 2004.

Pakistan incorporated the AD Agreement into national law vide *Anti Dumping Ordinance 2000* (the "AD Ordinance"). The application against alleged dumping and investigation of the matter are the responsibilities of the NTC, Government of Pakistan. In this case, the application was made by the industry representative Filament Yarn Manufacturers Association (FYMA) on behalf of the domestic industry producing PFY.

Section 24(1) of the AD Ordinance emulates Article 5.4 of the AD Agreement. This provision states that an application would be considered to have been made by, or on behalf of, the domestic industry only if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the domestic like product produced by that portion of the domestic industry (expressing either support for or opposition to the application). In this case, the applicant filed the application on behalf of four units constituting 43.06% of the domestic production of PFY during the 2004. Table 5.6 provides an overview of the production share by these domestic manufacturers of PFY.

(Table 5.6) Unit-wise Production of PFY in Pakistan during 2004 Source: PFY Report, above n 1333, Table I			
S.No.	Name of the Unit	Percentage Share in Domestic Production	Status
1.	S.G. Fibers Ltd., Karachi	10.91	Applicant
2.	Polyron Ltd., Karachi	3.38	Applicant
3.	Rupafil Ltd., Lahore	22.28	Applicant
4.	Spintex Ltd., Lahore	6.49	Applicant
5.	Rupali Polyester Ltd.	10.96	Indifferent
6.	Gatron (Ind.) Ltd.	39.05	Indifferent
7.	Dawood Lawrencepur Ltd.	1.83	Indifferent
8.	Sind Industries	0.36	Indifferent
9.	Ahsan+Ahmad Industries	4.73	Indifferent
	Total	100	

Additionally, Section 24 (2) of the AD Ordinance stated that no investigation shall be initiated when domestic producers expressly supporting an application account for less than 25% of the total production of the domestic like product produced by the domestic industry. This requirement was clearly satisfied.

Curiously, the NTC construed the indifference of other manufacturers as support by “100 percent of the total production of the like product produced by that portion of the domestic industry expressing its opinion.”¹⁴⁵⁰ Thus, the application was held as being made by the domestic industry, satisfying the requirement of Section 24(1) of the AD Ordinance.

The main grounds of the application were that the PFY imports at dumped prices originating from the targeted countries caused material injury to Pakistani manufacturers of the similar product. The investigated product was termed as “an industrial raw material, mainly used in the manufacturing of art silk fabrics and garments.”¹⁴⁵¹

The NTC imposed a provisional anti-dumping duty “ranging between zero percent to 36.56 percent ad valorem of C&F price importable from the Exporting Countries for a period of four months effective from November 12,

¹⁴⁵⁰ PFY Report, above n 1333, Paragraphs 2.2 & 2.4.

¹⁴⁵¹ Ibid, Paragraphs 6.2(i).

2005.”¹⁴⁵² Thereafter, the NTC invited comments from other concerned parties (including consumers of PFY) in order to review any consequences for third parties that could flow from imposition of anti-dumping duties.

Whilst there were comments from various interested parties both outside and within Pakistan, the most material comments for the purposes of this research came from the *Gujranwala Art Silk Merchant Association* (GASMA). GASMA commented that in presence of high tariffs and taxation rates levied on imports of PFY, there is little possibility of injury to the local industries.¹⁴⁵³

The GASMA further claimed that there was increasing demand for PFY imports in Pakistan and that the “local producers of polyester filament yarn can hardly meet 50% of the total consumption.”¹⁴⁵⁴ GASMA went on to state that “*Should this duty is not withdrawn (sic), running textile machinery will be scrapped and a large number of labor engaged in the textile industry will loose (sic) jobs and un-employment will increase considerably.*”¹⁴⁵⁵

In responding to GASMA’s comments, the NTC skirted the issue of tariffs maintained by Pakistan on textiles and any constituent materials associated with textiles manufacturing but commented on the rising demand of PFY within Pakistan. The NTC stated that even though domestic market for PFY was increasing there was no growth and investment in the domestic industry during the period of investigation “due to dumping of the investigated product.”¹⁴⁵⁶ Furthermore, the NTC responded to the GASMA comments concerning the negative effects on the local textiles industries by stating that the NTC was not “*required to assess public interest under the Ordinance. Under the Ordinance, the Commission is only required to determine dumping, injury and causal link between dumping and injury through an antidumping investigation.*”¹⁴⁵⁷

¹⁴⁵² Ibid, Paragraph 14.1.

¹⁴⁵³ Ibid, Paragraph 18.2.

¹⁴⁵⁴ Ibid.

¹⁴⁵⁵ Ibid.

¹⁴⁵⁶ Ibid, Paragraph 18.2 & 37.

¹⁴⁵⁷ Ibid, Paragraph 18.2.

The NTC's treatment of the injury factors as enumerated in Articles 3.2 and 3.4 of the AD Agreement are summarised in Table 5.7. The following summary does not assess the merits of NTC's calculations but only provides a concise overview of the treatment of the injury factors by the NTC in this investigation.

(Table 5.7) Evaluation of Injury Factors by NTC in imposition of Definitive Anti-Dumping Duties on PFY Imports into Pakistan

Source: PFY Report, above n 1333, Paragraphs 24-39

Factor	Evaluation	Determination
Price undercutting	According to NTC calculations, PFY Imports undercut the price of the domestic like product throughout the POI. In 2002, 2003 and 2004 the price undercutting was by 23.01%, 21.71% and 16.85% percent respectively. In period July-December 2004 price undercutting was 18.19%.	Positive
Price Depression	According to NTC calculations, the weighted average ex-factory price of PFY in Pakistan decreased by 7.19% in 2003. However in 2004 and in the period July to December 2004, the domestic industry was able to increase prices of PFY by 2.58% and 10.75% respectively	Negative
Price Suppression	According to NTC calculations, weighted average cost of production of domestic like product increased by 4.44% in 2003 as compared to previous year's cost of production. The cost of production increased by 7.55% percent in 2004 and further increased by 28.46% during the period from July to December 2004.	Positive
Effect on Market Share	The NTC cited figures from domestic market that demonstrate decreased share of the domestic industry from 72% 2002 to 67% in 2003, 63% in 2004, and 44% during the period from July to December 2004. Conversely, market share of dumped imports increased from 26% in 2002 to 31% in 2003 and 35 %in 2004. During the period from July to December 2004, the share of dumped imports increased to 51% of the total domestic market.	Positive
Effect on Sales	NTC evaluation showed sales of the domestic like product by the industry decreasing by 2.57%, 8.19% percent and 47.04% in 2003, 2004 and during the period from July to December 2004 respectively	Positive
Effect on Production & Capacity Utilisation	NTC cited manufacturing data which demonstrated that local production of PFY decreased in 2003 which led to a fall in capacity utilisation from 91% to 85 %. The production	Negative

	increased in 2004 and capacity utilization also increased from 85% to 94%. The capacity utilization increased to 96% during the period from July to December 2004	
Effect on Inventories	Inventory levels decreased from 38.98% in 2003 to 6.18% in 2004. During period July to December 2004 the inventory levels were further reduced 8.12%	Negative
Effect on Profit/Loss	The domestic industry incurred losses by experiencing decline in profits i.e. in 2003 the profits fell from Rs. 363.18 per (Metric Tonnes) MT to Rs. 359.85 per MT in 2004. However, during the period from July to December 2004 losses incurred by the domestic industry were found to be decreasing.	Positive
Effect on Cash Flows	Citing various cash flow figures, the NTC observed mix trend of cash flows from operations of the local industry. The cash flow through operations changed from negative in 2002 to positive in 2003. In 2004, the cash generated from operations was negative and during the period from July to December 2004 it was again positive.	Positive
Effect on Employment & Productivity	The NTC cited figures which demonstrated that the number of employees in domestic industry decreased in 2004. Productivity per worker decreased from 11.37 (MT) in 2002 to 10.46 MT per worker in 2003 due to increase in employment and decrease in production. The productivity increased in 2004 and July-December 2004 due to increase in production and reduction in employment. Salaries & wages/MT for production of the domestic like product increased in 2003 and decreased in 2004 and during the period from July to December 2004.	Positive
Effect on Return on Investment	The NTC considered figures which demonstrated return on investment as 10.86% in 2002 but which went into negative during the 2003, 2004, and July-December 2004.	Positive
Effect on Growth & Investment	The NTC observed that the domestic demand for PFY was in the range of 130000-136000 MT/year. Since the domestic industry suffered loss of market share and reduced sales during the POI, and since 10 out of original 19 units closed down, there was little likelihood of further growth and investment in the industry.	Positive
Ability to Raise Capital	Even though the Applicants raised this issue, no supporting documentary evidence was submitted.	Negative

To summarise, the NTC found a causal link between injury suffered by the local industry and the dumped imports due to volume of dumped imports increasing significantly while undercutting the prices of the domestic like

product significantly. Additionally, the domestic industry experienced significant price suppression due to dumped imports and lost significant market share while dumped imports increasingly snared market share away from the local industries. During the period of investigation, the sales of the domestic like product by the domestic industry decreased significantly and as a result the domestic industry incurred losses on its operations. The dumped imports were also found to be affecting domestic industry negatively in cash flow, employment, growth and return on investment terms.

(Table 5.8) Summary of Evaluation of Injury Determination Factors in Other Antidumping Investigations by NTC, Government of Pakistan (2002-2005) Source: NTC < http://www.ntc.gov.pk/adrep.asp > at 21 September 2009				
Determination Name & Year	Factors considered by NTC in making determination	Were these factors found to be causing material injury?	Outcome	Target Countries
Urea Formaldehyde Moulding Compound (2005)	Price Undercutting Price Depression Price Suppression Effect on share in domestic market Effect on sale Production and capacity utilization Decrease in Inventories Loss of Profits Cash flow Employment and Productivity Return on Investments Growth and Investment Ability to raise capital	Negative Positive Positive Positive Positive Negative Positive Positive Positive Negative Positive Positive Positive	Definitive Anti-Dumping Duty imposed	China
Formic Acid (2005)	Price Undercutting Price Depression Price Suppression Effect on share in domestic market Effect on sale Production and capacity utilization Decrease in Inventories Loss of Profits Cash flow Employment and Productivity Return on Investments Growth and Investment Ability to raise capital	Positive Negative Positive Positive (info not provided) Positive Positive Positive Positive Positive Negative Negative (Info not provided)	Provisional anti-dumping duty imposed	Finland & Germany

PVC Resin (2004)	Price Undercutting Price Depression Price Suppression Effect on share in domestic market Effect on sale Production and capacity utilization Decrease in Inventories Loss of Profits Cash flow Employment and Productivity Return on Investments Growth and Investment Ability to raise capital	Positive Negative Negative Positive (no info provided) Negative Positive Positive Negative Negative Positive Negative Negative	Definitive Anti-Dumping Duty imposed	South Korea & Iran
Acrylic Tow (2004)	Price Undercutting Price Depression Price Suppression Effect on share in domestic market Effect on sale Production and capacity utilization Decrease in Inventories Loss of Profits Cash flow Employment and Productivity Return on Investments Growth and Investment Ability to raise capital	Positive Negative Positive Partially suffered Partially suffered Positive Negative Positive Positive Positive Positive Positive (could not conclude due to lack of evidence)	Definitive Anti-Dumping Duty imposed	Uzbekistan
Glacial Acetic Acid (2003)	Price Undercutting Price Depression Price Suppression Effect on share in domestic market Effect on sale Production and capacity utilization Decrease in Inventories Loss of Profits Cash flow Employment and Productivity Return on Investments Growth and Investment Ability to raise capital	Positive Positive Positive Positive (info not provided) Positive Positive Positive Positive Positive Positive Positive Positive	Definitive Anti-Dumping Duty imposed	Taiwan
Sorbitol (2003)	Price Undercutting Price Depression	Positive Partial Loss	Definitive Anti-	France & Indonesia

	Price Suppression Effect on share in domestic market Effect on sale Production and capacity utilization Decrease in Inventories Loss of Profits Cash flow Employment and Productivity Return on Investments Growth and Investment Ability to raise capital	Partial Loss Positive Positive Partial Loss Partial Loss Positive Positive Positive Positive Positive Positive (Info not provided)	Dumping Duty imposed	
Tin Plate (2002)	Price Undercutting Price Depression Price Suppression Effect on share in domestic market Effect on sale Production and capacity utilization Decrease in Inventories Loss of Profits Cash flow Employment and Productivity Return on Investments Growth and Investment Ability to raise capital	Positive Negative Negative Partial Loss Partial Loss Partial Loss Positive Positive Partial Loss. Negative Positive Positive Positive	Definitive Anti-Dumping Duty imposed	South Africa

It is noticeable from Table 5.8 that not all of the factors were found to be affecting the domestic industry i.e. the imposition of dumping was done on grounds of majority factors being present. The same element of majority is noticeable from other NTC proceedings as well (summarised in Table 5.8). However, PVC Resin case is an exception where the majority of elements were not present but NTC imposed anti-dumping duties on South Korean exporters anyway.

It is also noticeable that in many cases some of the injury factors were not fully established and despite the partial losses suffered by the local industries, the NTC proceeded with imposition of anti-dumping duties. This not only highlights the level of discretion wielded by the national authorities (who are susceptible to external pressure in determining occurrence of dumping) but

also demonstrates the bias in terms of considering even a partial loss suffered by the local industries as sufficient to establish injury.

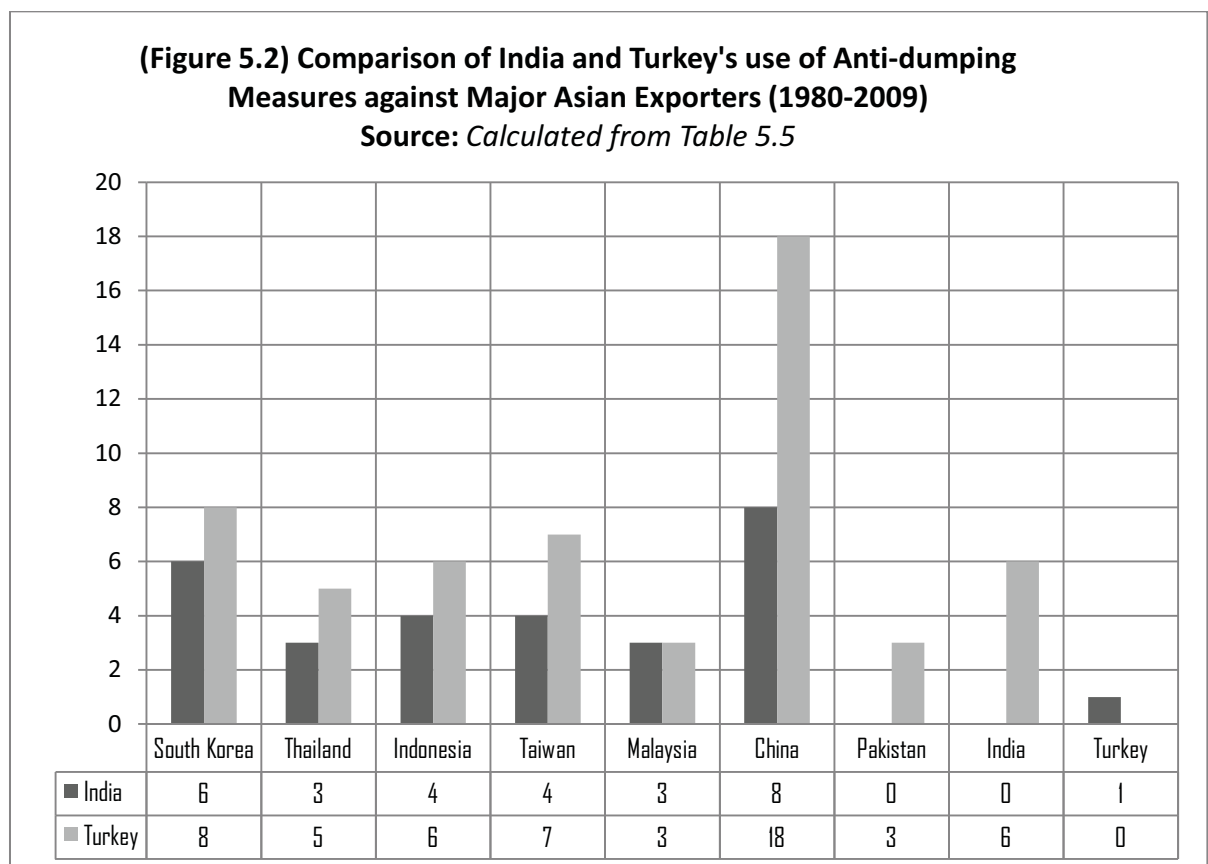
The bias is further betrayed by the NTC refusing to undertake a public interest investigation which would have revealed losses incurred by the more export oriented sectors that are dependent on imports. By denying access to cheaper imports, the policy-makers and the local industries manipulate the availability of inputs to these export oriented sectors such as clothing and fabric exporters who would be forced to use higher priced domestic inputs. The susceptibility of the national authorities to external influence by the local industries is increased in the case of the politically influential T&C industries in a developing country.

What is also noticeable from the PFY proceedings is the nexus between anti-dumping measures and the frequency of Asian NICs exporters being targeted by T&C dependent economies. In other words, Pakistan was not the first country that imposed anti-dumping duties on South Korea, Taiwan, Thailand and Indonesian exporters of MMF inputs. Annex-4 and Table 5.5 demonstrate that these countries were also targeted in similar product categories by Argentina, Colombia, EU, Indonesia, India, Mexico, Peru, South Africa, Turkey and USA.

5.3.2.1.1 Use by developing countries

In addition to Pakistan, Turkey and India's experience in imposition of anti-dumping measures against Asian NIC exporters is illustrative. Amongst developing countries, India and Turkey have emerged as leading users of anti-dumping measures in textiles and allied sectors (see Annex-4 and Table 5.5). India's applied measures in textiles and allied sectors numbered 53, whilst Turkey exceeded this number with 70 anti-dumping measures against imports in similar categories.

Figure 5.2 illustrates India and Turkey's use of anti-dumping measures against major T&C rivals. This illustration should be assessed keeping in mind that the major target market of these countries is not each other but the EU/US market. To this end, these countries attempt to give their industries as much advantage as possible by trying to keep out foreign competitors from their own domestic markets. This is further affirmed from the nature of the targeted products. These measures by Turkey and India came in the textiles and allied sectors as opposed to the clothing sector. As the case studies in Chapter 4 demonstrate, Asian NICs have lost comparative advantage in clothing manufacturing, whilst Thailand and China are experiencing increasing labour costs in clothing sector. Additionally, intra-clothing exports amongst these countries is not considered lucrative since majority of clothing exports are destined for the developed economies.



Therefore, keeping this fact in mind, the main policy rationale behind anti-dumping measures imposed by Turkey and India is not just to benefit their

textiles and allied industries in terms of competition in their domestic market but to “encourage” the local clothing industry (that target developed economies for exports) to continuously source their inputs and fabric needs from local manufacturers rather than relying on imports.

This is accomplished by a combination of maintaining tariff barriers backed by anti-dumping measures against competing raw materials imports that escape the tariff barrier net. This illustrates the trade restrictive nature of anti-dumping of what can be termed as a “Pre-emptive” use of anti-dumping to shield sensitive industries from foreign competition before the damage to local industry increases.

In addition to Turkey and India’s use of anti-dumping measures, some Latin American countries (that are traditionally not major exporters of T&C) in the past have employed anti-dumping measures as well. Their use can be termed as “Reactive” since their behaviour demonstrates use of anti-dumping measures at the behest of local industries following a period of trade liberalisation e.g. Argentinean use of anti-dumping and safeguard measures was following trade reforms in 1989 and onwards. Part of the reason why imports sharply increased was deliberately setting exchange rate at a level that proved unsustainable after removal of trade restraints.¹⁴⁵⁸ The concept of “Pre-emptive” and Reactive” use of anti-dumping measures will be developed further in this chapter.

These policies led to large scale displacement of domestic production whereby imports increased from US \$ 5 Billion in the late 1980s to more than US \$ 30 Billion in the late 1990s resulting in high unemployment rate of 20% in 1995.¹⁴⁵⁹ Argentina adopted a new anti-dumping regime and created a specialist organisation (Comisión Nacional de Comercio Exterior – CNCE) in 1994 which

¹⁴⁵⁸ Finger & Nogués, above n 1358, 4

¹⁴⁵⁹ Julio J. Nogués & Elias Bracat in Finger & Nogués, *Ibid.*

can be viewed as a direct reaction to macro-economic shocks and the currency crisis the country experienced in the recession years of 1999-2001.¹⁴⁶⁰

The Colombian experience is similar to Argentina's i.e. trade liberalisation resulted in massive influx of cheap imports (despite the presence of tariffs as high as 18%) which led to demands by local textiles industries for protection.¹⁴⁶¹ However, the Colombian government realised that imposing stringent measures against textiles inputs would disadvantage the local clothing producers.¹⁴⁶² This realisation resulted in a series of reforms encompassing temporary tariff reduction on raw materials and machinery, stronger smuggling control, and modification of the safeguards and anti-dumping regime.¹⁴⁶³

The Colombian solution to balance the interests of import-competing and import-dependent industries was to reform the safeguards mechanism and increase reliance on it rather than the anti-dumping system.¹⁴⁶⁴ The reformed Colombian system was termed as "safeguard by reason of disruption" which enabled increasing tariff levels up to the maximum bound tariff level on the target imports, thereby staying within the norms of the WTO and guarding domestic interests as well.¹⁴⁶⁵ This model of safeguards was different from the WTO model in terms of evidentiary and innovation requirements i.e. market disruption was interpreted differently as existence of imports in unfair conditions.¹⁴⁶⁶ Also, there was no requirement to formulate an adjustment plan and the restriction could be imposed up to a non-extendable period of two years.¹⁴⁶⁷ Colombia, therefore, stands out as an exception to the global preference for anti-dumping measures by relying on an ingenious variation of safeguards moulded to suit local demands.

¹⁴⁶⁰ Ibid.

¹⁴⁶¹ Mauricio Reina & Sandra Zuluaga in Finger & Nogués, Ibid, 15.

¹⁴⁶² Ibid, 16.

¹⁴⁶³ Ibid.

¹⁴⁶⁴ Ibid.

¹⁴⁶⁵ Ibid.

¹⁴⁶⁶ Ibid, 16-17.

¹⁴⁶⁷ Ibid.

By far the most targeted exporter in the T&C sector is China with 107 anti-dumping measures taken against its exports by other countries (see Table 5.5 and Annex-4.). Since Chinese economic growth has had a direct effect on China's export potential, many developing countries (especially focussing on clothing export) feel the need to protect their domestic textiles sector so that cheaper imports from China do not displace the locally produced inputs consumed by their export-oriented clothing industry. At the same time, importing countries do not wish to compromise on the trade liberalisation front, therefore, anti-dumping measures represent a WTO-consistent alternative¹⁴⁶⁸ in addition to the China specific safeguards (which suffers, from drawbacks as highlighted in the preceding section).

Importing countries have employed anti-dumping measures as a "cheap and powerful instrument for segmenting the markets that ongoing or scheduled trade liberalization is making more competitive."¹⁴⁶⁹ Historically, Chinese products were frequently targeted with discriminatory trade measures in the pre-accession years that mostly took the form of heightened tariffs.¹⁴⁷⁰ Anti-dumping measures against China became more prominent after Chinese accession in 2001 to the WTO. Bown writes that by 2001 the ten most frequent users of anti-dumping measures i.e. US, Canada, Australia, EU, Argentina, Brazil, India, Mexico, South Africa and Turkey were initiating about 60 new investigations against China every year.¹⁴⁷¹

According to Messerlin, a major factor behind China's susceptibility to anti-dumping measures is China's classification as a "non-market economy" until 2017.¹⁴⁷² This allows importing countries to use proxies for estimating

¹⁴⁶⁸ Chad Bown, 'China's WTO Entry: Anti-Dumping, Safeguards and Dispute Settlement', Working Paper 13349, National Bureau of Economic Research (NBER) (August 2007), 2.

¹⁴⁶⁹ Messerlin, above n 1000, 111.

¹⁴⁷⁰ Bown, above n 1468, 4.

¹⁴⁷¹ Ibid, 6.

¹⁴⁷² Messerlin, above n 1000, 123.

domestic prices in order to calculate dumping margin.¹⁴⁷³ The use of proxies makes proving dumping easier and it also artificially expands the estimation of dumping margins as compared to market economies.¹⁴⁷⁴

Another factor that contributes to Chinese vulnerability to foreign anti-dumping measures is China's own high tariffs which result in high prices of exported products in the domestic market.¹⁴⁷⁵ This means that when an importing economy is considering anti-dumping measures against Chinese exports, the landed price in the destination market will always be lower than the price for similar product in Chinese domestic market thus making dumping easier to prove.¹⁴⁷⁶ In 2007-2008, China maintained an average MFN tariff of 9.7% in textiles sector whilst in Clothing the MFN tariff was 16%.¹⁴⁷⁷ Since most of the inputs that go into textiles manufacturing are classified as chemicals, the average MFN tariff in this sector was 6.9%.¹⁴⁷⁸ These tariff levels have been maintained at similar levels since 2005-2006¹⁴⁷⁹ but have been reduced since 2001 when the average applied tariffs on textiles and clothing was 21% and chemicals was 9.4%.¹⁴⁸⁰

Even though this reduction in tariffs is substantial, this did not result in Chinese T&C exports not being targeted by other countries. The extent of anti-dumping measures is summarised in Figure 5.3 which show that Latin American countries were amongst the leading users of anti-dumping measures against Chinese T&C products entering their economies. Turkey is another example of a developing country that has frequently targeted Chinese textiles and inputs (see Figure 5.3, Annex-4 and Table 5.5).

¹⁴⁷³ Ibid.

¹⁴⁷⁴ Ibid.

¹⁴⁷⁵ Ibid, 114.

¹⁴⁷⁶ Ibid.

¹⁴⁷⁷ WTO, above n 1204.

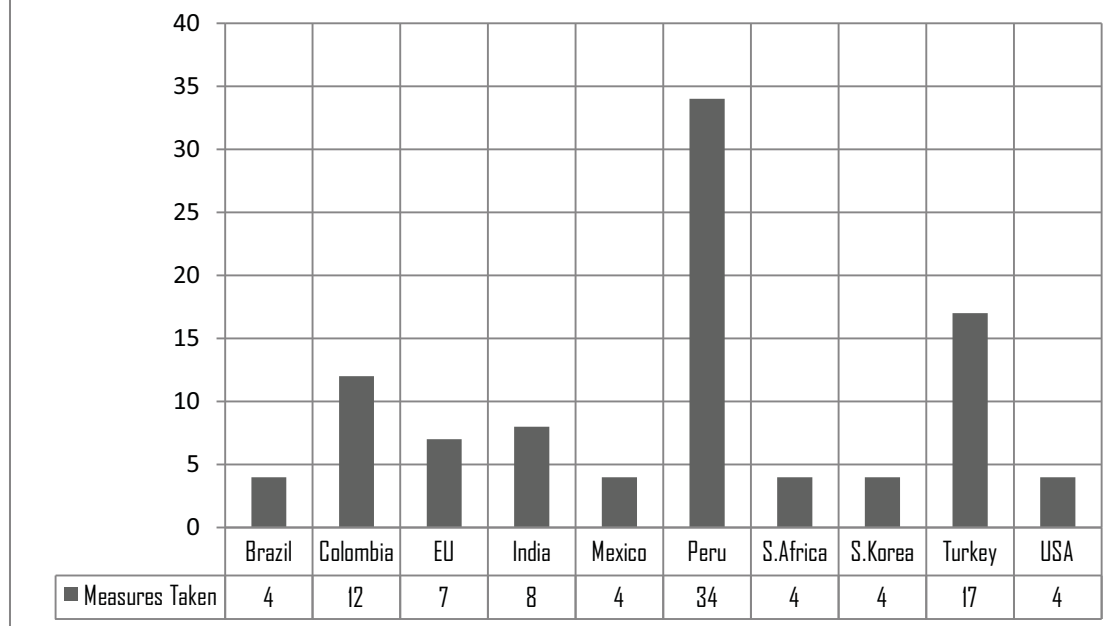
¹⁴⁷⁸ Ibid.

¹⁴⁷⁹ WTO, above n 1158.

¹⁴⁸⁰ Messerlin, above n 1000, 112-113 citing figures by Brink Lindsey & Dan Ikenson, 'Coming Home to Roost: Proliferating Antidumping Laws and the Growing Threat to US Exports', (Washington DC, Cato Institute) (2001).

(Figure 5.3) Leading Users of Anti Dumping Measures Against Chinese T&C Exports (1980-2009)

Source: Claculated from Table 5.5



Messerlin refers to the adoption of a uniform tariff policy by China to reduce distortions produced by China's high tariffs in some dumping-intensive sectors such as chemicals, metals, electrical equipment, machinery, textiles and clothing.¹⁴⁸¹ This policy was successfully followed by Asian NICs (in particular Taiwan and South Korea) because it reduces their exposure to foreign anti-dumping measures through industrial upgrade and diversification of exports.¹⁴⁸² According to Masserlin, this policy contributes positively to economic development of a country since it induces a shift in production to other sectors that are less likely to be targeted by other countries.¹⁴⁸³

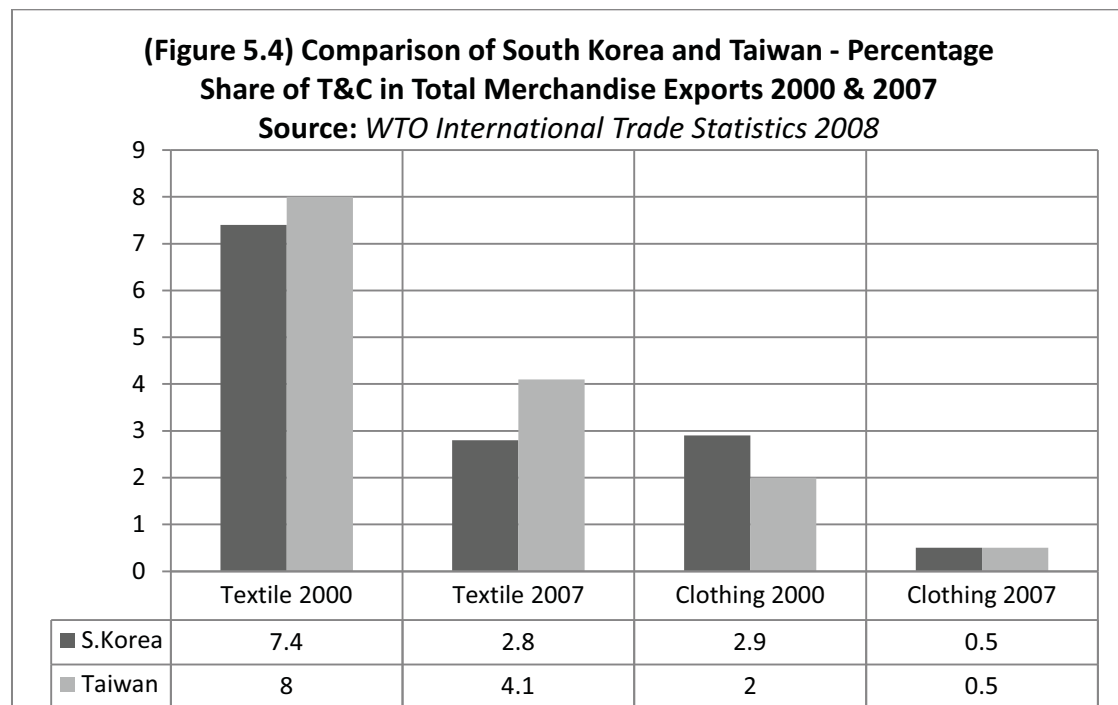
Messerlin's comments appear very convincing. No doubt Taiwan and South Korea have diversified on to higher value added sectors but a review of Annex-4 and Table 5.5 reveals that industrial diversification has not resulted in Taiwanese or South Korean textiles and related inputs from not being subjected to anti-dumping proceedings. Note that Taiwan was targeted 45

¹⁴⁸¹ Messerlin, above n 1000, 111, 114, 115.

¹⁴⁸² Ibid, 115.

¹⁴⁸³ Ibid.

times whilst South Korea was targeted 54 times in textiles and allied sectors over the last three decades (see Table 5.5).



As per Messerlin's postulation, these two countries reduced their reliance on the textiles sector over time and lost comparative advantage in clothing manufacturing similar to developed countries (see Figure 5.4). Yet, this has not stopped or reduced the likelihood of their textiles exports being targeted by competing nations. Read this way, the argument of developing countries undergoing industrial diversification prompted through anti-dumping measures is not very convincing, especially from the T&C perspective.

Applying this in case of China reveals further weakness in Messerlin's argument. China is not heavily dependent on the T&C sector even though it is the leading T&C exporter of the world. WTO statistics even show a decline in Chinese reliance on textiles exports.¹⁴⁸⁴ Rather, the Chinese comparative advantage in T&C flow is through economies of scale that result from a

¹⁴⁸⁴ Chinese textiles exports constituted 4.6% of the total merchandise exports that fell from 6.5% in 2000. Similarly Chinese clothing exports stood at 9.5% of the total merchandise exports falling from 14.5% in 2000 (WTO, above n 1157).

combination of extensive industrial infrastructure and an enormous labour workforce. Therefore, reducing tariffs from existing levels will not substantially lead to diversification when China has already diversified on to other value added sectors.

5.3.2.1.2 Explaining use of anti-dumping measures through the endogenous trade policy theory

The use of anti-dumping measures by developing countries against China can perhaps be explained by Bown's analysis that increased imports from China into the new user countries correspond with the increase in anti-dumping actions against China.¹⁴⁸⁵ Whilst this observation is general in nature, applying this to the post-ATC behaviour of China in the T&C sector confirms this proposition. Note that majority of actions taken by Colombia, India, Mexico and Turkey came soon after or near 2005 when quotas on T&C trade was lifted (see Annex-4).

This trend may also be used to explain the concerns that the afore-mentioned developing countries harboured against China in the post-ATC trading environment. These countries feared that after lapse of T&C quotas competition would increase manifold, leading to greater penetration of Chinese textiles products within their own local markets. After China's accession to the WTO, China became entitled to MFN treatment upon accession and could not be contained behind discriminatory tariffs.¹⁴⁸⁶

An additional concern in the post-ATC period is that countries used to the quota system would have to compete with China in the major markets of EU and US. These concerns led to increased post-ATC use of anti-dumping by developing countries to protect their domestic sectors, with further augmentation by lobbying the EU and the US to renew restraints on China.

¹⁴⁸⁵ Bown, above n 1468, 8.

¹⁴⁸⁶ Ibid, 11.

These efforts materialised in the EU-China MoU and the US China MoU as well as the Istanbul Declaration (see Chapters 2 & 4 for discussion).

Peru stands out as an exception to the above observation with the majority of its actions coming in 1996. This can be explained by Peru's preference in using anti-dumping measures against China when it was not a WTO member and hence not a recipient of the MFN treatment or entitled to WTO dispute settlement mechanism. The decline in Peru's use of anti-dumping after quota expiration in 2005 (see Annex-4) was the result of a policy shift from using anti-dumping measures as the primary market-protection tool to the China-specific TS and PSS (see discussion above on Peru's use of PSS).

Since anti-dumping measures are a WTO-sanctioned trade measure, its application against China and on an intra-developing country level will likely continue in the T&C sector. However, as the above arguments have demonstrated, market-protection behaviour by developing countries in the T&C specific context will vary according to individual circumstances and the level of industrial development along with extent of reliance on T&C sector. The endogenous trade policy theory is tested with these issues in mind in order to gauge the future use of anti-dumping in the developing-to-developing scenario.

According to the endogenous trade policy theory as explained by Bown, larger industries are likely to pursue anti-dumping matters because they can easily afford the costs associated with such proceedings. In a way this is akin to 'purchasing' protection from the state against imports. Furthermore, the larger the industries in terms of employment, financial capacity and contributor to the national exchequer, the more politically influential it becomes. Therefore, national authorities investigating anti-dumping actions are often under heavy political and external pressure to oblige the protection seeking industries (see discussion on the public choice theory in the Introduction).

The size of the local industries also enables it to overcome the free-rider problem i.e. since all the domestic producers would benefit from market protection as a result of anti-dumping measures, firms taken individually have little incentive to invest in the anti-dumping procedure.¹⁴⁸⁷ This observation can be illustrated in a more T&C specific context by the PFY case study examined above. Note that the applicant industries numbered four out of nine operational units at the time of the institution of the anti-dumping proceedings (see Table 5.6). The rest of the industries, constituting the bulk of domestic production at 56.93%, remained indifferent. Yet, as a consequence of the application of the anti-dumping measures, these producers benefitted from a trade remedy measure on import competition without spending any financial resources.

The fact that the T&C sector occupies a central position in the national economies of developing countries both in terms of size, employment, investment, export earnings and government revenue (Chapter 4 has highlighted the central position of T&C industries in the Asian context) makes these domestic producers in T&C and allied sectors the leading users of anti-dumping measures. This behaviour continues as long as the economy remains dependent on T&C operations. Thus, this dimension of the endogenous trade policy theory seems satisfied.

The endogenous trade policy theory also holds that industries experiencing declining outputs are more likely to pursue anti-dumping measures. This postulation requires cautionary treatment because when declining output is evaluated as one of the factors to prove injury to local industries by the domestic authorities, it becomes necessary to distinguish between output decline caused due to dumped imports (resulting in injury to the local industries) and output decline caused by factors other than dumped imports e.g. due to weak demand or due to supply side constraints or general increase

¹⁴⁸⁷ Bown, above n 1436, 265.

in costs of inputs which leads to loss of market share in favour of more efficiently produced and competitively priced imported products.

Naturally, the local industries tend to attribute any decline in output or loss of market share to increasing imports. This is especially true for countries that possess lesser comparative advantage in textiles manufacturing and owe the existence of this sector mainly to quotas. With the end of quotas and the artificial distortions they introduced in T&C trade, came increase in competition whereby quota-reliant countries experienced declines in output. Textiles industries in such countries are likely to pursue anti-dumping measures to keep foreign textiles imports from supplying their local clothing industries. Turkey is good example of a developing country that seeks to shelter declining textiles industries behind anti-dumping measures (observe Turkey's usage in Annex-4).

The endogenous trade policy theory further states that industries in countries that have been subjected to anti-dumping measures overseas, will adapt and learn to these policies and themselves pursue the same policies in, either a retaliatory fashion or simply as part of a learning process by being subjected to anti-dumping proceedings in foreign jurisdictions.¹⁴⁸⁸

This part of the theory also seems applicable to the T&C sector and it can be illustrated by the experience of Asian producers such as Indonesia, Taiwan and South Korea. These countries are leading producers of MMF and are frequently subjected to anti-dumping measures. These producers are also the users of anti-dumping measures on similar products when it comes to their domestic markets (see Annex-4). However, this part of the theory reveals certain weaknesses e.g. China stands out as a major exception. Being a major producer of MMF, it is a target of foreign anti-dumping proceedings but does not retaliate with anti-dumping measures of its own in similar sectors. Other

¹⁴⁸⁸ The perspective of endogenous trade policy theory finds support with Chung & Hartigan (see Chung & Hartigan, above n 1441, 326).

exceptions may include Colombia, Argentina and Brazil. Therefore, this dimension of the endogenous trade policy theory may only be considered as applicable to the T&C trade with major qualifications.

The final supposition in this theory is that industries in countries that have experienced macro-economic shocks such as currency fluctuations and falls in GDP growth are more likely to initiate anti-dumping proceedings. The best possible illustration of this view is the experience of Latin American countries such as Argentina, Brazil and Colombia that experienced currency fluctuations as well as declines in industries following a period of trade liberalisation (see discussion above). These countries resorted to a combination of anti-dumping and safeguard measures to protect local industries. However, these countries are not major producers of T&C therefore this supposition cannot be applied universally to other T&C producers.

With the liberalisation occurring in the global T&C trade after lapse of quotas it is likely that anti-dumping measures will be adopted by developing countries. This possibility is limited, however, only to countries that were dependent on quotas and not those that enjoy comparative advantage in manufacturing T&C. To summarise, endogenous trade policy theory, though generally worded, helps in explaining use of anti-dumping measures in the developing-to-developing scenario within global T&C trade. However, this theory is subject to certain presumptions and controls that fall within the sphere of economics, which will not be analysed in this thesis.¹⁴⁸⁹

It is noticeable that the application of the endogenous trade policy theory reveals some weaknesses (examined above). These weaknesses mean that the endogenous trade policy theory does not uniformly explain the use of anti-dumping measures by developing countries against other developing countries in the specific context of T&C trade.

¹⁴⁸⁹ See Bown, above n 1436, 265-285 for complete econometric analysis of the endogenous trade policy theory.

5.3.2.1.3 Developing an alternative explanation

A much simpler method of predicting the future course of anti-dumping measures in T&C trade is to broadly classify the users of anti-dumping measures into “Reactive users” and “Pre-emptive users.” Like all theories this classification is based on certain basic presumptions. The first presumption is that this framework is only restricted to the T&C sector. However, it may be extendable through proper analysis to other sectors of world trade as well. The second presumption is that it only explains the developing-to-developing use of anti-dumping measures. The third presumption is that classification of the user as Reactive or Pre-emptive depends on the developments status of the country in the T&C sector.

Pre-emptive users of anti-dumping measures are T&C producers that either possess a traditional cotton base or are proximate to major cotton producing countries. These users also possess some level of vertical integration in their textiles industries that feeds local clothing industries with fabric and inputs needs. Since clothing industries are more labour intensive and more export oriented, the state is naturally interested in seeking their protection. Hence, the defining characteristics of Pre-emptive users are high tariffs on clothing imports and either proximity to cotton producers or themselves being major producers of cotton.

Since textiles industries are more capital intensive and are often controlled by influential entrepreneurs, these industries have the political capacity to bring about a protectionist response from the state. This political influence is often backed by the state’s concern in maintaining the health of the textiles industries because its operations are essential for the local clothing industries. Any excess output of the textiles industries is exported to earn foreign exchange. Here again, high tariffs on textiles imports represents an effort by the state to augment the health of local textiles industries. However, the trade-off is the negative effects of high tariffs on the local clothing industries.

The T&C industries in Pre-emptive user countries also seem to prioritise T&C industries, possibly because they are less developed in other industrial sectors. However, this may not always be the case. The T&C sector does, however, feature as the leading, and sometimes the only viable industry. This reality becomes the main rationale behind the states desire to pre-empt any effect on the health of the local T&C industries. Thus, anti-dumping measures are adopted to pre-empt any negative effect posed by imports that could affect the market share of local textiles industries. Thus, the local textiles industries are the main sector of application of anti-dumping measures by Pre-emptive users.

Since the main focus of the Pre-emptive user countries revolves around protection of their primary industry, any other sector that is indirectly concerned with the operation of T&C production within the country would be enveloped within this protectionist policy as well e.g. the chemicals industry that manufacture inputs used in production of MMF (consumed by the local clothing industries). Even though the classification for the purposes of international trade for chemicals sector is different than T&C, Pre-emptive users tend to view such imports purely from the spectacles of the local textiles industries and the impact of competing imports on their operations.

This view is similar to the reasoning adopted by the US in imposing safeguards on imported lamb meat.¹⁴⁹⁰ In defining the local industries, the US included not just the packers and breakers of lamb meat, but also growers and feeders of live lambs.¹⁴⁹¹ Although the case concerns safeguards, the underlining logic that there was '*a continuous line of production from the raw to the processed product*'¹⁴⁹² is the common defining feature that also explains possible adoption of anti-dumping measures by Pre-emptive users.

¹⁴⁹⁰ See generally AB Report *US – Lamb*, Paragraphs 77, 84 & 95; See also discussion in Lester & Mercurio, above n 17, 530.

¹⁴⁹¹ Lester & Mercurio, *Ibid*, 530-531.

¹⁴⁹² AB Report *US – Lamb*, Paragraph 77

Furthermore, if the textiles sector surrogates development of an industrial machinery sector that caters to the needs of the local T&C industries, the state is likely to enact tariffs to pre-empt any competing textiles machinery imports. Conversely, if the local textiles industries are lagging behind their international competitors in terms of technology and are desirous of upgrading their industrial infrastructure or production capacity, the tariffs and import duties would be reduced in order to meet the needs of the local textiles industries. This, as a consequence, would prompt the local textiles machinery industry (that previously benefited from tariff protection) to pursue anti-dumping proceedings.

A good example of a Pre-emptive user country is Pakistan and the case study on PFY in this chapter illustrates the workings of the Pakistani economy that is highly dependent on T&C industries. The entire Pakistani economy is monitored for any indirect effects on the health of the local T&C sector. Any effect on a sector that is indirectly linked with the T&C industries will attract immediate restrictions.

In addition to Pakistan, other examples of Pre-emptive user countries are India, Indonesia, Turkey and Mexico. These countries have large textiles industries that are generally not amenable to trade liberalisation. Even though, Indonesia, Turkey and Mexico are members of regional trade regimes, which leads to some reduction in tariffs, such reductions are effective only to the extent of other member states. Tariff concessions are not accorded to textiles imports from other countries. Therefore, these countries remain pre-emptive users of anti-dumping measures.

Expiration of quotas has meant that Pre-emptive users that enjoy comparative advantage in manufacturing T&C (e.g. India, Pakistan and Indonesia) will continue to maintain tariff barriers in order to exploit the newly liberalised trading environment to their advantage. On the other hand, quota-incubated countries that do not possess comparative advantage (e.g. Turkey and Mexico)

will likely increase reliance on anti-dumping measures in order to continue their support to local industries against import competition.

In light of the reform in ROO as part of the EU GSP scheme, allowing regional cumulation, Pre-emptive users that do not have comparative advantage in manufacturing T&C (such as Turkey or Mexico) will have an added reason to adopt anti-dumping measures in order to hinder or prevent competing imports from accessing their clothing industries. This is because Turkey and Mexico's clothing exports enjoy preferential entry into the EU and the US markets respectively. It seems that Turkey is already moving in this direction as is evidenced by Turkey's 70 anti-dumping measures in T&C and allied sectors illustrated in Annex-4 and Figure 5.2.

In contrast to Pre-emptive users, the Reactive users of anti-dumping measures in T&C trade are more numerous. These countries typically do not possess comparative advantage and the lapsed quota system provided them with an artificially competitive environment within which their T&C countries developed. Nevertheless, like all developing economies, reliance on T&C activity has meant that these countries still feel the need to protect their local industries despite significant post-ATC erosion in their competitiveness.

The term Reactive denotes the application of anti-dumping measures as a "reaction" to increased imports following a period of trade liberalisation. Generally, trade liberalisation can take the form of reduced tariffs. In a more T&C specific sense, the expiration of quotas is a good example of trade liberalisation. Such countries adopt anti-dumping measures usually at the protestations of the domestic T&C industries that are under pressure from competing imports.

The use of anti-dumping measures by Reactive-users varies according to the development status of the T&C sector and also due to the politico-economic influence wielded by the T&C industries. As the importance of T&C industries

declines in a developing country possibly due to industrial diversification, the political influence of T&C industries also experiences a corresponding decline. This is the juncture where Pre-emptive users transition to Reactive users.

When this transition occurs, states do not feel compelled to pre-empt imports of T&C due to calculated policy decisions. The industrial diversification to other sectors triggers a shift in protection to other rising sectors, whilst leading to lowered tariffs in the T&C sector. The lowering of tariffs in the T&C sector exposes domestic industries to import competition, which in turn prompts these industries to seek protection in the form of anti-dumping measures. Effectively, such protection is held in reserve until there is an alleged influx of “unfair” imports into the economy.

In contrast to Pre-emptive users, the Reactive-users of anti-dumping measures seem to pursue a balance between import competing and import dependent sub-sectors of their domestic T&C industries. Their use of anti-dumping measures seeks to balance trade liberalisation with protection of vulnerable industries.

Latin American countries and their experience with anti-dumping measures following trade liberalisation is an example of Reactive use of anti-dumping measures. Other examples include Asian producers such as Malaysia, South Korea, Thailand and Taiwan. These countries have experienced erosion in their comparative advantage and the T&C sector largely holds a secondary importance in their economies. Having graduated to higher value added sectors, their clothing industries are in the continuous process of decline. Their textiles industries now concentrate more on investment in other developing economies and on exporting textiles, particularly MMF, to other developing countries that concentrate on clothing manufacture.

In addition to the standard classification of anti-dumping users into the Pre-emptive and Reactive streams, there are countries that have not been active

users of anti-dumping measures in protecting their T&C sectors. These countries can be termed as “Intermediary users.” Such countries are either LDCs that are heavily dependent on textiles imports to keep their clothing industries operational or are classified as non-market economies.

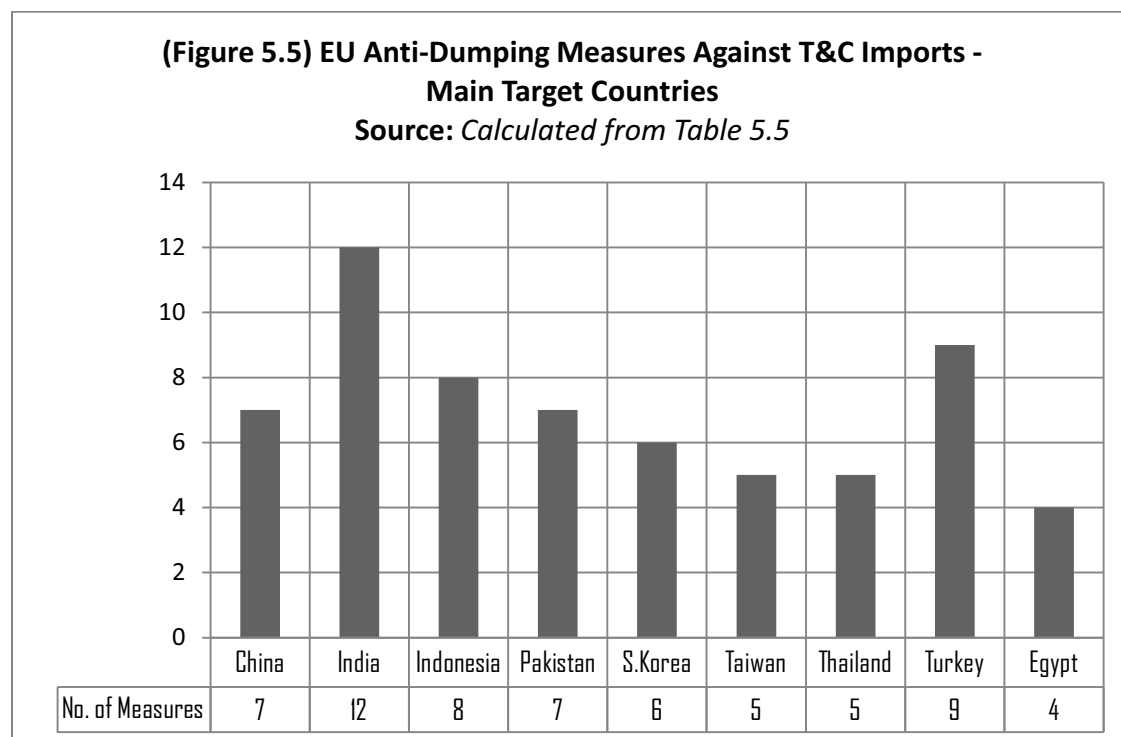
The LDCs’ use of anti-dumping is not prolific and has not attracted much attention. Again these countries are oriented towards targeting the EU and the US market rather than other developing countries. Their clothing industries are shielded behind high tariffs and their tariffs on textiles imports are kept low to allow imports of inputs consumed by their clothing industries. Use of anti-dumping measures is rare for these reasons.

China and Vietnam are non-market economy countries that extensively export T&C. These are more likely to be targeted due to the relative ease in establishing dumping against such countries and also due to their comparative advantage in terms of productivity and labour costs. Their use of anti-dumping measures is likely only in the event of extensive exports by countries that disrupt the internal flow of textiles and fabrics to the clothing manufacturers. Possible use of anti-dumping measures may emerge if privately owned enterprises become more common than state owned enterprises or when the economy transitions to other higher value added industries and the T&C sector adopts a secondary role in the economy.

5.3.2.2 Scenario-2: Developed-to-Developing

This scenario envisions application of anti-dumping duties by a developed country importing T&C from developing countries. In the post-ATC period, resort to anti-dumping measures have assumed greater importance since developed economies represent the main destination of the T&C exports by the developed countries. However, the use of anti-dumping measures vary between the developed countries e.g. EU has taken the largest number of anti-dumping actions (83) against T&C imports as compared to the US which has only taken 18 (see Table 5.5).

EU's actions can be simply explained by its status as the largest exporter of textiles in the world. Whilst the US textiles industries has constantly experienced decline, it still possesses a significant cotton base that targets cotton consuming countries. Such exports fall within the agricultural sector and not T&C. Therefore the need for US anti-dumping action is reduced in the post-ATC period. However, for the EU, anti-dumping measures continue to represent an instrument of market protection. Figure 5.5 summarises the main target countries of the EU's anti-dumping measures in the T&C sector. It comes as no surprise that the target countries are major textiles producers that compete with EU's producers both within the EU's domestic market as well as internationally.



Again, the endogenous trade policy theory helps in explaining EU's use of anti-dumping measures. EU textiles industries easily satisfy the characteristics concerning the size, influence and financial capacity to pursue anti-dumping measures. The EU industries also seem to meet the declining outputs criteria of

the endogenous trade policy theory which leads to increased use of anti-dumping measures.

The decline in output can be illustrated by WTO trade statistics that show EU's total growth in exports of textiles from US \$ 56.737 billion in 2000 to US \$ 80.618 Billion in 2007, yet the share of textiles in total merchandise exports fell from 2.5% to 1.6% during this period.¹⁴⁹³ This decline demonstrates that while textiles exports are increasing in value terms, the industry is experiencing decline in importance to the EU's economy. Such industries are likely to pursue anti-dumping measures against imports that could further affect the overall health of the domestic industries.

The characteristics that EU textiles industries do not seem to meet are historical experience of being subjected to anti-dumping proceedings elsewhere and undergoing macro-economic shocks such as GDP decline and currency fluctuations. Hence endogenous trade policy theory partially explains possible application by the EU industries in the textiles sector.

In the clothing sector, the EU has traditionally relied on safeguards to contain the impact of cheaper imports on the domestic producers. This has been discussed in the preceding section. The EU may consider increasing reliance on anti-dumping measures in the clothing sector in the coming years as an alternative to safeguards since anti-dumping measures can be used in an origin-specific manner as opposed to safeguards.

EU has adopted anti-dumping measures in the past mostly on textiles inputs and made-ups categories e.g. EU's anti-dumping duty on Pakistan's bed linen exports significantly affected Pakistan's exports in this category (see Chapter 4).

¹⁴⁹³ WTO, above n 1157.

Anti-dumping measures in T&C trade were used prior to quota expiration and are expected to be used in the foreseeable future as well. Since such measures fall within the WTO framework, any objections by exporters against anti-dumping measures adopted by the national authorities in the developed countries are challengeable in the WTO DSB.¹⁴⁹⁴ However, Chad Bown comments that measures challenged successfully in the WTO were “imposed by countries whose trade remedy laws serve as models that countries new to establishing their own statutes and investigative procedures are quick to emulate.”¹⁴⁹⁵

After expiration of quotas and the lapse of ATC and TS safeguards, anti-dumping measures would likely become the next market regulatory instrument. Due to the current orientation of T&C trade flows from developing to developed economies, disputes could possibly emerge under the developed-to-developing scenario. It becomes important to examine the factors that countries consider before they mount a challenge in the WTO DSB against anti-dumping measures taken by developed countries.

Chad Bown proffers a number of factors that developing countries would consider in challenging an anti-dumping measure. According to Bown, initiating a DSB proceeding involves calculation of costs, benefits and probability of success.¹⁴⁹⁶ In T&C terms, as with any other sector important to developing countries, this would mean assessing the probability of success along with the size of the restored market access in event of a successful action in the WTO DSB. The probability of success, in turn, is determined by the likelihood of compliance by the developed country in the event of a successful challenge. This is where retaliation or a credible threat thereof by the targeted developing country assumes critical importance.¹⁴⁹⁷

¹⁴⁹⁴ Chad Bown, ‘Trade Remedies and World Trade Organization Dispute Settlement: Why Are so Few Challenged?’ (2005) 34 *The Journal of Legal Studies* 515, 516. Bown cites statistics that disputes relating to trade remedies constituted nearly one-half of all WTO disputes initiated between 1999-2004.

¹⁴⁹⁵ *Ibid.*

¹⁴⁹⁶ *Ibid.*, 517-518 & 533.

¹⁴⁹⁷ *Ibid.*, 517-518.

Bown also holds the view that the capacity of retaliation by the target developing country against an anti-dumping measure by a developed country increases the probability of a WTO DSB challenge.¹⁴⁹⁸ This can be further illustrated by the recent allowance by the WTO to Brazil for cross-retaliation in the TRIPS and GATS sector due to non-compliance of the US against an earlier WTO ruling on cotton subsidies.¹⁴⁹⁹ The retaliation by Brazil came through lifting patent and trademark protection on pharmaceutical products and software instead of simply raising tariffs on imported goods. This may lead to US domestic interests pressurising Washington for action, possibly leading to compliance with the original ruling.¹⁵⁰⁰

The fact that Brazil mustered enough resources to pursue a remedy at the WTO level and then possessed the capacity to pursue an enforcement action focussing on cross-retaliation proceedings in the WTO, attests to the considerable economic leverage and trade capacity of some developing countries. However, the majority of the developing countries that are substantially dependent on market access to the US and the EU lack such attributes. Hence, these countries tend to accept anti-dumping measures as *fait accompli* and often opt for negotiating price undertakings.

The problem for T&C dependent exporters is the variance in the EU and the US trade policy. The EU accepts price undertakings since these are explicitly permitted under the EU law, whilst the US does not allow such undertakings.¹⁵⁰¹ Price undertakings appear similar to the outlawed concept of VERs (see Chapter 1 & 2 for discussion). The ostensible difference between the two concepts is that the former is negotiated with private exporters, whilst the latter were concluded at the state-to-state level. The fundamental idea is the

¹⁴⁹⁸ Ibid, 521.

¹⁴⁹⁹ See for example ICTSD Bridges Weekly, 'WTO Panel Allows Brazil to Cross-Retaliate on IP, Services in US Cotton Row', 9 September 2009 <<http://ictsd.net/i/trade-and-sustainable-development-agenda/54744/>> at 21 September 2009.

¹⁵⁰⁰ Ibid.

¹⁵⁰¹ Hoekman & Kostecki, above n 3, 324.

same i.e. exporters are given an incentive to either scale back their exports “voluntarily” and retain some share in the market or be subjected to anti-dumping duties which may well lead to the exporter’s exit from the target market.

In practice, the US does accept price undertakings (as pointed out by Hoekman and Kostecki).¹⁵⁰² Such pseudo-undertakings, which take the form of informal assurances to the local industries by the exporters that exports will be reduced or prices will be raised, explains why most US anti-dumping investigations are withdrawn.¹⁵⁰³

These comments by Hoekman and Kostecki provide a general perspective but in T&C terms, the US industries have lost comparative advantage over the years and have generally weaned off reliance on anti-dumping measures (see e.g. Annex-4 which demonstrates that US actions in textiles and related inputs sectors have been sporadic and limited).

By contrast, the EU has extensively relied on anti-dumping measures to secure its primacy as the leading textiles exporter of the world (see Annex-4) despite expressly accepting price-undertakings. In the quota free trading environment, this indicates that the future application of anti-dumping measures would continue along these existing trends.

Occasionally, developed countries employ trade remedies on a country-specific basis quite similar to China-specific safeguard measures. The best illustration is the Vietnam monitoring programme operated by the US (discussed in Chapter 4) which was terminated in January 2009.¹⁵⁰⁴ This programme was designed to self-initiate dumping proceedings if there was an influx of damaging imports of five specified category of clothing. Due to

¹⁵⁰² Ibid.

¹⁵⁰³ Ibid.

¹⁵⁰⁴ OTEXA, ‘Textile and Apparel Products from Vietnam Import Monitoring Program’, <<http://web.ita.doc.gov/tacgi/eamain.nsf/6e1600e39721316c852570ab0056f719/46e285131a24fa9b8525753d006edfca?OpenDocument>> at 11 October 2009.

insufficient evidence of dumping in all of the three reviews conducted by the US authorities, the country-specific programme was terminated.¹⁵⁰⁵ Nevertheless, it inspired the US industries to seek additional protection against Chinese T&C exports to the US since safeguards were proving to be ineffective.¹⁵⁰⁶

There is also a possibility that target countries, finding resort to WTO DSB too expensive and difficult, opt for a “tit-for-tat” response against the developed countries by adopting anti-dumping measures of their own. Bown terms this as “vigilante justice” action.¹⁵⁰⁷ This view again seems generalised, since an analysis of anti-dumping actions in the T&C sector shows that most developing countries do not target developed countries with anti-dumping actions (see Annex-4).

This can be due to the importance of market access to developed economies for the developing countries, which prompts the exporter to take a political rather than a trade decision to withstand the anti-dumping measures while attempting to resolve the imposition issue diplomatically. An example can be the EU “rewarding” Pakistan by reducing and eventually eliminating the anti-dumping duties on its bed linen exports as cooperation for the war on terror. An alternative explanation is quite simply the lack of resources and access to indigenous legal expertise on international trade which leads to developing countries “voluntarily” restricting their exports. Hence this point raised by Bown seems inapplicable for T&C in explaining the developed-to-developing use of anti-dumping measures.

Another important point raised by Bown seems more relevant, although it is raised in the case of US, it can be applied by analogy to the T&C sector. Bown

¹⁵⁰⁵ OTEXA, ‘Commerce Finds Insufficient Evidence To Self-Initiate Vietnam Apparel Dumping Case’, Press Release, 21 November 2008
<<http://web.ita.doc.gov/tacgi/eamain.nsf/d511529a12d016de852573930057380b/ba50d57948602c348525753d0070066e?OpenDocument>> at 11 October 2009.

¹⁵⁰⁶ Just-Style, ‘US: Textile Groups Call for China Apparel Monitoring’ (18 September 2008).

¹⁵⁰⁷ Bown, above n 1494, 521.

comments that countries that are less diversified in their exports are less likely to challenge a trade remedy and since these countries lack experience in targeting alternative markets, they are likely to suffer more overall welfare loss.¹⁵⁰⁸ In other words, if a country is successfully deflecting its exports to other economies or if the targeted country is not extensively reliant on a particular export category, there would be reduced likelihood of challenge against the measure.¹⁵⁰⁹

Chapter 4 highlights the predicament faced by garment export-reliant LDCs such as Sri Lanka and Bangladesh that target the EU and the US market for their T&C exports.¹⁵¹⁰ Although, being LDCs they are recipient of special and differential treatment, there is a possibility of future application of anti-dumping duties on such countries if there is an increased growth of exports to the developed economies. Conversely, developing countries that are less reliant on T&C but still considered main exporters of such goods are better placed to challenge imposition of an anti-dumping measure either in the WTO DSB or by way of retaliation e.g. India has been extensively targeted by the EU (see Figure 5.5) and has managed to institute anti-dumping measures of its own against the EU as well (see Annex-4). No other country has managed to do this to the same extent as far as T&C and allied sectors are concerned.

In the past, developed countries have not extensively relied on anti-dumping duties on Chinese T&C exports (see Annex-4 and Figure 5.3). Even though establishing dumping through the use of China's non-market economy status becomes easier, safeguards under various regimes highlighted in this chapter were considered the measure of choice to restrict Chinese T&C exports. With the expiry of ATC and the TS, China is still subjected to the PSS safeguards but there has been only one developed country anti-dumping action so far on China after 2008 (by the US on imports of woven electric blankets in 2009 – see Annex-4).

¹⁵⁰⁸ Ibid, 525, 531-533.

¹⁵⁰⁹ Ibid, 546.

¹⁵¹⁰ Tewari, above n 1131, 7

The use of anti-dumping measures by developed countries against China is expected to increase in the coming years. Like in the past, any trade measures against Chinese exports would most likely lead to China “voluntarily” curtailing its exports to the developed countries and such state of affairs will last until China exhausts its comparative advantage by graduating onto higher value added sectors.

5.4 CONCLUSION

This chapter highlights the future use of safeguards and anti-dumping in the post-ATC period. This chapter also considers the possible rationales behind the use of these trade remedies. Considering the past, these rationales may well explain the future use of trade remedies in regulating T&C trade.

Put simply, the basic aim behind these trade remedies is obviously the protection of domestic industries. This aim receives support if viewed purely from the Stolper-Samuelson theorem and the public choice theory. Safeguards and anti-dumping measures can be easily explained through the Stolper-Samuelson theorem, especially from the developed countries perspective e.g. due to the post-ATC market liberalisation, import-competing industries face increased competition. These industries oppose any further trade liberalisation that may take the form of tariff reduction or cuts in regulatory duties, fearing erosion of their domestic market share. On the other hand, the import-dependent industries stand to benefit from cheaper imports, therefore, they support the trade liberalisation process.

In the case of developed countries, a further extension to this argument is the lobbying support often extended to the import-dependent industries by the retail interests that would be able to source their merchandise at a more competitive rate, thereby enabling maximisation of their profit margins. Therefore, put simply, the use of trade remedies will be dominated by

industries that are able to muster larger politico-economic influence (as explained by the public choice theory).

This basic explanation is true especially where the import-competing industries oppose any further trade liberalisation and seek the use of trade remedies as an instrument of protection, regardless of the economic costs to the society as a whole.

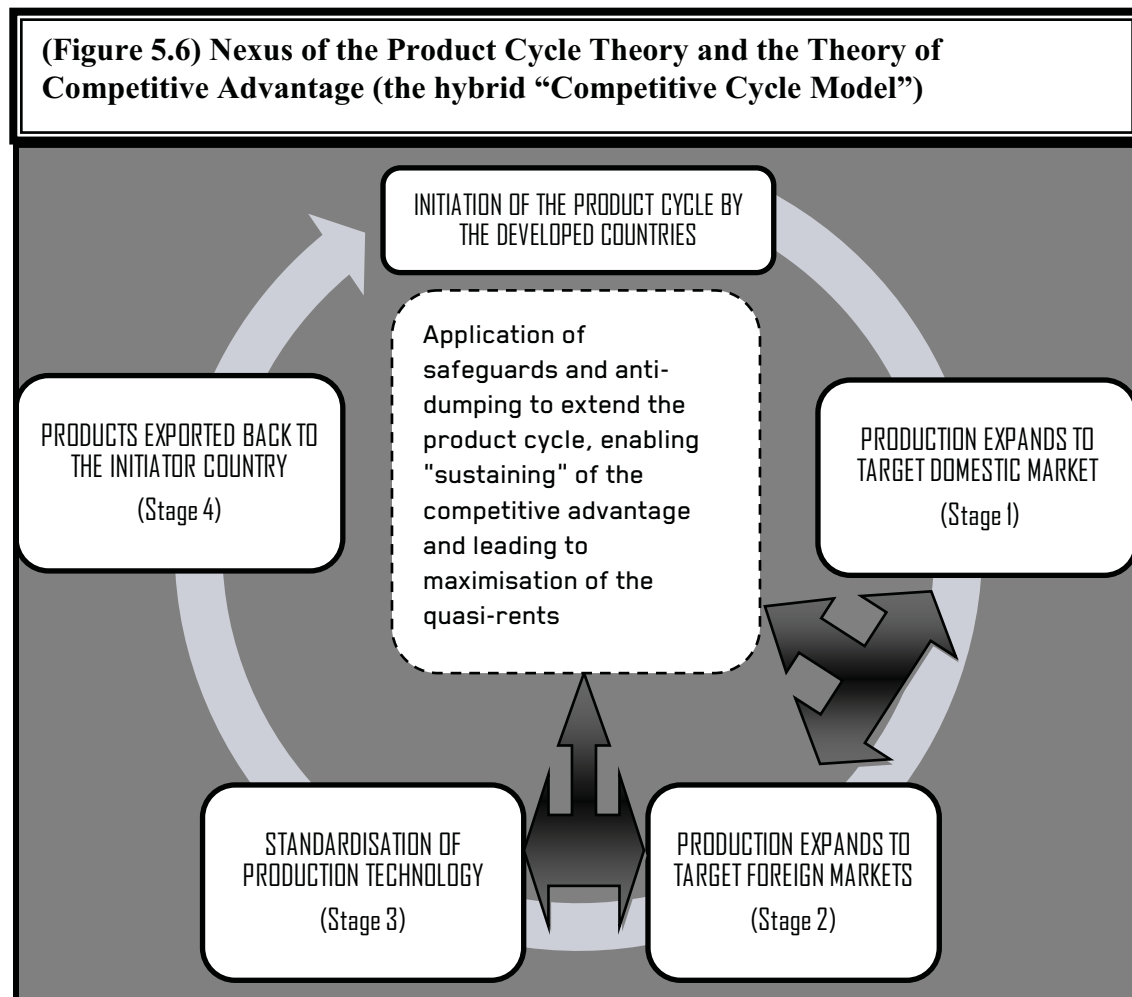
Against this explanation, the case studies in Chapter 4 demonstrate that safeguards and anti-dumping measures, in reality, do not effectively deter imports. They may restrict imports from particular producers but do not stop the overall inflow of imports. History of the T&C trade from the STA onwards to the post-ATC restraints on China proves one undeniable point; *market penetration by producers holding comparative advantage in T&C cannot be prevented.*

Additionally, history also shows that vacuum left in the target market by restrained exporters is always filled by another exporter. Thus, the use of trade remedies only delays the inevitable. This observation challenges the explanations offered by the Stolper-Samuelson theorem and the public choice theory. Surely, the economists, trade specialists, industry interests and the policymakers are acquainted with the futility of such actions. There must be another plausible explanation behind the use of these trade measures.

The answer may lie in marrying Vernon's postulation of the Product Cycle with Porter's theory of Competitive Advantage. Recall the product life-cycle, whereby developed countries initiate development of a product (or in the case of T&C, an advanced method of production) which eventually passes through a series of stages to reach a point where eventually the country initiating the product cycle becomes the net-importer (see Figure II in the Introduction).

Between the first and the second stage of this product cycle, the initiating country realises the full profit potential of the product. As pointed out by

Vernon, this is the stage where quasi-rents are generated. Thereafter, the quasi-rents dissipate with gradual loss in comparative advantage. Therefore, the economic interests of the initiator country lay in extending, through any means possible, the product cycle between the first and the third stage.



This extension is what is referred to by Porter as the “sustaining” of competitive advantage. Although, Porter does not envision the “sustaining” of competitive advantage by nations to incorporate trade remedies, the fourth query in Porter’s postulation does refer to the role of the state (see the Introduction). One role of the state in sustaining competitive advantage is active assistance to its industries which may include protective measures. In other words, the longer a country sustains this competitive advantage it will continue to maintain comparative advantage in manufacturing a particular product (see Figure 5.6). Quotas, tariffs, non-tariff barriers, safeguards and

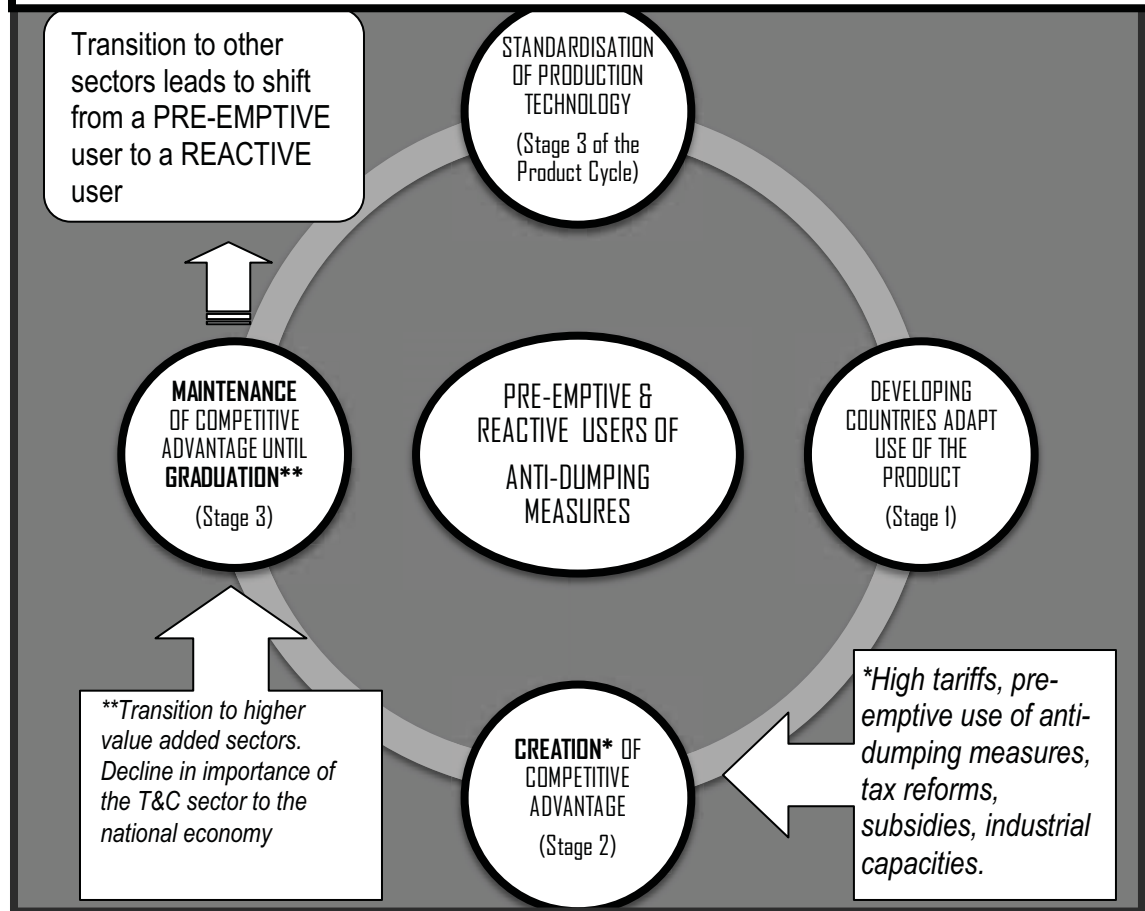
anti-dumping measures serve to extend the time between the first, second and the third stage of the product cycle. Another dimension of this extension may be the back-loading of the quota phase out process.

Such policies or measures enable the industries in the developed countries to fully milk the product for profits before the manufacturing technology becomes standardised. Once the standardisation stage is reached (stage three of the product cycle), developing countries are able to exploit their lower production costs to manufacture cheaper alternatives, which then serves to capture market share from the initiator-country.

The above explanation is offered from a developed-to-developing perspective and it explains why developed countries insist on adopting trade remedies, quite possibly knowing that it will only serve to delay the inevitable loss of comparative advantage. The crux of the “competitive cycle model” is that imposition of trade remedies by developed countries is actually an effort to sustain competitive advantage for as long as possible.

Porter’s theory of competitive advantage also offers an explanation for the use of trade remedies from the developing-to-developing perspective. This use of trade remedies may be a slight variation of the application discussed in the case of developed countries. If Porter’s theory is adapted for use with the product cycle theory (as per the competitive cycle model – see Figure 5.7), then trade remedies may simply form the part where developing countries are in the process of “creating” their competitive advantage (see the Introduction for discussion on the four queries posed by Porter). In the “creating” stage, the developing countries provide a deliberate competitive edge to their industries vis-a-vis competing imports (see Stage 2 in Figure 5.7). This enables the local industries to prosper under protection until it reaches maturity. Thereafter, the developing countries, depending on their development status and on the importance of the T&C sector in the national economy, transition to become either pre-emptive or reactive user of anti-dumping measures.

(Figure 5.7) Pre-emptive and Reactive Use of Anti-Dumping Measures, as explained through the Competitive Cycle Model



Usually, developing countries remain pre-emptive users until they graduate to higher value added sectors (Stage-3). When this graduation is achieved, developing countries transition from being Pre-emptive users to Reactive users (see Figure 5.7). This explanation assumes that safeguards (with some exceptions) are the less preferred remedy for protecting domestic T&C industries in the developing-to-developing context, especially after quota expiration.

CHAPTER 6

THE WAY FORWARD

6.1 INTRODUCTION

The final chapter in this thesis discusses the future direction of international trade in T&C after quota expiration. There is little doubt that even after the demise of quotas, distortion of T&C trade continues mainly through a protectionist use of trade remedies (see discussion in the previous chapter), ROO incorporated in the GSP schemes and non-tariff barriers. Hence, the T&C sector is not liberalised in actual terms despite the end of quotas.

Yet, the importance of quota expiration cannot be discounted. It is a monumental step towards liberalising trade in T&C and has revealed conflicting interests amongst developing countries. These countries remain divided on the issue of treating T&C as an exception to world trade. The question for consideration, therefore, becomes: *Why liberalisation in T&C? Why not continue with the quota system that at least guaranteed minimum market access to the developing countries?* This is the central theme of this chapter.

Building on the issues raised in Chapters 3, 4 and 5, this chapter revisits the restrictive effects of ROO within GSP schemes and the effectiveness of trade remedy measures in regulating trade in T&C. Since T&C is a global industry, it can be used as an engine of growth and poverty elimination. The current ROO/GSP structure maintained by developed countries does not perform this function satisfactorily. The aim behind revisiting ROO is to highlight the negative effects on the real trade growth of poor countries. ROO as part of the GSP undermines trade diversity and stunts product development in recipient countries by trapping these countries in an undiversified, low-value added product cycle.

By remaining trapped in the low-value added product cycle, many developing countries/LDCs are unable to capitalise on the shift in comparative advantage

of leading T&C manufacturers. The concept of shift in comparative advantage of T&C producers over time has been referred to throughout the thesis.

As highlighted in Chapter 2, developing countries/LDCs remain divided on the issue of quotas. Some countries insist that this sector (like agriculture) is unique and merits a sector-specific regulatory regime that exists parallel to the standard GATT/WTO framework. This essentially translates into a demand for a return to a system akin to the MFA/ATC whereby some developing countries/LDCs enjoyed guaranteed minimum access to the developed markets.

This view is generally opposed by developing countries that were constrained under quotas. These countries (predominantly based in Asia) have experienced a surge in exports since quota expiry (refer to case studies in Chapter 4) and naturally oppose anything that stifles their growth.

This, then, is the challenge for the multilateral trading system. Any return to a system of maintaining parallel and sector-specific regimes, violative of the MFN and NT principles, undermines the multilateral trade system. With a parallel system already existing for agriculture, there is no guarantee that this will not be extended in future to other sectors of trade in goods. Also, in order to ensure the continued viability of multilateralism, the GATT/WTO system must be seen as offering more to the developing countries/LDCs on sectors that are of particular interest to them.

Therefore, the question for consideration is *“would a return to a sector-specific agreement be better for developing countries/LDCs and the global trading system?”* The response, in simple terms, is no. Since the expiration of quotas in 2005, an examination of major issues and trade statistics enables us to draw a number of conclusions that justify the argument that global T&C trade is better off without the quota system and does not need a sector-specific agreement.

6.2 REFORM, READJUSTMENT & RESTRUCTURING

In making a case for liberalised trade in T&C, the lessons learnt from quota expiration are important, especially in light of the inaccurate pre-ATC estimates. One such prediction was the effect of preferential treatment on OPP trade. This factor was considered by many trade experts as essential for continued export success for any developing countries/LDCs reliant on OPP trade. Yet, countries that enjoy preferential entry into the US and EU have not performed as well as those that do not enjoy preferential treatment. Similarly, Asian LDCs have performed better than their AGOA, CBI/CBTPA counterparts.

These observations lead to a logical enquiry into the utility of geographical proximity, regional free trade agreements and preferential treatment in the post-ATC trade in T&C. Preferential treatment cannot be the sole basis of competition in T&C trade. It must be combined with other factors such as low labour costs, favourable currency balance, ability to efficiently source competitive inputs, diversity in exports products, active marketing and the capacity to offer DTS/ full-package service. Geographical proximity is a bonus that only some nations enjoy. This factor may be added to the list but, as the case studies in Chapter 4 demonstrate, this is not a decisive factor.

The current structure of preferential treatment schemes often carries counter-productive consequences for the developing countries/LDCs. The idea of preferential schemes in promoting T&C trade is seemingly noble but the actual execution is deliberately manipulated by policymakers.

Critics often cite ROO as the factor that undermines the effectiveness of GSP schemes. These ROO often mandate that in order to qualify for preferential treatment, recipients must use textiles and other inputs originating from the country extending preferential treatment. As the statistics in Chapter 4 demonstrate, this hampers the export performance of the recipients of

preferential treatment as compared to countries that source their fabric and input needs from other suppliers.

Reform of ROO is essential in order to achieve a truly liberalised trading environment in the post-ATC era. Where ROO have been reformed to allow regional cumulation (see discussion in Chapter 3), the results have been positive e.g. the 2003 reform of Canadian ROO that allowed regional cumulation resulted in the immediate flow down of benefits to developing countries/LDCs (see Figure 3.1).

The Canadian reform of ROO provides a precedent for US and the EU policymakers, if they are genuinely committed to helping the poor countries. Implementation of a reformed GSP scheme and its positive effects on LDC exports, demonstrate that GSP schemes and PTAs/FTAs significantly affect trade flows of T&C in the post-ATC environment. If policies allowing for global cumulation are put in place then many poor countries truly benefit. The reformed EU EBA is a step in the right direction. However, the restrictive standards built into the scheme again undermine the actual utilisation and, indeed, the very purpose of preferential treatment schemes (see discussion in Chapter 3).

Another dimension of the reform agenda in the post-ATC period is the capacity to offer superior customer service. The case studies in Chapter 4 have highlighted the importance of maintaining DTS/full-package service capabilities even where countries possess significant advantages in terms of preferential treatment, low labour costs and industrial capacity. Obviously, developing these service capabilities require significant efforts and investment. However, the developed countries (OPP-extending countries) can increase meaningful market access for the LDCs by facilitating contacts between the retail industries and clothing producers in the OPP-recipient countries (usually LDCs). These contacts should, ideally, streamline the entire trade process of

placing orders, sourcing of inputs, actual manufacturing, warehousing and final delivery to the retailer.

Furthermore, compliance with labour standards can be made an integral part of such schemes. This will obviously incentivise the producers in the OPP-recipient countries to adhere to labour standards, whilst manufacturing clothing on a competitive basis. In this regard, the role of large retailers assumes greater importance. Since the expiration of quotas and the consequent decline in the politico-economic influence of the cotton textiles industries in the developed countries, the large retail corporations have emerged as the dominant influence that may affect trade policy in T&C trade. These retail corporations already maintain private labour standards that are often imposed as pre-condition in OPP trade with manufacturers in the developing countries/LDCs. However, these standards often vary. This discourages compliance and results in increased business costs for the clothing producers in the OPP-recipient countries.

If governments of OPP-extending countries coordinate with retail corporations and develop a realistic global standard for sourcing, this will not only increase certainty and remove the risk of unforeseen costs but will benefit LDC based producers more than the artificial preferential treatment schemes. Additionally, this reform will reinforce the need for adhering to international labour standards.

The retail corporations have the right incentive to pursue this approach. Branding their merchandise as “ethical” opens up new market segments of socially conscious consumers that are willing to spend more to reassure their conscience. Viewed from an economic perspective, advertising on the basis of an ethical quality mark becomes a distinguishing feature which enables realisation of monopoly rents along similar lines to Chamberlin’s theory of monopolistic competition (see the Introduction).

For the OPP dependent developing countries/LDCs, this strategy is not just based on the narrow argument of “let’s uphold labour rights so that we can get more business” but rather, forms the very basis of future competitiveness. As trade barriers are reduced and competition develops in a more liberal trading environment, many OPP dependent countries may face increased competition. This is especially true for countries where T&C industries were incubated in the quota environment. The post-ATC challenge for these countries is to sustain their industries to the point where comparative advantage of China and other leading T&C producers starts to shift. Maintenance of high labour standards may enable these T&C producers to compete against non-compliant countries.

For countries that were constrained under quotas, with the exception of China, the post-ATC period has brought mixed results. The case studies in Chapter 4 discussed Pakistan and India as two major T&C producers that still face considerable readjustment challenges in the post-ATC environment. The biggest challenge for these producers is to restructure their export models from quota dependent segments to ones that exploit their comparative advantages. This is already evident in the case of Pakistan, where post-ATC figures show a general decline in clothing but increase in exports of made ups, yarns and cotton fabrics. Nevertheless, these two producers are in an ideal position to capitalise on China’s move to higher value-added sectors i.e. once China begins to lose comparative advantage in the T&C sector, Pakistan and India may move in and fill the vacuum, provided these countries are able to cultivate a superior standard of customer service. It must also be borne in mind that these are non-GSP recipients, therefore, their T&C exports under the normal course of trade will not be accorded preferential treatment by the developed countries (unless under a bilateral FTA).

6.3 TARIFFS & NON-TARIFF BARRIERS

Tariffs are the residual market protection instrument after quota expiration. Using tariffs for market protection is WTO-compliant. The impact of market

protection through tariffs in the post-ATC environment carries varying consequences for stakeholders in global T&C trade.

In the post-ATC period, tariffs on T&C products became an important policy instrument for both developing and developed countries. The chances of reduction in T&C tariffs are low, even if the ongoing NAMA negotiations move ahead successfully.

If viewed from the perspective of the developed countries, tariff levels are closely connected to the GSP schemes operated by the developed countries. If this connection is explored further, the true nature of trade distorting trade policies maintained by the developed countries is revealed i.e. developed countries enact high tariffs barriers to discourage market access. Then, market access is selectively extended to countries through preferential treatment schemes. These schemes employ ROO to distinguish between 'preferred' and 'non-preferred' countries. The fundamental rationale behind such policy discrimination is that the benefits of free trade are not for all. This rationale is what undermines true liberalisation in T&C trade even after the lapse of quotas. Through tariffs, the life cycle of T&C industries in the developed countries can be artificially increased. If viewed from Porter's perspective discussed in the context of trade remedies (see Chapter 5), high tariffs represent an effort to "sustain" competitive advantage of industries that would otherwise be unable to compete in a purely liberalised environment.

For the developing countries/LDCs, the developed country rationale for maintenance of tariff barriers explains the issue of preference erosion and the conflicting views espoused by the developing countries on the WTO NAMA negotiations (see discussion in Chapter 3). It is apparent why developing countries/LDCs, transitioning from a quota-incubated environment to the increasingly competitive post-ATC period, oppose a general reduction in T&C tariffs. Any cut in tariff levels on manufactured goods pursuant to a successful NAMA process will make preferential treatment less effective. Hence these

countries continue to voice their opposition to the NAMA process and propose a sector-specific arrangement similar to agriculture.

There is no easy answer to the issue of preference erosion and maintenance of high tariffs by developed countries. But what is apparent is that preferential trade is a mirage. The net effect of maintaining high tariffs and then granting selective trade preferences is that it binds developing economies into a low-value added cycle. By becoming dependent on preferential market access to developed countries, developing countries/LDCs do not subject their industries to the correct competitive economic pressures. As a result, industrial progress and growth is delayed since T&C producers find little incentive to diversify into products that fetch better value. Quotas, in this sense, had the same effect. After quota expiration, many developing countries/LDCs seek continuance of the same system that guarantees a minimum level of market access either through adopting the FTA route or through opposing general tariff cuts as part of the NAMA process.

Tariffs also affect intra-developing country trade in T&C and will continue to do so in the foreseeable future. Due to the sensitivity of the T&C sector for most developing countries/LDCs, high tariffs are a standard part of their trade policies. High tariffs are intended to deter competing textiles imports and at the same time, attract FDI into a country by assuring the investors of a “safe” investment, free from risks of competing against imports.

It is interesting to note that high tariffs may benefit one segment of the T&C industries but may undermine the other e.g. high tariffs on textiles imports benefits the local textiles industries but affects the import-dependent segments of the domestic clothing industries. If these segments become dependent on sourcing their inputs from local sources, the end-product often lacks the competitiveness to target foreign markets.

The best illustration of the tariff conundrum is the comparison between South Asian and ASEAN T&C producers. ASEAN producers generally maintain low tariffs in T&C, this enables high intra-ASEAN trade e.g. clothing manufacturers are able to source competitively priced fabrics from proximate ASEAN members at low costs simply because there are reduced tariffs in place. Conversely, South Asian clothing manufacturers do not source from within the South Asian region and prefer to source from ASEAN where prices are low. The ongoing yarn shortage in Pakistan is a classic example of high tariffs constricting local clothing industries. Had tariff levels been realistically determined (instead of through protectionist influences) the yarn shortage would not have occurred. Therefore, purely from the perspective of developing-to-developing country trade in T&C, low tariffs hold the key to prosperity for the T&C dependent economies, especially where a country has reached economic stagnation through active use of import-substitution policies. The Asian NICs provide an excellent example of tariff liberalisation e.g. the pro-growth policies of South Korea featured gradual reduction of tariffs along with other factors.¹⁵¹¹

In addition to tariffs, non-tariff barriers will continue to act as barriers to trade in global T&C trade. Regulatory policies and industry standards often have multiple uses (see Chapter 3 for discussion). At the same time, these policies may double up as a tool for protectionism. Since tariffs are not complete barriers to market entry, unless prohibitively high, complex regulatory policies and standards entailing high compliance costs can be used for protecting local industries.

Non-tariff barriers in international T&C trade may cover a host of issues (highlighted in Chapter 3). However, the most significant non-tariff barrier to affect T&C trade in the post-ATC period is likely to be labour rights. The nexus of this factor with preferential treatment schemes has been discussed above

¹⁵¹¹ See for example discussion on South Korea's economic growth by Bryan Mercurio, 'Growth and Development: Economic and Legal Conditions' (2007) 30 (2) *UNSW Law Journal* 437, 461.

(see also discussion in Chapter 3). This factor may emerge as a likely market protection instrument after lapse of quotas. This is best illustrated by the recent request of the US for consultations with the Guatemalan government under the labour chapter of the DR-CAFTA over alleged labour rights violations (see discussion in Chapter 3). This action is the first ever labour rights abuse action under an FTA and may be a foretaste of things to come after quota expiration. Even within the intra-developing country trade in textiles, this issue may affect sourcing of inputs as part of the liberalised OPP trade. Clothing producers may be reluctant to source textiles inputs from countries that have poor labour rights standards, fearing that their final clothing products may not qualify for preferential treatment under ROO. All of these concerns will continue to affect global T&C trade in the coming years.

6.4 FUTURE USE OF TRADE REMEDIES IN T&C TRADE

With the end of quotas came the prediction that countries may resort to trade remedies to protect their domestic interests. This was especially true for the developed countries but statistics demonstrate that some developing countries are increasingly turning to trade remedies to guard their own T&C sectors (see discussion in Chapter 5).

After the lapse of quotas, there has been a drastic reduction in the use of safeguards in T&C trade. Latin American countries have successfully used safeguards (both origin and product specific) to protect their T&C industries. This represents the only successful usage of safeguards in the developing-to-developing countries scenario, keeping in view the overall decline in the utility of safeguards for developing countries. In the developed-to-developing scenario, post-ATC use of safeguards against China by the EU and the US provide a useful example in order to anticipate future trends.

China's stellar performance challenges the use of trade remedies and quotas i.e. despite being severely constrained by various trade restrictions over the years, China has successfully established itself as the leading exporter of T&C

products. India has somewhat emulated China's performance but to a lesser extent. Therefore, it can be said that quotas, non-tariff barriers and trade remedies only delay, and do not stop, the inevitable rise of countries that possess comparative advantage.

The use of safeguards by the US has experienced a marked decline. Again with the exception of use against China, the US has not applied safeguards against other T&C exporters for some time now. The US has in the past accepted threat based applications by local industries to justify imposition of safeguards (see Chapter 5). This policy may indicate willingness on part of the US authorities to target T&C imports of any country under the threat based criteria, if these are "found" to be harming the US T&C sector.

The post-ATC usage of safeguards by the EU may also provide a glimpse into the future of safeguards as a trade remedy in T&C trade. The EU's use of safeguards goes beyond the traditional standards defined in the WTO/GATT framework by ingeniously extending the requirement of "rapid rise or surge in imports." The scope of this requirement is expanded to include not just the EU based producers but also producers based in third countries i.e. even if the EU's domestic industries are not being directly affected by surge in imports, any affect on third country exporters that are linked with the EU market will be sufficient grounds for imposition of safeguards (see Chapter 5 for discussion).

The WTO Safeguards Agreement, TS and PSS do not contain any provisions that cover protection of third country T&C industries. The basic rationale behind these regimes is the protection of domestic producers from market disruption caused by sudden and rapid surge in imports. The increase in scope of the standards for imposition of safeguards by the EU may give an indication of how PSS may be employed until 2013 against China. Indirectly, such a use may protect the EU's interests because the satellite importers of EU's textiles (predominantly based in Euro-Mediterranean region) are the reason why an

expensive textiles industry is still operational. Since the satellite importers source their inputs from the EU to produce clothing destined for the EU market, the EU's application of safeguards sustains the symbiotic relationship between EU's textiles and Euro-Mediterranean clothing producers. This policy rationale is supported by the hybrid competitive cycle model put forward in Chapter 5.

In addition to safeguards, anti-dumping measures provide an alternative market protection mechanism. Again the EU demonstrates more willingness than the US in imposing anti-dumping measures on T&C imports (see statistics presented in Chapter 5). Again the competitive cycle model helps explain why producers of textiles based in the most expensive countries in terms of labour costs are able to collectively maintain the position of the largest exporter of textiles in the world. This hybrid explanation of the product cycle theory and the competitive advantage theory demonstrates a conscious effort to maintain competitiveness through artificial intervention in the natural shift of comparative advantage from developed to developing countries.

This intervention enables T&C industries in the developed countries to maintain their industrial advantage longer. But one may query where ROO and preferential trade schemes fit in the competitive cycle model? In response to such a query, one needs only to look at the role of each sub-segment in the T&C complex. In capital intensive and more automated segments such as textiles and synthetic fibre manufacturing, using trade remedies serves to extend the product cycle so that quasi-rents may be maximised (see discussion in Chapter 5).

In segments where competitiveness is measured purely in terms of low labour costs (such as clothing), activities such as design, marketing, merchandising and quality control are still retained by the producers based in the developed countries. These value addition activities are where the greatest profits are derived. Low-value addition activities such as CMT operations are outsourced

to countries that are able to produce clothing effectively and cheaply. This arrangement is further encouraged through propagation of GSP schemes incorporating ROO. For countries that are unsuitable for the GSP “entrapment”, trade remedies, tariffs and non-tariff barriers (such as non-compliance with labour standards) step in to fill the gap.

The competitive cycle model is a purely competition and business school explanation behind use of trade remedies, quotas, tariffs and non-tariff barriers. The underlying rationales behind trade remedies have always been, and will always remain, political especially when the long term effects of safeguards and anti-dumping are kept in mind. Since trade remedies do not stop but only serve to delay the inevitable dominance of a producer with comparative advantage in a target market, policymakers often enact policies based on political and self-serving considerations rather than economic reasoning (see discussion in Chapters 4 and 5).

Intra-developing country use of anti-dumping measures in the post-ATC period has also emerged as an issue that will continue to affect trade flows of T&C. Chapter 5 discussed an alternative explanation to Bown’s endogenous trade policy theory. The alternative explanation revolves around classifying producers as either pre-emptive or reactive users of anti-dumping measures. Although, subject to further economic analysis, this model in the specific context of developing-to-developing country use provides a simple method to anticipate future use of anti-dumping measures in the post-ATC period.

In the post-ATC period (especially after expiration of TS), developing countries are the emerging users of anti-dumping measures. In order to anticipate their usage trends in the future, the pre-emptive and reactive use of anti-dumping measures can also be read with the competitive cycle model (refer to Figure 5.7 and accompanying discussion). If these two concepts are read together, it provides an explanation of how and why developing countries are likely to use anti-dumping measures in the post-ATC environment. As discussed in the

conclusion of Chapter 5, use of anti-dumping measures is directly proportionate to the sensitivity of the T&C industries in the national economy. More sensitivity of the T&C sector leads to a pre-emptive use of anti-dumping measures by developing countries. As these countries transition to other sectors of advanced manufacturing, dependence on the T&C sector is gradually reduced. This results in the transition from being pre-emptive users to reactive users. In the case of reactive users, T&C industries have reduced importance to the national economy. The ability to gain protection from the state is directly linked to how much politico-economic influence these declining industries are able to wield.

6.5 CONCLUSION

The shift of comparative advantage defines the future of trade in T&C. This is an ongoing process that is difficult to predict. Some nations reach this point more quickly and efficiently than others. This development is, of course, paradoxical as it results in loss of advantage over competing countries. Some countries deliberately desire to achieve this shift, whilst others try to delay this process for as long as possible (see arguments above).

The development status of the country determines what policy the country will pursue in achieving or delaying the shift of comparative advantage e.g. the developing countries pursue policies to attract FDI and technology transfer into their countries from developed countries. Radelet and Sachs term this as “the trick” to attract multinational production enterprises and their technologies into the developing economies to link them to the engines of growth of the advanced economies.¹⁵¹² Once investment is attracted into the country, the government may adopt protectionist policies favouring industries considered important for economic development.¹⁵¹³

¹⁵¹² Steven Radelet & Jeffery Sachs, ‘Asia’s Reemergence’ (1997) 76 (November/December) *Foreign Affairs* 44, 54; Kojima, above n 66, 395.

¹⁵¹³ Dowling & Cheang, above n 67, 447.

The developed countries and Asian NICs are “technology donors.” This donation, however, is not altruistic but is a dimension of the “strategic adjustment” on part of the developed countries.¹⁵¹⁴ This strategic adjustment involves adoption of policies that are aimed at reinforcing a sector where it enjoys comparative advantage by, amongst other things, surrendering market access in a sector where comparative advantage is gradually being eroded.¹⁵¹⁵ Thus, by opening up one sector to imports from developing countries, the developed countries make inroads into the southern markets by gaining market access for their goods.

Compared with the developed countries and Asian NICs, the developing countries are “technology recipients.” Therefore, their policy emphasis is to attract technology and investment into the country, maximise use of received technology and drive their economies by replicating the experience of the developed countries. This perspective explains the trade flows from developed countries in sectors that utilise high-end technology or the industrial capacity of the developed countries where they possess comparative advantage e.g. telecommunication equipment, consumer electronics, automobiles, industrial machinery and others. But how is trade in T&C explained with this logic?

The T&C sector is not technology-intensive. Perhaps this partially explains why developed countries no longer seek to protect it to the degree observed a few decades ago. Yet, this sector still carries a certain level of sensitivity for developed countries, which is why developed countries still adopt policies to either “adjust” to competition from the developing countries or artificially extend their competitiveness through use of trade remedies and other barriers to trade (refer to Figure 5.6 and the accompanying discussion).

¹⁵¹⁴ See generally Belay Seyoum, ‘Trade Liberalization and Patterns of Strategic Adjustment in the US Textiles and Clothing Industry’ (2007) 16 *International Business Review* 109.

¹⁵¹⁵ Recall Hoekman & Kostecki’s comment, in Chapter 3 of this thesis, that it is a mistake to think that the MFA was abandoned by the developed country due to its unfair nature. Rather, this was pursuant to a strategic decision on part of the developed countries (in particular the US) which sought cooperation in exchange on the more controversial areas from the developing countries (such as trade-related intellectual property rights and trade in services) by liberalising their T&C markets.

One manifestation of such policy was the deliberate construction of the ATC whereby the quota expiration process was back-loaded over ten years. As discussed in Chapter 2, the majority of T&C products were liberalised after quota expiration. This enabled the T&C industries in the developed countries to formulate their post-expiry strategies. These strategies incorporate a process of “readjustment” in the face of growing imports from developing countries.

Australia provides a good example of readjustment in the T&C sector of a developed country, although Australia was not affected on the same scale as the EU and the US due to early T&C liberalisation. Ever since liberalising and the consequent increase in imports of T&C into its economy, Australian policymakers and entrepreneurs have focussed on value addition activities such as branding, quality control, marketing and the insistence on ethical production processes as their competitive strategy.¹⁵¹⁶

Australian clothing firms pursued policies of readjustment, whilst shifting basic assembly operations overseas where labour costs are low.¹⁵¹⁷ This is a difficult business decision because it often entails negative effects on local employment. However, if clothing firms do not restructure their business patterns, they risk complete elimination from the market.

Similar trends are observable among the EU and US manufacturers. Both countries maintain satellite production centres in proximate developing countries/LDCs. These countries provide a source of low-wage labour and production process as for the clothing firms based in the EU and the US. This

¹⁵¹⁶ Elizabeth Van Acker, ‘Trade Liberalisation and its Impact on the Australian Textiles, Clothing and Footwear Industries’, 1997 2(1) *Journal of Fashion Marketing and Management* 9, 10; M. Ann Capling & Brian Galligan, ‘Sectoral Corporatism with a Difference: The Textiles, Clothing and Footwear Plan’, 1991 50(1) *Australian Journal of Public Administration* 47; Andrew Leigh, ‘Trade Liberalisation and the Australian Labor Party’, 2002 48(4) *Australian Journal of Politics and History* 487, 494; Alastair W. Craig, ‘Technological Change in Innovation in the Clothing Industry: The Role of Retailing’, (1990) 3(2) *Labour and Industry* 330-332; Sally Weller, ‘Retailing, Clothing and Textiles Production in Australia’ (Working Paper No.29, Centre for Strategic Economic Studies, Victoria University, 2007) 3; Roy Green, ‘Building Innovative Capability; Review of the Australian Textile, Clothing & Footwear Industries’ <http://www.innovation.gov.au/tcfreview/Documents/401_TCFreviewvoll.pdf> (29 August 2008), 20 at 21 March 2010.

¹⁵¹⁷ Van Acker, Ibid; Craig, Ibid.

arrangement is incentivised through either regional FTA's or through GSP schemes that incorporate ROO, designed to encourage use of inputs originating in the developed countries. By doing this, the developed countries ensure survival of a textiles industry that otherwise cannot compete in free competition with developing countries (see discussion above).

In textiles industry (which is capital intensive and less labour oriented) developed countries still maintain a respectable advantage. The strategy involved in this sector is continuous innovation and ensuring that there are "buyers" available for the textiles products through use of ROO incorporated in the GSP schemes. This innovation in a traditional sector such as textiles is where the developed countries still maintain a healthy advantage. However, the process of innovation has taken the developed countries from beyond manufacturing textiles to be used in production of clothing. Developed countries have begun to move to advanced textiles segments such as technical textiles, textiles incorporating use of nanotechnology, insulation textiles and others.¹⁵¹⁸ This move ensures the future of the textiles industries in the developed countries, provided they make the jump from traditional woven and knitted fabrics to such advanced segments.

Whilst the developed countries and Asian NICs remain committed to innovation and, thus, "creation" of their competitive advantage (in Porter's terms), the consequence of this innovation is reduced reliance on traditional T&C sectors. These sectors eventually shift to the developing countries. The question for consideration is should this process be hastened? And if so, how might this hastening be achieved?

There is little doubt that trade barriers hinder trade flows while liberalisation encourages more trade. The shift of comparative advantage is directly connected with trade liberalisation e.g. in the post-ATC period, T&C exports by quota-restrained countries have increased dramatically (see Chapter 4). The

¹⁵¹⁸ Seyoum, above n 1514, 121-122.

process of liberalisation through abolition of quotas generally resulted in lower prices and increased competition between suppliers. As a result the foremost beneficiaries of trade liberalisation are consumers. As far as suppliers are concerned, China represents the best example of a quota-restrained supplier that has now begun to transition to other sectors (see discussion in Chapter 4).

With wages constantly rising, China is experiencing what European, North American and Japanese manufacturers experienced a few decades ago.¹⁵¹⁹ The natural response from an economic perspective is to restructure and transplant comparative advantage into neighbouring countries in order to continue business. However, the public choice/Stolper-Samuelson response to shift in comparative advantage is not dictated by economic thought but rather through extraneous considerations. These considerations manifests themselves in various policies designed (e.g. trade remedies and non-tariff barriers) to buy more time for the domestic industries (see discussion in Chapter 5). The statistics examined in Chapter 4 and 5 also show that producers with comparative advantage always come to dominate the target market. Use of trade remedies or other barriers to trade, at the most, can only accomplish a delaying purpose.

Developed countries in Scandinavia, Canada and Australia realised this much earlier than EU and the US. These countries gradually liberalised their T&C markets. As a result, T&C competition increased and public welfare was maximised. However, the effects of a competitive domestic market meant polarisation of market shares in favour of a few exporters (most notably China and some other Asian manufacturers).

¹⁵¹⁹ See generally Textiles Intelligence, 'China Loses its Competitive Edge in Clothing' (Press Release) July 2008; Just-Style, 'China Loses its Competitive Edge in Clothing' (22 July 2008) < http://www.just-style.com/analysis/china-loses-its-competitive-edge-in-clothing_id101441.aspx > at 27 August 2010; Livemint, 'Chinese textiles lose out to rising costs and currency surges' (13 August 2008) < <http://www.livemint.com/2008/08/13204635/Chinese-textiles-lose-out-to-r.html?atype=tp> > at 27 August 2010.

China's domination of the liberalised T&C markets and the newly-liberalised markets of the EU and the US seem to be a foregone conclusion. This dominance comes at the expense of other developing countries/LDCs that have yet to develop a comparative advantage in manufacturing T&C. Furthermore, many developing countries/LDCs are unable to develop this comparative advantage because of their confinement to the low-value added cycle as a result of the counterproductive effects of ROO (discussed above). These countries are still adjusting from quota incubation to a liberalised trading environment. Due to Chinese dominance, this transition means that currently many of these developing countries/LDCs are experiencing declines in their market shares of developed markets. This means erosion of T&C exports or production and its consequent impact in humanitarian terms especially in some of the LDCs. These countries continue to insist on trade restraints on China and a sector-specific agreement within the WTO/GATT framework, if their T&C industries are to recover. China is, therefore, widely viewed as a problem. Yet, it also holds the solution.

Since China is now experiencing a gradual loss in its competitive advantage due to higher energy costs, rising wages, rising exchange rates and the costs of compliance with international environmental standards, Chinese entrepreneurs are already contemplating relocating their clothing operations overseas.¹⁵²⁰ This move is motivated by costs reasons and by the burgeoning competition from other developing countries/LDCs. This competition can potentially increase even more if trade liberalisation is allowed. In other words, liberalisation increases competitive pressures on a country that has achieved the zenith of its comparative advantage. The natural response to an increasingly competitive environment is the same as that of Japan and Asian NICs during the LTA/MFA era: *regional relocation, restructuring and diversification* (this process is already illustrated by the Flying Geese Model/Kojima's pro-trade FDI). Therefore, if trade liberalisation is allowed to happen, by reducing reliance on trade remedies and eliminating tariffs/non-

¹⁵²⁰ Textiles Intelligence, Ibid; Just-Style, Ibid; Just-Style, Ibid.

tariff barriers, it is safe to assume that China will act similarly to Japan and Asian NICs and shed its comparative advantage in traditional T&C segments in favour of other developing countries/LDCs.

This trade liberalisation, in the short term, means that many developing countries/LDCs will be unable to compete with China and other T&C giants. In the long term, however, China and other manufacturers will eventually transition to higher value added sectors and developing countries/LDCs (that currently lack comparative advantage) will step in to fill the vacuum. By not allowing this transition to happen earlier, developing countries/LDCs are actually worse off and will continue to remain trapped in a low-value added cycle. Once the comparative advantage shifts from China, India, Indonesia and Pakistan to Asian, African and Caribbean LDCs, these countries will experience significantly enhanced competitiveness in T&C manufacturing. Evidence of this shift of comparative advantage from Asia to Africa as per the flying geese model is already observable.¹⁵²¹

The T&C sector is a major test for the multilateral trading system. If this system is to succeed, it must allow for countries to trade on the basis of their strengths. This will allow regional complimentary relations to increase which will enhance the benefits of trade for all participants. The T&C sector also occupies a special position because of the low-investment threshold and its ability to engage abundant labour resources. As such, this sector can be transformed into an instrument of poverty alleviation in the LDCs. This can only happen if the T&C industries are allowed to firmly take hold in these countries, naturally and gradually. History and the trade statistics show that T&C industries cannot artificially be transplanted through quotas or preferential access. Any industries that are established under artificial

¹⁵²¹ See for example Alemayehu Geda & Atnafu Meskel, 'China and India Growth Surge: Is it a curse or blessing for Africa? The Case of Manufactured Exports' (2008) 20 (2) *African Development Review* 247, 253-255, 259, 260, 263-266; see also Radelet & Sachs who cite examples of industrial transition from Japan to Taiwan and Korea, and then to Indonesia, Thailand and Vietnam (Radelet & Sachs, above n 1512, 52); see also discussion in Delpuech, above n 426; see also for comparison Textiles Intelligence, Ibid; Just-Style, Ibid; Just-Style, Ibid; Textiles Intelligence, above n 1519; Just-Style, above n 1519.

incentives are dependent on an incubated environment. Such an industry lacks the ability to compete and excel.

The developed countries hold a special responsibility in this regard, in particular the EU and the US. By allowing liberalisation to occur through reduced trade barriers and non-protectionist use of trade remedies, the EU and the US will trigger a process that will induce a more rapid exhaustion of China's comparative advantage. Such liberal policies will obviously carry substantial consequences for T&C industries of the EU and the US. However, the EU and the US are capable of compensating, retraining and diverting their labour for other sectors. The poor countries are not. The T&C sector represents virtually the only industrial sector that is viable for fragile economies.

Once the exhaustion of comparative advantage is triggered, Chinese clothing industries and then textiles industries will enter a phase of restructuring. This is the juncture where developing countries/LDCs can step in and truly establish a T&C sector that is truly competitive and productive and which enhances consumer benefit globally.

The trends and issues identified in this thesis are the waypoints for the future development of trade in T&C. It is now up to the WTO Members to decide whether they choose to usher in an era of truly 'fair' trade that truly helps the socio-economic development of poor countries or to pursue short-term protectionist strategies that only serve to stunt global economic growth.

ANNEXES

(ANNEX-1) Top-5 non-EU/US Markets for Pakistan's Textiles Products (2005/06, 2006/07 & 2007/08) with Cumulative Average Growth Rate (CAGR) (2005/06 – 2007/08) <i>Source: TDAP (data available on request)</i>				
Category	(2005/06) Importers & (%share in exports)	(2006/07) Importers & (%share in exports)	(2007/08) Importers & (%share in exports)	CAGR (05/06 – 07/08)
Raw Cotton	Indonesia (28.18%) Bangladesh (40.98%) Thailand (6.22%) China (10.14%) Hong Kong (2.98%)	Indonesia (38.13%) Bangladesh (36.16%) Thailand (10.51%) China (0.10%) Hong Kong (1.39%)	Indonesia (31.33%) Bangladesh (24.82%) Thailand (6.81%) China (6.50%) Hong Kong (5.24%)	7% -21% 6% -19% 35%
Cotton Yarn	Hong Kong (30.48%) China (19.14%) Bangladesh (5.37%) South Korea (7.94%) Turkey (3.04%)	Hong Kong (27.98%) China (23.06%) Bangladesh (4.72%) South Korea (6.23%) Turkey (3.50%)	Hong Kong (24.80%) China (23.62%) Bangladesh (6.36%) South Korea (5.39%) Turkey (5.08%)	-13% 8% 6% -20% 25%
Yarn (other)	Turkey (9.21%) Bangladesh (4.73%) South Korea (4.02%) Hong Kong (3.39%) Chile (10.28%)	Turkey (5.29%) Bangladesh (5.02%) South Korea (2.42%) Hong Kong (6.50%) Chile (6.01%)	Turkey (11.44%) Bangladesh (8.78%) South Korea (5.61%) Hong Kong (5.06%) Chile (4.65%)	25% 53% 33% 37% -24%
Cotton Fabrics	Turkey (8.18%) Bangladesh (5.38%) Sri Lanka (4.15%) UAE (3.69%) Hong Kong (5.91%)	Turkey (10.68%) Bangladesh (5.88%) Sri Lanka (5.26%) UAE (2.90%) Hong Kong (4.80%)	Turkey (10.05%) Bangladesh (6.90%) Sri Lanka (4.45%) UAE (3.02%) Hong Kong (2.75%)	8% 11% 1% -12% -33%
Knitted Fabrics	Sri Lanka (5.37%) UAE (22.14%) India (2.50%) Thailand (N/A) Egypt (0.96%)	Sri Lanka (12.79%) UAE (12.09%) India (1.71%) Thailand (0.02%) Egypt (0.85%)	Sri Lanka (15.51%) UAE (7.05%) India (3.61%) Thailand (2.72%) Egypt (1.56%)	101% -33% 42% N/A 51%
Tents & Canvas	Saudi Arabia (43.38%) Sudan (1.41%) Kuwait (10.49%) UAE (14.61%) Yemen (1.19%)	Saudi Arabia (40.49%) Sudan (2.61%) Kuwait (12.60%) UAE (7.80%) Yemen (1.10%)	Saudi Arabia (22.26%) Sudan (15.52%) Kuwait (8.14%) UAE (7.86%) Yemen (5.76%)	-3% 349% 19% -1% 198%
Synthetic Textiles	UAE (11.86%) South Africa (5.04%) Russia (0.30%) Benin (3.90%) Saudi Arabia (6.38%)	UAE (9.14%) South Africa (6.21%) Russia (3.96%) Benin (3.42%) Saudi Arabia (3.89%)	UAE (10.70%) South Africa (6.93%) Russia (4.49%) Benin (4.48%) Saudi Arabia (3.97%)	36% 68% 457% 53% 13%
Bed wear	UAE (2.64%) Australia (2.06%) Canada (2.07%)	UAE (2.08%) Australia (2.05%) Canada (2.11%)	UAE (2.60%) Australia (2.33%) Canada (2.09%)	-4% 3% -3%

	South Africa (0.85%) Saudi Arabia (0.85%)	South Africa (1.13%) Saudi Arabia (0.94%)	South Africa (1.87%) Saudi Arabia (1.24%)	44% 17%
Towels	UAE (3.04%) South Africa (1.48%) Australia (2.18%) Canada (2.87%) Saudi Arabia (1.04%)	UAE (3.58%) South Africa (1.79%) Australia (1.90%) Canada (1.99%) Saudi Arabia ((1.06%)	UAE (5.43%) South Africa (2.34%) Australia (2.08%) Canada (1.94%) Saudi Arabia (1.48%)	37% 28% 0% -16% 22%

(Annex-2) Comparison of Total Apparel Imports from Leading Sub-Saharan African, Caribbean and South Asian LDCs Producers in the US Market 2006-2009 (Data in US \$) Source: OTEXA					
Regime	Producers	2006	2007	2008	2009
<i>CBTPA/ CBI</i>	<i>Dominican Republic</i>	1,547,679,309	1,056,516,449	840,552,163	613,345,253
	<i>Honduras</i>	2,440,262,965	2,511,006,283	2,604,027,979	2,031,639,563
	<i>El Salvador</i>	1,407,727,997	1,486,101,260	1,533,577,513	1,298,271,458
	<i>Costa Rica</i>	464,968,489	422,944,876	303,089,536	205,999,420
	<i>Haiti</i>	449,674,413	452,196,495	412,323,852	513,232,724
	<i>Jamaica</i>	48,506,415	36,410,782	16,390,532	819,249
<i>AGOA/ Sub-Saharan Africa</i>	<i>Botswana</i>	28,447,909	31,497,922	15,803,887	12,361,717
	<i>Cameroon</i>	143,446	412,495	480,039	977,398
	<i>Ethiopia</i>	4,949,763	4,576,870	9,513,018	6,719,949
	<i>Ghana</i>	9,506,958	7,765,884	903,151	365,128
	<i>Kenya</i>	262,904,749	248,176,273	246,584,710	195,115,747
	<i>Lesotho</i>	387,031,425	383,525,513	339,690,343	278,345,449
	<i>Madagascar</i>	238,357,546	289,439,437	278,842,415	211,532,836
	<i>Malawi</i>	18,186,761	19,825,465	12,676,502	9,015,312
	<i>Mali</i>	14,937	31,061	43,063	31,088
	<i>Namibia</i>	33,086,530	28,599,849	800	399
	<i>Niger</i>	157,334	5,924	11,511	25,978
	<i>Nigeria</i>	62,010	49,879	55,673	26,903
	<i>Senegal</i>	44,669	34,181	19,267	23,589
	<i>Sierra Leone</i>	506,382	258,743	192,312	240,512
	<i>Swaziland</i>	135,240,812	135,274,157	124,868,687	94,409,357
	<i>Tanzania</i>	2,997,872	2,818,544	1,503,009	1,001,957
	<i>Uganda</i>	1,254,815	1,140,605	405,408	187,898
<i>Asian LDCs</i>	<i>Nepal</i>	50,962,067	32,075,420	18,834,419	12,114,068
	<i>Maldives</i>	1,401	0	3,285	648
	<i>Bangladesh</i>	2,914,090,349	3,103,345,687	3,441,642,469	3,409,775,380
	<i>Sri Lanka</i>	1,682,424,801	1,573,361,305	1,466,983,640	1,210,109,511
	<i>Cambodia</i>	2,135,889,157	2,424,941,911	2,375,584,736	1,870,533,267
	<i>Vietnam</i>	3,222,054,177	4,358,517,612	5,223,491,293	5,068,333,143

(Annex-3) Comparison of Major ASEAN Textiles & Clothing Producers with China in the US Market (2006-2009) (Data in Million US \$)

Source: OTEXA

	CHINA				INDONESIA			
Categories	2006	2007	2008	2009	2006	2007	2008	2009
334 M/B COATS, COTTON	395.232	592.668	596.182	430.049	26.38	29.287	27.391	41.615
335 W/G COTTON COATS	757.064	835.037	902.484	681.72	89.484	91.525	118.684	114.066
338 M/B KNIT SHIRTS, COTTON	385.99	597.585	590.504	749.49	228.852	262.519	293.942	312.891
339 W/G KNIT BLOUSES, COTTON	740.799	1132.717	1367.367	2036.908	387.437	585.257	681.137	741.691
340 M/B COTTON SHIRTS, N- KNIT	214.431	446.465	540.033	626.417	227.095	241.058	214.995	180.232
341 W/G CTTN BLOUSES,N-KNIT	519.568	754.547	747.329	739.877	192.758	180.956	181.506	175.826
342 COTTON SKIRTS	470.2	388.57	304.174	234.229	67.899	45.53	40.803	42.743
347 M/B COTTROUSERS	406.061	548.777	589.476	922.47	201.537	191.915	137.88	133.229
348 W/G COTTON TROUSERS	860.683	1217.388	1346.061	2126.29	425.085	451.014	439.25	369.06
351 COTTON NIGHTWEAR	390.903	516.225	506.304	412.53	26.963	20.276	22.847	20.588
352 COTTON UNDERWEAR	101.977	191.768	188.695	232.101	51.295	56.958	53.848	41.636
359 OTHER COTTON APPAREL	586.315	576.347	577.577	523.456	13.985	16.087	17.12	20.999
443 M/B SUITS, WOOL	50.165	53.425	68.148	68.708	9.577	29.382	27.042	17.834
447 M/B WOOL TROUSERS	23.404	30.033	30.98	41.308	10.551	20.444	19.124	12.343
638 M/B MMF KNIT SHIRTS	93.514	145.388	135.469	158.871	67.167	82.167	90.711	81.706
639 W/G MMF KNIT BLOUSES	607.739	799.739	695.519	889.367	140.529	145.9	181.316	181.428
640 M/B NOT-KNIT MMF SHIRTS	70.271	89.903	82.8	75.808	31.161	19.39	33.112	29.596
641 W/G NOT-KNIT MMF BLOUSES	354.802	421.198	387.14	358.483	157.597	148.29	133.172	117.436
642 MMF SKIRTS	199.889	204.278	146.16	140.364	61.304	60.008	45.815	39.113
645 M/B MMF SWEATERS	12.196	14.893	6.906	8.268	2.991	1.238	2.119	0.922
646 W/G MMF SWEATERS	160.502	210.887	164.063	191.95	31.161	19.389	12.752	9.279
647 M/B MMF TROUSERS	276.591	357.852	333.717	328.53	170.396	157.793	144.048	125.479
648 W/G MMF SLACKS	244.235	339.185	306.443	290.128	222.72	214.281	203.406	132.927
651 MMF NIGHTWEAR	246.888	327.831	336.059	364.157	9.171	10.726	12.935	15.646
652 MMF UNDERWEAR	95.784	157.402	176.387	216.597	41.814	30.351	28.221	14.412
659 OTHER MMF APPAREL	846.185	1005.436	1155.047	1263.636	96.988	128.986	147.557	155.9

(Annex-3) Continued	VIETNAM				PHILIPPINES			
Categories	2006	2007	2008	2009	2006	2007	2008	2009
334 M/B COATS, COTTON	26.825	48.299	54.276	40.128	11.162	14.572	9.934	8.681
335 W/G COTTON COATS	72.808	135.764	159.697	154.721	69.757	61.5	52.266	33.117
338 M/B KNIT SHIRTS, COTTON	219.791	300.088	336.265	301.199	160.87	125.801	78.829	53.843
339 W/G KNIT BLOUSES, COTTON	555.089	841.478	1111.597	1056.223	347.332	324.788	224.122	136.468
340 M/B COTTON SHIRTS, N- KNIT	108.38	138.47	138.339	135.548	103.192	72.729	70.791	59.205
341 W/G CTTN BLOUSES,N-KNIT	26.863	34.351	42.26	54.596	47.782	29.368	20.875	10.789
342 COTTON SKIRTS	18.928	27.318	33.021	36.585	33.405	14.913	11.137	14.579
347 M/B COTTROUSERS	207.568	244.82	270.031	254.811	105.873	70.463	54.487	38.755
348 W/G COTTON TROUSERS	403.561	530.051	621.474	590.859	263.774	206.385	163.653	100.837
351 COTTON NIGHTWEAR	14.215	23.694	44.463	34.948	35.89	37.382	20.827	15.686
352 COTTON UNDERWEAR	18.262	15.156	57.552	117.413	35.89	37.382	28.687	22.327
359 OTHER COTTON APPAREL	47.685	50.141	63.223	57.638	20.647	11.172	9.418	8.385
443 M/B SUITS, WOOL	33.679	34.358	26.901	20.847	2.855	4.312	1.516	1.217
447 M/B WOOL TROUSERS	9.166	11.383	16.221	14.442	2.661	1.912	2.071	0.432
638 M/B MMF KNIT SHIRTS	43.543	78.836	121.1	115.225	34.132	40.435	35.131	25.346
639 W/G MMF KNIT BLOUSES	52.29	149.605	270.347	315.139	83.786	81.416	81.124	72.393
640 M/B NOT-KNIT MMF SHIRTS	47.687	46.512	35.878	30.055	4.289	2.601	0	0
641 W/G NOT-KNIT MMF BLOUSES	19.655	29.855	39.03	40.63	11.152	11.726	5.889	8.566

642 MMF SKIRTS	19.206	36.236	39.802	44.65	26.107	16.908	11.537	8.82
645 M/B MMF SWEATERS	0.313	0.603	0	0	0.651	0.226	0	0
646 W/G MMF SWEATERS	9.192	4.932	1.534	1.413	6.118	2.96	0	0
647 M/B MMF TROUSERS	93.084	111.11	153.494	160.455	39.316	33.66	23.724	27.777
648 W/G MMF SLACKS	95.707	176.855	211.988	199.663	90.586	59.076	56.302	32.347
651 MMF NIGHTWEAR	7.889	16.585	21.206	22.237	18.454	18.349	14.489	15.826
652 MMF UNDERWEAR	9.92	14.023	20.85	23.806	20.663	8.527	6.175	4.999
659 OTHER MMF APPAREL	118.696	147.523	168.368	163.568	36.457	29.357	32.274	22.868

(Annex-3) Continued	THAILAND			
Categories	2006	2007	2008	2009
334 M/B COATS, COTTON	16.643	13.725	13.88	7.869
335 W/G COTTON COATS	35.714	26.466	26.245	16.768
338 M/B KNIT SHIRTS, COTTON	171.545	185.6	155.727	87.544
339 W/G KNIT BLOUSES, COTTON	121.429	114.655	97.367	61.53
340 M/B COTTON SHIRTS,N- KNIT	47.906	45.324	36.065	29.192
341 W/G CTTN BLOUSES,N-KNIT	68.645	65.147	64.332	53.355
342 COTTON SKIRTS	29.349	16.775	12.847	6.661
347 M/B COTTROUSERS	44.101	41.86	37.895	30.406
348 W/G COTTON TROUSERS	125.855	110.144	94.702	45.383
351 COTTON NIGHTWEAR	21	18.841	11.896	11.33
352 COTTON UNDERWEAR	201.262	180.82	177.273	150.34
359 OTHER COTTON APPAREL	8.841	3.348	7.091	4.276
443 M/B SUITS, WOOL	2.055	0.78	0.696	0.263
447 M/B WOOL TROUSERS	5.535	5.321	3.959	4.74
638 M/B MMF KNIT SHIRTS	77.815	95.89	104.114	70.863
639 W/G MMF KNIT BLOUSES	34.055	40.091	42.288	30.519
640 M/B NOT-KNIT MMF SHIRTS	11.43	8.261	0	0
641 W/G NOT-KNIT MMF BLOUSES	6.041	4.324	0	0
642 MMF SKIRTS	5.906	5.809	5.458	3.925
645 M/B MMF SWEATERS	0.323	0.336	0.343	0.554
646 W/G MMF SWEATERS	14.993	4.925	4.351	1.015
647 M/B MMF TROUSERS	109.981	112.316	108	90.674
648 W/G MMF SLACKS	41.667	39.418	29.585	25.049
651 MMF NIGHTWEAR	2.555	1.582	1.954	2.54
652 MMF UNDERWEAR	42.246	41.056	37.95	28.216
659 OTHER MMF APPAREL	47.649	42.448	40.816	31.141

(Annex-4) Summary of Anti-dumping Actions in T&C and Related Products (1980-2009)*

Source: Chad Bown (2009), 'Global Antidumping Database' [Version 5.0, July],
<www.brandeis.edu/~cbown/global_ad> at 17 September 2009

*The resources at the Global Antidumping Database vary from country to country. This table takes into account the overall figures as available.

Country	Product	Year	Target Countries
Argentina	PVC	1999	Mexico & USA
	Denim	1999	Brazil
	Nylon and Polyester Fabric	1999	South Korea & Taiwan
	Acetate Textiles	1999-2000	South Korea & Taiwan
	Polyester Fiber	2001	South Korea
	Synthetic Textiles	2004	South Korea, Malaysia, Thailand, Indonesia
	Polyethylene Terephthalate	2004-2005	Brazil, South Korea & Taiwan
	Acrylic Yarns	2008	Brazil, Indonesia
	Polyester Fiber and Yarn	2008	China, India, Indonesia, Taiwan
	Denim	2009	China
Australia	Certain Textured Nylon Yarn	1993-1994	Austria, France, Germany, Israel, Italy, South Korea, Taiwan, UK, Japan, Turkey
	Unsaturated Polyester Resins	1994	South Korea, Singapore, Taiwan
	Woven Polypropylene Primary Carpet Backing Fabric	1998	Belgium, Colombia, Saudi Arabia, UK, USA
	Cotton Blankets	1998	China
Brazil	Woven Fabrics of Jute	1991	Bangladesh, India
	Yarn of Jute	1991	Bangladesh, India
	Cotton Yarn	1993	Pakistan
	Nylon Yarn	2000	South Korea
	Synthetic Indigo Dye	2007-2008	Germany
	Synthetic Fiber Blankets	2007	China
	Yarn of Jute	2007	Bangladesh, India
	Fibre of Viscose Rayon	2008	Austria, China, Indonesia, Taiwan, Thailand
	Yarn of Viscose Rayon	2008-2009	Austria, China, India, Indonesia, Taiwan, Thailand
	Synthetic Fiber Blankets	2009	China
Canada	Spandex Filament Yarn	1986	South Korea
	Textured Polyester Yarn	1989	Mexico
	Carpets	1991	USA
China	Of Poly (Ethylene Terephthalate)	1999	South Korea
	Esters of Acrylic Acid	1999-2000	Germany, Japan, USA
	Poly(Ethylene Terephthalate)	2001-2002	South Korea
	Of Polyesters	2001-2002	South Korea
	Esters of Acrylic Acid	2001-2002	South Korea, Malaysia, Singapore, Indonesia
	Of Nylon or Other Polyamides	2003-2004	Taiwan
	Spandex	2005-2006	USA, Japan, Taiwan, Singapore, South Korea
	Terephthalic Acid	2009	South Korea, Thailand
Colombia	PVC	1993	USA

	Ethyl Acetate	1993	Brazil, Mexico, USA
	Denim	1994	China
	Filament	2001-2002	Indonesia, Malaysia, Taiwan, Thailand
	Polyester Fibers	2001-2002	Indonesia, South Korea
	Socks	2006	China
	Textiles - Blended Fabrics	2006	China, Taiwan
	Textiles - Cotton	2006	China
	Textiles - Curtains	2006	China
	Textiles - Bed Linen	2006	China
	Textiles - Table Linen	2006	China
	Textiles - Kansas Denim	2006	China, Taiwan
	Textiles - Synthetic Fabrics	2006	China, Taiwan
	Textiles - Towels	2006	China
	Women's Undergarments	2006	China
	Men's Undergarments	2007	China
EU	Synthetic Textile Fibres of Polyester	1987-1988	USA, Mexico, Turkey, Romania, Taiwan, Yugoslavia
	Polyester Yarn (Man Made Staple Fibres)	1987-1988	Mexico, Turkey, South Korea, Taiwan
	Polyester Film	1988	South Korea
	Denim	1989	Turkey, Hong Kong, Indonesia, Macao
	Thin Polyester Film	1990	South Korea
	Cotton Yarn not Made Up for Retail Sale	1990-1991	Egypt, India, Thailand, Turkey, Brazil
	Polyester Yarn (Man Made Staple Fibres)	1990	South Korea, Turkey, India, Indonesia, Taiwan, China
	Synthetic Fibres of Polyester	1990-1992	India, South Korea
	Cotton Fabrics	1994	Turkey, Indonesia, China, Pakistan, India
	Synthetic Staple Fibre Fabric	1994	India, Indonesia, Pakistan, Thailand
	Bed Linen	1994	Turkey, India, Pakistan, Thailand
	Polyester Textured Filament Yarn (PTY)	1994-1996	Indonesia, Thailand, India
	Polyester Staple Fibre	1994-1996	Belarus
	Certain Footwear (Textile Uppers)	1995-1997	Indonesia, China
	Polyester Yarn (Man Made Staple Fibres)	1995-1997	Malaysia
	Unbleached Cotton Fabrics	1996	Egypt, Turkey, India, Indonesia, Pakistan, China
	Bed Linen (Cotton Type)	1996-1997	Egypt, India, Pakistan
	Cotton Fabrics	1997-1998	Egypt, Turkey, India, Indonesia, Pakistan, China
	Polyester Textured Filament Yarn (PTY)	1998	India, South Korea
	Polyester Staple Fibre	1999-2000	India, Thailand, Australia
	Polyester Staple Fibres	1999-2000	India
	Polyester Textured Filament Yarn (PTY)	2001-2002	India
	Certain Filament Yarns of Cellulose Acetate	2001-2002	USA, Lithuania
	Cotton-Type Bedlinen	2002	Pakistan
	Polyester Staple Fibres	2003	China, Saudi Arabia
	Polyester High Tenacity Filament Yarn	2004	Belarus, South Korea, Taiwan

	Certain Finished Polyester Filament Apparel Fabrics	2004-2005	China
	Synthetic Staple Fibres of Polyesters	2006	Malaysia, Taiwan
India	PVC Paste Resin	1992-1993	Brazil, Mexico, South Korea, USA
	Acrylic Fibre	1996-1997	USA, Thailand, South Korea
	Purified Terephthalic Acid (PTA)	1996-1997	South Korea, Indonesia, Thailand
	Acrylic Fibre	1998	Japan, Portugal, Spain, Italy
	Acrylic Fibre	1998-1999	Mexico
	Acrylic Fibre	1999	Turkey, Hungary, EU
	Pure Terephthalic Acid (PTA)	1999	Japan, Malaysia, Spain, Taiwan
	Acrylic Yarn	2001	Nepal
	Acrylic Fibre	2001	Italy, UK, Germany, Brazil, Bulgaria
	Mulberry Raw Silk (Not Thrown)	2002	China
	Acrylic Fibre	2003	Belarus
	PVC Paste Resin	2003	South Korea, Saudi Arabia, EU
	Narrow Woven Fabrics	2004-2005	China, Taiwan
	Viscose Filament Yarn	2005	China, Ukraine
	Silk Fabrics 20-100 Gms/Meter	2005	China
	Fully Drawn Spin Draw Yarn/Flat Yarn Of Polyester	2005-2006	Indonesia, South Korea, Malaysia, Taiwan
	Nylon Filament Yarn	2005-2006	China, Taiwan, Malaysia, Indonesia, Thailand, South Korea
	Partially Oriented Yarn (POY)	2005-2006	China
	Flax Fabrics	2008-2009	China, Hong Kong
	Viscose Staple Fibre excluding Bamboo Fibre	2009	China, Indonesia
Indonesia	Synthetic Fibre	1996	Taiwan, South Korea (terminated due to lack of evidence)
	Synthetic Fibre	1996	Taiwan, South Korea (Re-initiation, terminated due to lack of evidence)
	Polyester Staple Fibre	2003	Taiwan, South Korea, Thailand
	Polyester Staple Fiber (PSF)	2009	China, India, Taiwan
Japan	Cotton Yarn	1982	South Korea
	Knit Sweater	1988	South Korea
	Certain Cotton Yarns	1994	Pakistan
	Polyester Staple Fibre	2001	South Korea, Taiwan
Malaysia	Polyethylene Terephthalate	2005	Indonesia, South Korea, Taiwan, Thailand
Mexico	Acrylic Fibers	1989-1990	USA
	Denim	1990-1991	Hong Kong, USA
	Short Fiber Polyester	1992-1993	South Korea
	Various Fabrics	1992	China
	Cotton Fabrics	1992	China, Argentina, Brazil, Colombia, South Korea, Pakistan, Taiwan
	Textile Products	1993	China
	Clothes	1993	China
	Polyester	1999-2000	South Korea, Taiwan
	Acrylic Fibers	2000	Spain, Turkey, Peru
Pakistan	Acrylic Tow	2004	Uzbekistan
	Polyester Filament Yarn	2005	Indonesia, Malaysia, Korea, Thailand
	Polyester Staple Fiber	2006-2007	Indonesia, South Korea, Thailand, China

Peru	Textiles	1994-1995	China (5 separate actions), Taiwan, USA, Hong Kong, Chile, Panama
	Cotton Men's Pants	1996	China
	Synthetic Fiber Men's Pants	1996	China
	Synthetic Fiber Women's Pants	1996	China
	Cotton Men's Shirts	1996	China
	Synthetic Fiber Men's Shirts	1996	China
	Cotton Underwear	1996	China
	Synthetic Fiber Underwear	1996	China
	Cotton Nightgowns	1996	China
	Synthetic Fiber Nightgowns	1996	China
	Cotton Polo Shirts	1996	China
	Synthetic Fiber Underwear	1996	China
	Synthetic Fiber Underwear	1996	China
	Cotton Men's Pants	1996	China
	Synthetic Fiber Men's Pants	1996	China
	Cotton Women's Pants	1996	China
	Synthetic Fiber Women's Pants	1996	China
	Synthetic Fiber Men's Shirts	1996	China
	Cotton Women's Shirts	1996	China
	Synthetic Fiber Women's Shirts	1996	China
	Synthetic Fiber Slips	1996	China
	Cotton Nightgowns	1996	China
	Synthetic Fiber Nightgowns	1996	China
	Bras	1996	China
	Knickers	1996	China
	Polyester/Cotton Poplin Fabrics	2002	China
	Denim	2004	Brazil
	Woven Fabrics of Cotton & Polyester/Cotton Mixes	2004	China, Brazil
	Denim	2005	China
	Textiles (Polyester and Cotton Blends)	2006	China (2 separate actions, one denied initiation)
Philippines	Terry Towelling Products (Face/Hand)	1994	China
	Terry Towelling Products (Face/Hand/Bath)	1994	Hong Kong
South Africa	Bed Linen	1992	Pakistan
	Acrylic Fibre	1996-1997	Portugal
	Acrylic Blankets	1998	China, Hong Kong, India, South Korea, Turkey
	Bed Linen	1999-2000	Malawi, Pakistan
	Acrylic Fabrics	2003	China, Turkey
	Polyethylene Terephthalate (PET)	2005	China, India, Indonesia, Taiwan, South Korea, Thailand
	Staple Polyester Fibre	2009	China
South Korea	Polyvinyl Alcohol (PVA)	1997-1998	Japan
	Combed Yarn	2001	India, Pakistan, Indonesia
	Polyester Filament Draw Textured Yarn	2005-2006	China, Malaysia, Taiwan

	Polyvinyl Alcohol (PVA)	2006	USA, China, Singapore
	Ethyl Acetate	2007-2008	China, Japan, Singapore
	Polyester Yarn	2008	China, Taiwan
Taiwan	Cotton Yarn	1983	Pakistan
	Ethyl Acetate	1989	South Korea
	Cotton Yarn	1994-1995	Pakistan
	Certain Towelling Products	2006	China
Thailand	Woven Fabrics of Cotton and Polyester	2007	China
Turkey	Polyester Fibers	1989	Taiwan
	Cotton Textiles	Data unavailable	Pakistan, India, China, Hong Kong, Taiwan
	Polyester Fibers	1991	Italy
	Cotton Yarn	1992	Pakistan
	Polyester Fibers	1992	South Korea, Romania
	Polyester Tops	1992	Romania
	Polyester Synthetic Staple Fibers (not Processed)	1993	Russia, Belarus
	Cotton Textiles	1994	China, Indonesia, India, Pakistan, Russia
	Synthetic Textiles	1994	China, Indonesia, South Korea
	Polyester Flat Yarns	1998	South Korea
	Polyester Synthetic Staple Fibers	1999	South Korea, Indonesia
	Polyester Textured Yarn	1999	India, Taiwan, Korea, Thailand
	Woven Fabrics of Synthetic & Artificial Stable Fibers	2000	China
	Woven Fabrics of Synthetic Filament Yarn	2000	China, Taiwan, South Korea, Malaysia, Thailand
	Polyester Synthetic Staple Fibers	2002	India, Taiwan, Thailand
	Metallised Yarn	2004	China, Taiwan, South Korea, Taiwan
	Textile Fabrics (Polyurethane-Leather Substitutes)	2004	China
	Textile Fabrics (Polyurethane-Others)	2004	China
	Textile Fabrics Coated (Polyurethane-Leather Substitutes)	2004	China
	Polyethylene Terephthalate (Viscosity No. 78 Ml/G or Higher)	2004	China, India, Thailand, Taiwan, South Korea, Malaysia, Indonesia
	Woven Pile Fabrics and Chenille Fabrics (Other Than Fabrics)	2004	China
	Polyester Synthetic Staple Fibres	2006	China, Saudi Arabia
	Textured Yarn of Nylon or Other Polyamides	2007	China
	Polyester Textured Yarn	2007	China, Indonesia, Malaysia, Thailand
	Tarpaulin Made of Polyethylene/Polypropylene	2008	China, Vietnam
	Yarn of Man-Made or Synthetic or Artificial Staple Fibers	2008	China, Indonesia, India
	Nonwovens (Impregnated/Coated/Covered or Laminated)	2008	China
	Certain Fabrics	2008	China, Iran, Israel, Italy, Saudi Arabia
USA	Spun Acrylic Yarn	1979	Japan, Italy
	Polyester Filament Fabric	1983	Japan, South Korea
	Nylon Impression Fabric	1985	Japan

	Silica Filament Fabric	1986	Japan
	Sweaters	1989	Hong Kong, South Korea, Taiwan
	Shop Towels	1991	Bangladesh
	Sulphur Dyes	1992	China, Hong Kong, India, UK
	Polyester Staple Fiber	1999	South Korea, Taiwan
	Synthetic Indigo	1999	China
	Woven Electric Blankets	2009	China
Venezuela	Blue Jeans	1993	China
	PVC	1999	USA

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