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In This Issue

- ☛ **WTO AGREEMENT ON TEXTILES AND CLOTHING : Market access & meaningful intergration-key issues for India.**
 - Background
 - ATC and the Uruguay Round
 - Integration Process-tardy implementation
 - Textile Monitoring Body (TMB)
 - Safeguard and other anti-import actions
 - The Approach
- ☛ **FREQUENT ANTI-DUMPING PROBES AGAINST INDIA S TEXTILE EXPORTS**
- ☛ **CONCERNS RELATING TO RULES OF ORIGIN**
- ☛ **FOUR STAGES OF INTEGRATION: PHASE-OUT OF MFA**
- ☛ **PROPOSALS REGARDING THE ANTI-DUMPING AGREEMENT: Preparations for the 1999 Ministerial Conference**
- ☛ **TEXTILE INDUSTRY GEARING UP TO FACE POST-MFA CHALLENGES**
- ☛ **G-15 MINISTERIAL MEETING IN PREPARATION FOR THE THIRD MINISTERIAL CONFERENCE OF WTO AT SEATTLE**
 - (Chairman s Summary) - August 17-18, 1999 Bangalore, India
- ☛ **MONTHLY UPDATE FROM PMI/GENEVA (15TH JULY - 15TH AUGUST, 1999)**
- ☛ **QUOTES & EXCERPTS**
- ☛ **SCHEDULE OF MEETINGS AT THE WTO, GENEVA, SEPTEMBER 1999**

WTO Agreement on Textiles and Clothing

Market access & meaningful integration - key issues for India

Background

The textile sector remained outside the GATT disciplines for many decades, being subjected from the early 60's to specially negotiated rules designed to regulate trade in cotton textile products. From 1974 onwards, world trade in textiles and clothing has been governed by the Multi-Fibre Arrangement (MFA) under which many industrial countries, through bilateral agreements or unilateral actions, established quotas on imports of textiles and clothing from more competitive developing countries. MFA was to initially operate for a limited period of four years and was primarily meant to provide breathing time to the textile industries of the developed countries to make structural readjustments. However, the quota regime of MFA got extended time and again for varying periods till 1994. In fact, from 1987 onwards, the scope of MFA itself was expanded further by including vegetable fibres and silk blend products within its purview. The integration of the textile sector into the mainstream of WTO (GATT 1994) disciplines is embodied in the Agreement on Textiles and Clothing (ATC) which was negotiated during the Uruguay Round and is being implemented in stages over a period of 10 years. Indeed, integration of the textile sector into GATT had been one of the major objectives in the Uruguay Round for India, as exports of textiles account for about 36 per cent of total exports from India and represent the largest net foreign exchange earner for the country.

ATC and the Uruguay Round

The key elements of the Agreement on Textiles and Clothing (ATC), which was finalised during the Uruguay Round, are as follows :

i) Setting up of a time-frame for integration of textiles and clothing products into WTO (GATT-1994) disciplines – i.e. integration of textiles (or abolition of

Market access is a key issue for India in multilateral trade negotiations. Nowhere is this more evident than in the textile sector which has been subjected for many decades to the restrictive quota regime under the Multi-Fibre Arrangement (MFA). The Agreement on Textiles and Clothing (ATC) negotiated during the Uruguay Round was seen as a potential area of benefit for the developing countries, with estimates at that time even suggesting that over one-third of the total benefits from the Uruguay Round would result from the liberalisation of the world trade in textiles and clothing in the wake of the phased abolition of the quota regime and its integration into WTO/GATT disciplines. The anticipated benefits, however, have not materialised. This is largely because the integration process has not been commercially meaningful. In other words, market access for Indian textiles has not increased significantly. Compounding the problem are the various measures taken by importing countries such as anti-dumping actions, transitional safeguards and discriminatory rules of origin which nullify whatever little market access resulting from implementation of the ATC. Highlighted in this issue are some of these concerns, our approach to the problems and the ongoing efforts - jointly by the government and the textile industry - to meet the challenges of the post-quota scenario.

quotas) within a time frame of 10 years in four stages – abolition of quotas on specified products to be 16 per cent of the total volume of imports into the quota countries in 1990 on the date of commencement of the agreement on 1st January, 1995; 17 per cent on 1st January, 1998; 18 per cent on 1st January, 2002; and the remaining 49 per cent on the final day of the transition period i.e. 1st January, 2005.

ii) Progressive growth of quota limits during the period of transition preceding final integration of the textile sector into GATT. For products remaining under quota, at whatever stage, the Agreement lays down a formula for increasing existing growth rate. Thus, the annual growth rate should be 16%, 25% and 27% higher than the growth rate established for the previous MFA restrictions under MFA bilateral agreements in the three stages.

iii) Application of safeguard mechanism during the transition period. A specific transitional safeguard mechanism allows members to impose restrictions against individual exporting countries if the importing country can show that both the overall imports of a product and imports from the individual countries are entering the country in such large quantities as to cause (or to threaten) serious damage to the relevant domestic industry.

Setting up of a time frame for elimination of quotas is the singular achievement of the ATC given the fact that textile trade has been under a discriminating regime since the early sixties. The growth in quotas envisaged in the interim also goes beyond the MFA maximum of 6 per cent in many categories under restraint especially to the US and some categories, especially garments, in the European Union (EU). The additional access gained on account of the growth on growth rates granted under the ATC, although no substitute for the elimination of actual restriction, is also a significant improvement.

Apart from the above, the ATC also recognises the need to strengthen GATT rules & disciplines through tariff reductions & bindings, elimination of non-tariff barriers etc. as part of the integration process. The ATC also provides a mechanism for supervising the implementation of the agreement by establishing the **Textiles Monitoring Body (TMB)**. **A periodic overview of the agreement before the end of each stage of integration by the WTO Council of Trade in Goods has also been envisaged.**

Of the above, the two most significant features of the ATC are : (i) the phase-out of restraints on a pre-determined schedule and within a stipulated period of 10 years and (ii) an improved, multilateral policing of additional restraints and other measures during the phase-out period through the Textile Monitoring Body (TMB) envisaged in the ATC and on both these counts, the operation of ATC has fallen short of the expectations of developing countries, including India.

Integration Process – tardy implementation

The process of integration of items has been very reluctant and tardy, especially in the case of the US & EU. In effect, commercially meaningful integration has not been done. An analysis of the integration process in the

first two stages initiated by the US & EU shows that it has not led to removal of restrictions on any item under specific restraint from India. Canada & Norway, on the other hand, who are also operating quotas under the ATC have significantly reduced the restraints under the phase-out programme during the first two stages. While Canada has removed restrictions on several clothing products in 1998, Norway has removed all restraints on clothing by 1998 and on bed linen with effect from 1999. Norway currently operates restraints only on fishing nets in a few countries. The developed countries appear to have adhered to the strictly 'legal' requirements of the integration process, without taking into account commercial considerations. **The Council for Trade in Goods of the WTO in its review report on the eve of the second stage of integration (July 1997) also concurred that a large number of quotas remained in force, with the members fulfilling only the minimum legal requirement.**

Textile Monitoring Body (TMB)

The TMB is the only legitimate body within the ATC which can interpret the different provisions of the ATC and ensure that these provisions are properly implemented by the Members. But the track record it has created during its brief period of operation is not very encouraging. The functioning of the TMB has not given any indication of the commitment of the WTO itself to the implementation of the ATC. The structure of the TMB is such that in any issue, it tends to get divided into two distinct blocks of importing country members and exporting country members. The result is that on many disputes they end up issuing a finding rather than making a recommendation. And in some of the serious disputes, they are not even able to issue a finding and merely admit that they have no consensus to say anything about the dispute.

The apparent division of the TMB into two blocks and its tendency to wash its hands off serious disputes would tend to erode its relevance, and also convert it into a sort of 'deal-making' body. And in case where the parties refuse to make or accept a 'deal', the dispute goes to a WTO Panel. **In fact, dispute settlement in the textile sector may become a lot more smoother if the disputes are handled directly by the Dispute Settlement Body (DSB), as in the case of the other sectors.**

Safeguard and other anti-import actions

A tendency to replace QRs (Quantitative Restrictions or quotas) with other disguised anti-import measures has been evident in both the US and EU, especially after the finalisation of the ATC in December 1993. **The EU pre-empted the impact of the ATC by accelerating the anti-dumping drive in the textile sector during 1994. Repeated action was initiated by EU in the case of imports of unbleached cotton fabrics from India.** Duties were imposed on Cotton type bed-linen. Anti-dumping and anti-subsidy action was also initiated by EU on imports of PTFY from India. The United States proposed as many as 26 new restraints globally during the first year of the ATC. The ostensibly social "new" issues such as those relating to child labour, labour standards, wages and working conditions /

workers' rights, environmental and ecological standards and even fire safety standards have been invoked both by the EU and the US, and linked to trade, as thinly veiled protectionist measures, all too frequently in the textile sector.

An important element of the ATC is the linkage of the integration process to the issue of market access. **Article 7(i) of the ATC mandates members to achieve improved access to markets for textiles and clothing products through measures such as tariff reductions and bindings as part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round.** With the unequivocal commitment to phase-out MFA restrictions within a definite time period of 10 years, it is not surprising that the developed countries imposing quantitative restrictions on imports of textiles and clothing products should seek reciprocal market access in the textile sector by seeking reductions in tariffs and removal of non-tariff barriers in the developing countries.

India has granted access for textile products under the MOUs signed with the US and the European Commission (EC). The market access has been granted by calibrating the removal of quantitative restrictions and tariff reductions over a 10-year period, coinciding with the 10-year integration period of textile products into GATT. The peak tariff levels on textile items have been progressively reduced to 25 per cent for yarns, 35 per cent for certain made-ups by 1999 & 35 per cent for priority garments by the year 2000. Quantitative restrictions have also been removed for a large number of textile products and will be removed for most of the remaining products by 2002.

An analysis of the profile of imports of top 20 H.S. lines accounting for nearly two thirds of total textile and garment products shows that import of these items in 1994-95 was about Rs.1721 crores which has increased to about Rs. 2026 crores during 1997-98, marking an increase of 17.72 per cent in three years. Most of the imports appear to have taken place from the countries in the South-East Asian region. In order to ensure that low cost and poor quality imports of textile products do not unduly distort the domestic market, a scheme of specific duties has been envisaged along with the ad valorem duties in the MOUs signed with the US & EC.

Apart from the above, the transition period has also seen:

- (i) **Unilateral changes in the Rules of Origin** (by the US) restricting market access.
- (ii) Delay in prompt approval of special flexibilities committed under the India-EU MOU.
- (iii) **Growing preference for regional parts/Customs Union in order to circumvent meaningful liberalisation of textile trade.**

With the developed countries showing varying degrees of commitment to the process envisaged in the ATC, developing countries like India will come under increasing

pressure to liberalise trade by removing restrictions. There is thus a need to remain vigilant during the remaining years of the operation of ATC and renew efforts to resist attempts to restrict trade by recourse to new methods of protectionism.

The Approach

- The integration programme implemented by the importing countries have been very meagre and have not been in line with the spirit of the ATC. The proposal is that importing countries, on the first day of the 85th month (January 1st, 2002) that the WTO Agreement is in effect, shall integrate products which accounted for not less than 50% of the total volume of the Member's 1990 imports of the restrained products proportionately distributed among all sub categories like tops and yarns, fabrics, made-ups and clothing. This is possible since Article 2:10 and 2:15 do not prevent a Member from advance integration of products.
- The importing countries should be persuaded to apply growth-on-growth presently provided under Article 2:14 for stage 3 with effect from 1st January 2000 instead of 1st January 2002.
- The period of 10 years provided for removal of all quantitative restraints on textiles and clothing products be adhered to and the integration programme be implemented in good faith by the deadline of December 31,2004.
- TMB should be made more effective by directing it to make a recommendation in each case referred to it and provide a clear finding, rather than observations, on each measure or action reviewed by it;
- The developed countries should avoid resorting to unreasonable anti-dumping/anti-subsidy and other anti-import actions as a means of protecting their textile industries;
- Sparing use of transitional safeguards based on standards established in the context of WTO dispute settlement mechanism. Thus, while reviewing a safeguard action if it is found that the market data provided by the importing country does not establish a situation of serious damage or actual threat thereof for the product, all requests for restraints issued by the same importing country to other exporting countries for the same products based on the same market statement should automatically be treated as invalid. Not more than one safeguard action should be permitted on a given product of a particular exporting country by any importing country during the currency of ATC.
- There should be no unilateral change in the Rules of Origin to the detriment of developing exporting countries. Further, since the process of harmonisation of Rules of Origin of various countries is being undertaken in the committee of Rules of Origin, no member country should be allowed to make any further changes in their Rules of Origin till the harmonisation process is completed.

(* Source : Ministry of Textiles)

Frequent anti-dumping probes against India's textile exports

Over the past few years, India's textile exports to the European Union have been facing anti-dumping investigations of the European Commission (EC). In recent times, 3 textile product categories, namely (i) Unbleached Cotton Fabrics (UCF) (ii) Cotton Type Bed-liner and (iii) Polyester Texturised Filament Yarn (PTFY) originating from India have been subjected to anti-dumping action by the EC. India's exports to the European Union of certain textile products are already under quantitative restrictions under the Indo-EU bilateral textile agreement. As a result of various initiatives taken either through intensive diplomatic efforts or legal course of action to defend the cases, the Unbleached Cotton Fabrics-III anti-dumping case of the EC was turned down.

In the cotton type bed-linen anti-dumping case, Government of India decided to contest the EC's action and initiated the process as a prelude to raising this issue under the Dispute Settlement Mechanism of the WTO. Two rounds of consultations with EC have already taken place and DSB proceedings initiated.

The European Commission had initiated two parallel investigations, namely, anti-dumping proceedings and

anti-subsidy, concerning import of PTFY originating, among others, from India. The complainant has since withdrawn the case.

Turkey has recently initiated anti-dumping investigations on import of Polyester Texturised Yarn (PTY) from India, Republic of Korea, Thailand and Chinese Taiwan. The Silk and Rayon Textiles Export Promotion Council (SRTEPC) is coordinating the defence of Indian producers/exporters in the case and taking necessary steps to contest the proceedings.

The Board of Tariff and Trade (BOTT), South Africa, had received complaints against large quantity of imports from India and also received requests for initiating anti-dumping and anti-subsidy proceedings against the following two items being exported from India : firstly, printed and dyed bed linen and secondly, acrylic fibre blankets. Although BOTT has not initiated any anti-dumping and anti subsidy proceedings against imports of printed and dyed bed linen, in case of acrylic fibre blankets definitive anti-dumping duties have been imposed by the South African authorities.

Concerns Relating to Rules of Origin

The US has changed its Rules of Origin (RO) with effect from July 1, 1996. According to the old US Rules of Origin, for processed fabrics and made-ups (e.g. sheets, pillow cases, terry towels, toilets & kitchen linen), the country of origin was the country where transformation of the fabric into processed fabric/made-ups took place (i.e. the country where the processing of the grey fabric or the stitching operation for conversion into made-ups took place). For garments, it was the country where the fabric was cut (but not necessarily stitched). But now, for processed fabrics and made-ups, the country of origin is the country where the fabric is made. For garments, it is the country where the fabric was substantially converted into a garment and not necessarily where it was cut. Since we currently have zero or negligible off-shore production (third country production) of garments produced from fabrics cut in India, the change in the US Rules of Origin may not affect us at this juncture, although it may affect us adversely at a later stage. But, we are likely to be affected by the application of new rules on the exports of fabrics and made ups as it gets debited against our quota utilisation. A substantial quantity of our fabrics is going to countries like Sri Lanka, Bangladesh and Hong Kong for conversion into processed fabrics /made-ups for re-export to the US. As per the new rules, these value added products require to be accompanied by an Indian visa and/or Indian quota for clearance by the US Customs. India has been so far clearing such cases by giving Indian visas/quotas under protest. Rules of Origin continue to be an important issue of concern to India in the textiles sector which has been conveyed on several occasions.

Four Stages of Integration :

Phase-out of MFA

- 16 per cent of the total volume of the imports of the listed textiles and clothing products on the date of entry into force of the ATC (1st January, 1995) must be outside quotas.
- 17 per cent of the total volume of imports of the listed textiles and clothing products on the first day of the 37th month or the end of the third year (1st January, 1998) must in addition be integrated, adding up to a cumulative total of 33 per cent.
- 18 per cent of the total volume of imports of the listed textiles and clothing products on the first day of the 85th month or the end of the seventh year (1st January, 2002) must in addition be integrated, adding up to a cumulative total of 51 per cent.
- 49 per cent of the total volume of imports of the listed textiles and clothing products on the first day of the 121st month or the end of the tenth year (1st January, 2005) must be integrated. This adds up to a cumulative total of 100 per cent and quotas disappear thereafter.

Product Categories under ATC

- Silk
- Cotton
- Other vegetable textile fibres
- Paper yarn and woven fabrics
- Man-made filaments
- Man-made staple fibres
- Wadding, felt and non-woven
- Yarns, twine, cordage, etc.
- Carpets & other textile floor coverings
- Wool, fine/coarse animal hair, horsehair, yarn & fabrics
- Special woven fabrics, tufted textile fabrics, lace & tapestries
- Impregnated, coated, cover/laminated textile fabrics
- Art of apparel and clothing access, knitted or crocheted
- Art of apparel and clothing access not knitted or crocheted
- Other made up textile articles, sets, worn clothing etc.

(Excerpted from "Indian Industry's guide to the WTO", a CII publication by Bibek Debroy and P.D. Kaushik)

Proposals Regarding the Anti-Dumping Agreement

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

(Text of proposals submitted by India in the General Council of the WTO)

Issues

1. Recent years have seen increasing resort to anti-dumping actions. In a number of cases investigations are started even in cases where the industry claiming injury has not been able to produce, before the investigating authorities, satisfactory evidence of dumping or injury. New investigations have often been started on the same products immediately after the termination of an investigation. This is particularly true of exports of developing countries which are being subject to more and more anti-dumping and countervailing measures. The frequent use of anti-dumping actions against exports from developing countries by major trading countries has become a matter of serious concern. The uncertainty and restrictiveness of these measures has created trade disruption affecting not only particular consignments but also longer-term trade in the targeted product. Benefits from trade liberalisation have been considerably neutralised by the unfair use of anti-dumping measures, including back-to-back anti-dumping investigations on the same products which have frustrated the expectations created during the Uruguay Round.

2. The lack of clarity in certain provisions has compounded the problem, including the fact that Article 15 of the Agreement which provides the only reference to the special situation in developing countries is ambiguous and practically inoperative. Furthermore, in cases where there are no sales, or the sales in the domestic market are low, the investigating authorities rely on “constructed value” calculated on the basis of cost of production, even where data on price charged by the exporter to third-country markets may be readily available for price comparison purposes. Experience has shown that the determination of the construction value is often not fair and results in harassment of exporting firms that are alleged to be dumping. Moreover, certain provisions, particularly those relating to *de minimis* dumping margin and the threshold volume of imports below which no anti-dumping duty shall be levied, need to be revised in view of the changed global trade and economic scenario, especially for export from developing countries. The concerns arising out of

increased susceptibility of developing countries to the incidence of dumping into their economy, as they liberalise their import regimes, also needs to be addressed.

3. The special provisions in the Agreement relating to settlement of disputes in the anti-dumping area which *inter alia* require panels not to challenge “the evaluation of facts” made by the investigating authorities, where “establishment of facts was proper and the evaluation was unbiased and objective” needs to be modified to provide that the common rules provided by the Dispute Settlement Understanding apply to disputes relating to anti-dumping actions. The following amendments are therefore necessary in order to ensure that developing countries receive the due benefits of global trade liberalisation.

Proposals

4. Article 15 of the Agreement on Implementation of Article VI is only a best-endeavour clause. Consequently, Members have rarely, if at all, explored the possibility of constructive remedies before applying anti-dumping duties against exports from developing countries. Hence, the provisions of Article 15 need to be operationalised and made mandatory.

5. In order to restrict the initiation of back-to-back investigations, it should be provided that no investigation would be initiated for a period of 365 days from the date of finalisation of a previous investigation for the same product resulting in non-imposition of duties. However, if for any exceptional reasons such an investigation has to be initiated it must have the support of at least 75 per cent of the domestic industry.

6. (i) The existing *de minimis* dumping margin of 2 per cent of export price below which no anti-dumping duty can be imposed (Article 5.8), needs to be raised to 5 per cent for developing countries, so as to reflect the inherent advantages that the industries in these countries enjoy vis-à-vis comparable production in developed countries.

(ii) The major users have so far applied this prescribed *de minimis* only in newly initiated cases, not in review and refund cases. It is imperative that the proposed *de minimis* dumping margin of 5 per cent is applied not only in new cases but also in refund and review cases.

7. The threshold volume of dumped imports which shall normally be regarded as negligible (Article 5.8) should be increased from the existing 3 per cent to 5 per cent for imports from developing countries. Moreover, the stipulation that anti-dumping action can still be taken even if the volume of imports is below this threshold level, provided countries which individually account for less than the threshold volume, collectively account for more than 7 per cent of the imports, should be deleted.

8. The lesser duty rule should be made mandatory while imposing an anti-dumping duty against a developing-country Member by any developed-country Member. Article 9.1 needs to be modified accordingly.

9. The definition of "substantial quantities" as provided for in Article 2.2.1 (footnote 5) is still very restrictive and permits unreasonable findings of dumping. The substantial quantities test should be increased from the present threshold of 20 per cent to at least 40 per cent.

10. In cases where there are no or low sales of like product in the domestic market, resort to constructed value on the basis of cost of production (Article 2.3)

should only be made where the investigating authorities find that prices charged by the same exporter to third-country markets are not available or are not representative.

11. As developing countries liberalise, the incidence of dumping into these countries is likely to increase. It is important to address this concern, since otherwise the momentum of import liberalisation in developing countries may suffer. There should therefore be a provision in the Agreement, which provides a presumption of dumping of imports from developed countries into developing countries, provided certain conditions are met.

12. Presently there is a different and more restrictive standard of review pertaining to adjudication in anti-dumping cases. There is no reason why there should be such a discrimination for anti-dumping investigations. Hence, Article 17 should be suitably modified so that the general standard of review laid down in the WTO Dispute Settlement Mechanism, applies equally and totally to disputes in the anti-dumping area.

The annual review provided under Article 18.6 has remained a proforma exercise and has not provided adequate opportunity for Members to address the issue of increasing anti-dumping measures and instances of abuse of the Agreement to accommodate protectionist pressures. This Article must be appropriately amended to ensure that the annual reviews are meaningful and play a role in reducing the possible abuse of the Anti-Dumping Agreement.

Textile Industry Gearing Up to Face Post-MFA Challenges - Initiatives and Approaches

* The textile industry in India is preparing to meet the competition expected in the post-MFA era. The government is trying to help the industry to meet the situation and has recently given a favourable Exim Policy as well as various other schemes through Budget notifications. In order to provide easy access to raw materials required for export production, the government has recently introduced a scheme of granting Annual Advance Licences by which exporters can continue to import their input requirements throughout the year and simultaneously, export garments made out of them. This scheme will reduce the transaction time and cost to enable the garment exporters to devote themselves to the job of producing and exporting their products. Various types of trimmings and embellishments have been allowed to be imported by the industry free of licence as well as import tariffs. Most of the fabrics have been brought into the free list of imports. Arrangements are also being worked out by taking policy initiatives so that quality fabrics produced by the mill sector in India are made available to the garment makers.

* A scheme of setting up **Apparel Parks** is being worked out whereby the State Governments will be asked to set up such Parks in areas which are near the existing garment production centres as well as the fabric trading or manufacturing industries so that garment exporters can set up and relocate their manufacturing facilities to places where they can get cheaper labour and cut down costs. **This cluster development approach will enable the Apparel Parks to be used as an instrument for guiding technology upgradation and export culture.**

* **A Technology Upgradation Fund Scheme** has been launched with effect from April 1,99 with a view to

making the Indian textile industry globally competitive and bringing in the desired level of investment for the technological upgradation of the textile sector, covering spinning, weaving, processing and the garment manufacturing sectors.

* **The key areas of infrastructural concern for textiles are ports, power (both availability and price), highways, telecommunications and FDI. Certain steps have been taken to encourage private investment in segments like ports (on build-operate-transfer basis), power generation and distribution etc. The pace of investment in infrastructure for the export-related segments needs to be enhanced through both public and private efforts including FDIs. Higher budgetary support through the Ministry of Textiles is envisaged for providing better infrastructure in the clusters of textiles and garment production.**

* Reservation for garment and knitting in the SSI sector could be eased in order to provide the Indian industry a level playing field to compete against imported garment and knitted products and face the post-quota regime in 2005. This would also help in attracting foreign direct investment and joint ventures, besides proper utilisation of the Textile Upgradation Fund Scheme.

* **The competitiveness of the domestic industry has to be strengthened to withstand the increased import of textile products.** Therefore, a detailed view of various issues relating to the domestic textiles industry such as excise and other duties applicable to raw material, infrastructural problems, interest rates etc. have to be undertaken for revamping in order to increase the competitiveness of the domestic textile industry.

G-15 Ministerial Meeting in Preparation for the Third Ministerial Conference of WTO at Seattle

Chairman's Summary (Excerpts) August 17-18, 1999, Bangalore, India

- The Ministerial Meeting of the Group of Fifteen (G-15), in preparation for the Third Ministerial Conference of WTO at Seattle, was held at Bangalore, India on 17-18 August, 1999. Mr. Ramakrishna Hegde, Commerce Minister of India, chaired the meeting. India hosted this preparatory meeting in pursuance of the decisions taken at the IX Summit of the Heads of State and Government of the Group of Fifteen at Montego Bay, Jamaica, in February 1999. Reaffirming the importance of a transparent, fair and equitable rule-based multilateral trading system under the WTO, the Summit had highlighted the legitimacy of the development objectives of developing countries.
- Against the backdrop of the above guidelines provided by the Montego Bay Summit, the delegates had detailed discussions with reference to the current stage of preparations in Geneva. The objective was to ensure that the interests of developing countries were fully taken on board and that the gains of the multilateral trading system contributed positively to the economic development of developing countries.

Implementation issues

- In the first Session, the focus was on **issues and concerns arising out of implementation of existing agreements, as well as mandated reviews** referred to in para 9(a) of the Geneva Ministerial Declaration.
- The delegates recognised **three facets of implementational issues and concerns. The first is the removal of inequities in the existing agreements to restore the balance of rights and obligations forged in the Uruguay Round. Second is the non-realisation of benefits by many developing countries in areas of interest to them, such as agriculture and textiles and clothing sectors, because of the failure of developed countries to fulfil their obligations in spirit. Third is the special and differential provisions in the Uruguay Round Agreements which have remained**

unimplemented. These provisions, including those of a best endeavour nature, have to be operationalised if the developing countries are to derive the intended benefits of these provisions.

- Developing countries are facing difficulties in effective and timely implementation of their commitments because of resource and institutional constraints and lack of adequate technical assistance. There are also **many specific implementation problems.** For instance, non-operationalisation of the transfer of technology provisions and lack of benefit sharing on biological resources and traditional knowledge accessed for innovations under the TRIPs Agreement; inability of developing countries to use regulations necessary to accelerate their industrialisation process because of the TRIMs provisions and inability to use subsidies for development and diversification and upgradation due to the subsidies Agreement were pointed out. Similarly, special provisions in the Anti-dumping Agreement, the Dispute Settlement Understanding and the SPS and TBT Agreements meant to benefit developing countries have been virtually ignored by the developed countries. The repeated and unreasonable imposition of anti-dumping and countervailing duties by developed countries; lack of meaningful implementation of the Agreement on Textiles and Clothing and non-reduction of tariffs in areas of interest to developing countries showed lack of concern of developed countries for the core interests of developing countries.
- In the light of the concerns expressed, the delegates agreed that these issues should be addressed appropriately in the preparatory process in Geneva on priority and emphasised the need for adoption of coordinated and mutually supportive positions by G-15 countries, particularly through their Geneva based Permanent Representatives accredited to the WTO, so that the necessary corrective measures could be taken by the Seattle Ministerial Conference.

Mandated negotiations: Agriculture & Services

- On mandated negotiations in the **Agreement on Agriculture**, the delegates observed that any **delay in pursuing further liberalisation is unwarranted** and highlighted the need to work towards introducing greater equity and balance in the Agreement and **dismantling of trade-distorting measures. The importance of providing necessary flexibility to developing countries for the adoption of domestic policies for improving the general levels of production, achieving food security and enhancing the income levels of the rural poor was recognised.**
- In the services sector, importance was laid in the discussions on the **liberalisation of areas of interest to developing countries**, particularly movement of natural persons.

Trade & Investment

- Developing countries, including several G-15 countries had agreed in Singapore to launch educative programmes on certain new subjects like Trade and Investments, Trade and Competition Policy, Trade Facilitation and Transparency in government procurement. The work on Trade and Investment had shown that the issue was complex and multifaceted. Given the complexity of the task, members of the OECD had not been able to reach any agreement on a discipline on investment. Several delegations while noting that developing countries had been pursuing an autonomous policy of investment liberalisation suited to their specific needs emphasised that this trend should be allowed to evolve. A few delegations, however, said that while they were not de mandeurs of a multilateral regime in this area they could go along with a consensus.

Competition Policy

- On Competition Policy, delegates were of the view that it would be premature to talk of a multilateral competition framework at present, given the complexities of the issue shown during the discussions in the WTO working group, which was still in an analytical phase. Delegates also emphasised the need to address the issue of restrictive business practices by

transnational corporations as well as anti-competitive effects of certain trade remedial measures. The delegates rejected any move to gradually multilateralise the existing Plurilateral Government Procurement Agreement.

LDCs

- Delegates recognised that urgent steps were needed to integrate the Least Developed Countries (LDCs) into multilateral trading system.

Other issues

- Over and above the Singapore issues, there are certain other issues which are being suggested for inclusion into the negotiating agenda of WTO such as industrial tariffs, electronic commerce, trade and environment, transparency in WTO functioning and global policy coherence. There are even attempts to reintroduce the social clause.

Industrial tariffs

- The delegates observed that the benefits of tariff reduction commitments undertaken in the last round have not accrued to the developing countries to the extent anticipated, in view of the **prevalence of tariff peaks, tariff escalations and non-tariff barriers in respect of items of particular interest to developing countries.** Some delegations, therefore, were not in favour of a new round of tariff negotiations. **Certain delegations stated that in order to address these issues they would favour negotiations on industrial tariff reductions without excluding any industrial sector.** Some delegations said that while they were not de mandeurs of such negotiations, they were not opposed to it either. **It was observed that the issues of tariff peaks, tariff escalations and non-tariff barriers in the developed countries overhanging from the Uruguay Round must be addressed effectively for market access to be meaningful.** Many delegations affirmed the need for due credit to tariff reductions already effected autonomously by developing countries. Many delegations strongly opposed any concept of standstill on tariff reduction based on applied tariffs or a commitment to harmonise tariffs.

Electronic Commerce

- On electronic commerce, it was noted that a work programme to examine all trade-related issues relating to global electronic commerce has been launched. This work programme has identified many complexities involved in electronic commerce. Many delegates emphasised the need to look at electronic commerce from the perspective of developing countries and the need to address the important issues raised in the Work programme.

Environment

- Most delegates agreed that environment is **ab initio a non-trade issue, and that all legitimate environmental concerns can be accommodated within the existing WTO provisions**, including Article XX of GATT 1994. Delegates agreed that the work programme in the Committee on Trade and Environment (CTE) should continue. Since trade is seldom at the root of environmental problems, they were particularly concerned **with attempts to give legitimacy to protectionism in the garb of environmental concerns. Delegates urged the Ministers at Seattle to clearly recognise that environmental standards differ from country to country and that the solution lies in mutual recognition of only product-related standards rather than harmonisation of environmental standards. The delegates also recommended that in case of proprietary technologies or substances mandated for use by international agreements or national environmental laws, owners of intellectual property should be required to sell them at fair and most favourable terms and conditions.**
- The call by some developed countries for a greater coherence between WTO and other inter-governmental organisations was noted. It was noted that the Marrakesh Ministerial Declaration ruled against the imposition of any cross conditionalities or additional

conditions being imposed by such organisations. It was agreed that closer relationship between institutions cannot relieve members of the WTO from their own responsibility to keep markets open and avoid recourse to trade distorting measures.

Labour Standards

- The delegations rejected any linkage between trade and core labour standards. They recalled that this issue had been finally settled in the Singapore Ministerial Declaration. **They decided to resolutely oppose any renewed attempt to raise this issue in the WTO.**

Seattle priorities

- All delegates agreed that the resolution of the **implementation issues and concerns should be treated as a priority issue in the Seattle Ministerial Conference. Many delegates expressed the view that mandated negotiations and mandated reviews should constitute the core agenda for the next round of negotiations. Some delegates were prepared for limited add-ons like tariff negotiations.** It was stated by many delegates that overloading of the agenda would definitely cause delay in the fructification of negotiations as happened in the Uruguay Round. Regarding the issue of a single undertaking, most delegations were of the view that it has both advantages and disadvantages and that a final view could be taken only after the scope of negotiations is determined. All delegations agreed that the final outcome of the Seattle Ministerial Conference should be based on consensus.
- In conclusion, the meeting reaffirmed its **commitment to a rule-based and equitable multilateral trading system** resulting in full integration of developing countries into the system for their economic development and for global trade expansion. **The meeting reiterated the importance of greater and easier market access for the products of interest to developing countries.**

Monthly update from PMI/Geneva *

(15th July 15th August, 1999)

GENERAL COUNCIL

The General Council met for a prolonged session stretching over six days in the second fortnight of July 1999, to continue the discussions on the preparatory process for the 1999 Seattle Ministerial Conference. Since this was the last meeting before the summer break, the focus was on all issues covered under para 9 and para 10 of the Geneva Ministerial Declaration.

The emphasis, as before, was on what should be included in the work programme to be initiated after the Seattle Ministerial Conference. Developing countries, including India, continued to emphasise the importance of addressing implementational concerns. They also expressed hesitancy on the inclusion of any issue other than what is already a part of the built-in agenda. On the other hand, most of the developed countries and, in fact, some developing countries also feel that the built-in agenda would not be sufficiently comprehensive and that some other issues, particularly negotiations on industrial tariffs, should be included in the post-Seattle basket of issues.

More than 150 proposals have so far been submitted by Members in this preparatory process. However, it was evident from the statement made by a number of Members in the concluding session of the General Council that they are yet to submit some more proposals. In fact, one major player stated that their consultations with their domestic constituency are still continuing and that they would be in a position to finalise their remaining proposals only after the summer break. Consequently, even though it is generally felt **that 3rd phase of the preparatory process will start early in September, it is also a fact that the proposal driven second phase will stretch into the first few weeks of September 1999, that is for some time the two phases will run concurrently.**

The General Council is to reconvene in the first week of September. The Chairman has indicated that he would, on his own responsibility, prepare a draft outline of the Ministerial Declaration and submit it for Members' consideration in the meeting to be held in early

September. While a number of Members have expressed certain reservations on this, stating that it would be best to enter the drafting stage only after all proposals have been tabled, a large number of Members feel that the two exercises i.e. submission of new proposals and the drafting of the Ministerial Declaration, can go on simultaneously. In the meanwhile, the Secretariat has also been asked to prepare a more functional and detailed checklist of the proposals submitted by Members so that proposals submitted under various areas/agreements are available at one place for a more focussed discussion.

SELECTION OF THE NEW DG/WTO

After more than nine months of protracted negotiations, the General Council finally agreed to a compromise formula for the new DG of the WTO, under which Mr. Mike Moore of New Zealand and Dr. Supachai of Thailand would both hold the post of DG for three years each. In an endeavour to overcome the impasse, Dr. Supachai also agreed to be the DG for the second term which would start from 1st September 2002. The General Council decision also clearly specifies that in case Dr. Supachai is for some reason not available, at the time that Mr. Moore relinquishes office, then the next DG would necessarily be from a developing country. In effect, this means that the WTO would for the first time have a DG from a developing country, albeit after three years.

ITCB MEETING IN PAKISTAN

The twenty-ninth council meeting of the International Textiles and Clothing Bureau (ITCB) took place in Bhurban, Pakistan from July 12-15, 1999. **The meeting called on the textile importing countries to make commercially meaningful integration and improved growth rates in favour of exporting countries.**

DSB MEETING

In a formal meeting of the Dispute Settlement Body (DSB) on July 26, 1999, the United States submitted its first status report on the implementation of the DSB's recommendations in the Shrimps-Turtle dispute. The US

* Permanent Mission of India, Geneva

argued that it had already made the “guidelines” for the administration of certification more transparent and had taken into account comments made by its trading partners. The US maintained that it was under no obligation to change its law i.e. Section 609 which imposes an import ban on shrimps under certain circumstances. **India, Malaysia, Thailand and Pakistan while noting that the guidelines were more transparent, nevertheless pointed out that it was their interpretation of the recommendations of the DSB that the US should do away with the import prohibition of shrimps altogether. The US has time until 6th December 1999 to implement the DSB’s recommendations.**

DSU REVIEW

The DSU (Dispute Settlement Understanding) Review which was scheduled to end on July 31, 1999 did not complete its work on schedule. It was agreed that work would resume early September 1999 with a view to reaching an early consensus. One of the important issues being discussed is the relationship between Article 21 and 22 of the DSU. Article 21 deals with multilateral determination of compliance or non-compliance by an implementing Member whereas Article 22 deals with cross-retaliation. A large number of countries including India have said that without multilateral determination under Article 21, there cannot be retaliation under Article

22. This view is questioned by the US. Negotiations on this and other matters are expected to resume early September 1999.

WTO INFORMATION TECHNOLOGY (IT) SYMPOSIUM

In order to share information about the dynamism of IT and its future and to discuss the role of IT in economic growth and development and in the infrastructure for global information economy, an information technology symposium was held on 16th July 1999. The participants in the symposium were governments of WTO Members as well as of countries that have applied for accession to the WTO, large and small businesses and users of information technology. The discussions were organised in four sessions covering overview of the IT industry; technology advances/trends and innovative business practices; contribution of IT to economic growth and development and the role of trade in the mutual reinforcement of global and national IT policies; practical problems encountered in IT trade and the broader effects of non-tariff measures; and the implications of current approaches to standards making and conformity assessment. Presentations were made by IT experts from Australia, Belgium, Canada, Chinese Taipei, Costa Rica, the Czech Republic, Estonia, France, Germany, India, Israel, Japan, Malaysia, the Philippines, Switzerland, and USA.

Quotes & Excerpts

“It is a matter of great advantage to us that from the date of coming into force of the Uruguay Round Agreement on Textiles and Clothing, no bilateral arrangement will exist and only the multilateral arrangement envisaged under the Uruguay Round Agreement will apply to this sector. Bilateral arbitrariness and discriminatory practices adopted by the quota countries will come to an end immediately... Our unhappiness with the Agreement is two fold: First, the ‘product coverage’ for the phasing out of MFA is inflated. The entire universe of textiles and clothing items is covered, which means that even those items that are today not covered by quotas are included in it. This would imply, for example in the case of USA, no phasing out of quota items or only marginal phasing out of the quota items till the end of the transition period, and items of export interest to us will get integrated into GATT only on the last day of the transition period. Secondly, as much as 49 per cent of the textiles and clothing sector will get integrated into GATT on the last day of the ten-year transition period which lacks credibility. As against this, it is argued - at least in the case of USA- that quotas will cease to bite by the end of six years because of the growth factors (i.e. growth in the volume of export of quota items) and domestic demand may be lower than the available quotas. Notwithstanding these deficiencies, our key gain from the Agreement is that the arbitrary system of MFA

(which has remained in vogue from 1974 onwards) is at last being abolished and the textiles and clothing sector is being integrated into GATT by a multilaterally agreed treaty.... Now that the textiles and clothing agreement of the Uruguay Round is in place, what is of greater importance is the strengthening of our competitiveness in this sector. In a quota free world, we will face fierce competition from countries such as China, Pakistan, Bangladesh, Sri Lanka, Indonesia and Vietnam. Garment units from Taiwan and Hongkong are already being moved into China, while South Korea is shifting its base to low cost Asian countries. It is of urgent importance that government and industry get together and push through a concrete programme for upgradation of technology, quality consciousness and aggressive marketing. We need to invest substantially in the modernisation of our garment industry, and also of our textile industry to get high quality fabrics. We also need to diversify our export products. Our competitive strength lies in cotton-based products, and so the enhanced production and availability of raw cotton of the requisite quality at competitive prices would need to be ensured”.

(Excerpted from A.V. Ganesan’s “The GATT Uruguay Round Agreement: Opportunities and Challenges”, RGICS paper, 1994)

Schedule of Meetings at the WTO, Geneva : September 1999*

13/9/99	:	Committee on Trade Related Investment Measures
13-15/9/99	:	Textile Monitoring Body
14/9/99	:	Working Group on Trade & Competition Policy
14-16/9/99	:	Trade Policy Review Body (Israel)
21/9/99	:	Council for Trade in Services
20-21/9/99	:	Committee on Balance of Payments
22/9/99	:	Dispute Settlement Body
22/9/99	:	Working Party Accession of Saudi Arabia
22-24/9/99	:	Committee on Regional Trade Agreements (24th Session)
23/9/99	:	Special Session of the General Council
24/9/99	:	Working Group on the Relationship between Trade and Investment
27/9/99	:	Committee on Budget, Finance and Administration
27/9/99	:	Working Party Accession of Croatia
27-29/9/99	:	Trade Policy Review Body (Philippines)
28/9/99	:	Committee of Participants on the Expansion of Trade in Information Technology Products
29/9/99	:	Sub-committee on Least Developed Countries
29-30/9/99	:	Committee on Agriculture
30/9/99	:	Committee on Technical Barriers to Trade

*Source : WTO / Geneva as on August 28, 1999

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