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The Stakes for the African Textile and Clothing Industries in the WTO

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By Michiko Hayashi[1]

1. Introduction

While studies which examine the impact of the ATC termination estimate large welfare gains for both developed and developing countries, they also warn of the likely adverse impact of the ATC (Agreement on Textiles and Clothing) expiry for countries whose exports of textile products heavily relied on the quota protection. This includes African countries. In fact, the statistics for exports of garments to their major market, i.e. the United States, indicate that in terms of value exports from Africa have been declining. In the post-ATC environment where competitiveness is a major factor for success, it is clear that policies and strategies are necessary to strengthen the capacity and the competitiveness of the domestic textiles and clothing sectors in the African countries. At the same time, it is a prerequisite for effective implementation of the development policies and measures to know what rights and obligations do exist under the WTO rules to protect and promote the sectors.

Also, the results of the on-going negotiations on Non-Agricultural Market Access (NAMA) under the WTO-Doha round will impact directly on the textile and clothing sectors in the African countries. Understanding the implications of the developments in the NAMA-negotiations and transmitting the concerns of the African textile and clothing industries to the negotiation teams are also necessary for the sustainable development of the industries.

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1 The author works for United Nations Conference on Trade and Development (UNCTAD) as Economic Affairs Officer. The views expressed in this paper do not necessarily reflect those of UNCTAD.
This paper was prepared for the Trade Union Conference on the Future of the African Textile Industries held in Cape Town, South Africa, on 10-11 October 2005, addressing to the participating African countries. These countries include Ethiopia, Ghana, Kenya, Malawi, Mauritius, Madagascar, Namibia, Nigeria, Lesotho, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The author wishes to thank Ralf Peters, Kofi Addo and Thomas Mathew in UNCTAD for substantively assisting her in preparing the paper, particularly for the sections on Safeguard Measures and the Negotiating Group on Non-Agricultural Market Access. Also, she wishes to thank Dinora Diaz in the International Textile and Clothing Bureau and Hiromi Yano in the WTO for providing the information on safeguard and anti-dumping measures.

In light of the above, the paper addresses two issues: (I) WTO instruments that can be used to protect and promote African textiles and clothing industries in the post-ATC environment; and (II) the developments in the Negotiating Group on Non-Agricultural Market Access (NAMA) and their implications to the textile and clothing industries in the African countries.

2. WTO Instruments for Protection and Development of the African Textiles and Clothing Industries

2.1. Protection Provided by the Overall WTO Rules

The fundamental and most important benefit of the WTO rules is the protection that member countries derive from the rules-based and predictable international trading environment. A country that is not a member of the WTO does not have this protection and, hence, is exposed to the possibility of being targeted by unilateral trade restriction measures. For example, a country could suddenly prohibit imports or put quantitative restrictions to its imports from non-WTO member, be it agricultural products, manufacturing goods, or services. If a restricting country were a major economic power, it would be very difficult to challenge that country unless the affected country has a similar economic and political power and can threaten to retaliate.

When a WTO member imposes a trade restriction measure to another member, it has to observe strict WTO rules and to ensure that the measure imposed is in accordance with WTO rules. If the affected WTO member feels that its WTO rights are violated, it can challenge the restricting country by invoking appropriate mechanism under the WTO rules and seek compensation. If a country involved in a dispute settlement is a developing country and faces financial and technical constraints, it can request legal assistance from the Advisory Centre on WTO Law.[2] Being a WTO member, a country has to meet WTO obligations, but at the same time its rights are guaranteed by the WTO rules. This is one of the major reasons why many countries have joined the WTO since its establishment, and many more are in the process of WTO accession.

2 The Centre provides legal advise on WTO law, support in WTO dispute settlement proceedings, and training in WTO laws to developing countries, countries with economies in transition and LDCs. For the detailed information, see http://www.acwl.ch

2.2. WTO Instruments for Protection from Import Surge

Safeguard measures, and anti-dumping and countervailing duties are the WTO instruments (Agreement of Safeguards and Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994) that are used for protecting domestic industries from import surge. They are instruments specifically made for protection from sudden import surge, and these measures are temporary. They have to be treated separately from industrial subsidies for domestically produced and consumed products (the Agreement on Subsidies and Countervailing Measures) which are for protection of domestic industry from import competition and are longer-term.

(1) Safeguard Measures

Under the ATC it was possible to invoke selective safeguard measures for textiles and clothing, but with the expiry of the ATC at the end of 2005, this option is no longer available.[3] Now, MFN (Most Favoured Nation) safeguard measure must be used in accordance with the Agreement on Safeguards.

The Agreement on Safeguards provides for rules for the application of safeguard measures. A member may apply a safeguard measure to a product only if that member has determined, according to the rules set out in the Agreement on Safeguards, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products. The principle of non-discrimination must be observed when taking safeguard measures, i.e. safeguard measures must be applied to all exporting countries, except as stipulated in Article 9:1 of the Safeguard Agreement,[4] and, therefore, it is not allowed to target particular countries.

In order to invoke WTO safeguard measure, a member must have adequate domestic laws and legislation in place that provide for procedures for safeguard investigation. Also, the domestic laws and legislation must be known to all WTO

3 The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts, pp 315-324, WTO, June 1994.

4 The exception being for developing country members, wherein safeguard measures shall not be applied against a product originating in a developing country as long as its share of import of the product concerned in the importing member does not exceed 3 per cent, provided that developing country members with less than 3 per cent import share collectively account for not more than 9 percent of total imports of the product concerned.

members according to GATT Article X (Publication and Administration of Trade Regulations). These domestic laws and legislations must be in accordance with the WTO Agreement on Safeguards and be approved by WTO members. A member can apply a safeguard measure only after an investigation by the competent national authority which followed the procedures notified under GATT Article X, and which has found "serious injury" or "threat of serious injury" to the domestic industry.

To determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of the Agreement on Safeguards, the competent authorities must evaluate all relevant factors of an objective and quantifiable nature, the rate and amount of the increase in imports of the products concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production productivity, capacity utilisation, profits and losses, and employment. The period allowed for a safeguard measure is four years with the possibility of extension as specified in the Agreement on Safeguards.

Members that apply safeguard measures have to consult with affected members and to endeavour to provide concessions for compensation. If such compensation cannot be agreed, affected members may impose retaliation measures, after a period of 3 years that a safeguard measure is in effect, for example, raising the tariffs of products coming from the member applying safeguard measures. It must be noted, however, that to date, no WTO member which has invoked the provisions of the Safeguards Agreement has had to pay such a compensation to another WTO member. Article 9 of the Agreement on Safeguards provides for special and differential treatment for developing countries with respect to the rules on extension of the period and re-imposition of a safeguard measure to the same product.

Safeguard measures under the ATC were frequently used, but under the Agreement on Safeguard they are hardly invoked for textiles and clothing. One of the reasons for this might be the MFN obligation under the Agreement. As noted above, while ATC safeguard measures could be imposed on a particular country or group of countries, safeguard measures under the Safeguard Agreement, except in the event noted in footnote 2, must be applied to all exporting countries even if import surge is due to a particular country. Therefore, the impact of the domestic industry and consumers in the safeguard imposing country may not be negligible and might hurt its economy.

Special Case: Safeguard Measures for Textiles and Clothing from China

A surge of textiles and clothing imports from China can be dealt with under the provisions of China's WTO Accession Protocol.[5] First, WTO members are permitted to invoke safeguard measures for textiles and clothing from China invoking the provision for special safeguard measures for the products in China's WTO accession protocol. Chinese textiles and clothing will be subject to this particular safeguard provision until 31 December 2008. Under the provision, an affected country can limit the imports of textile products concerned by the growth rate of 7.5 per cent (6 per cent for wool product categories) from the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for the safeguard measure was made. The time limit for safeguard measures taken under this provision is one year.

Second, from 2009 to 2013, WTO members can apply a standard WTO safeguard mechanism targeting only China, while, as noted above, under normal circumstances application of a safeguard measure has to be non-discriminatory. There are three major differences between the 2008 and the 2009-2013 provisions. Procedures which an importing country has to go through to invoke safeguard measures are more complex (e.g. stricter requirements for investigation) for the latter. If China decides to contest, it can do so using WTO dispute settlement mechanism under the latter while it is not possible under the former. The time limit for safeguard measures under the former is one year, while for the latter it is four years with the possibility of extending up to eight years.

Third, application of the market economy principle to China in determining anti-dumping and countervailing measures is deferred for 15 years after the date of accession, i.e., until December 2016. Until then, in determining these measures China is treated as a non-market economy country.[6] It implies that investigation procedures can be unfavourable and discriminatory for China until December 2016, as the ways set to determine dumping margins for non-market economy countries have considerable scope for manipulation of data on prices and costs in ways that would increase dumping margins.

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5 China acceded to the WTO on 11 December 2001.

6 Non-market economy country is defined as a country that has a complete or substantially complete government monopoly over international trade and where all domestic prices are fixed by the states.

(2) Anti-dumping and Countervailing Duties

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 provides for rules for the application of anti-dumping and countervailing duties. The Agreement sets out technical details of the rules that members must observe in initiating anti-dumping and countervailing duty investigations. Also, for determination of countervailing duties, Part V of the Agreement on Subsidies and Countervailing Measures provides detailed rules for initiation of investigation and application of countervailing duties.

Determination of anti-dumping and countervailing duties is technically complex, but in a nutshell, a member may impose countervailing or anti-dumping duties on subsidised or dumped imports, respectively, up to the level of the subsidy or margin of dumping, provided that these imports cause injury. No countervailing or anti-dumping duty may be imposed unless it is determined that the effect of the subsidisation or dumping is such, as to cause or threaten material injury to an established industry, or is such, as to retard materially the establishment of a domestic industry. The definition of anti-dumping is somehow vague. The WTO website on anti-dumping actions (http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm) notes as follow – "If a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be 'dumping' the product."

Unlike safeguard measures, anti-dumping measures and countervailing duties can be used selectively, targeting particular enterprises, and in case of textiles and clothing, an anti-dumping measure is frequently used. Among African countries, only South Africa has initiated a number of anti-dumping cases in 2004 for textile products from China, Taiwan, Hong Kong, India, Korea, Malawi, Turkey, and Pakistan.

2.3 WTO Instrument for Protection of the Domestic Industry

(1) Agreement on Subsidies and Countervailing Measures

The Agreement on Subsidies and Countervailing Measures (SCM)[7] provides for rules on subsidies for the industrial sector. Article 1 of the Agreement on Subsidies and Countervailing Measures defines a subsidy as follow:

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7 *The Results of the Uruguay Round of Multilateral Trade Negotiations:* The Legal Texts, pp 315-324, op.cit.

(I) there is a financial contribution by a government or any public body within the territory of a member where:
   a. a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
   b. government revenue that is otherwise due is foregone or not collected (e.g., fiscal incentives such as tax credits);
   c. a government provides goods or services other than general infrastructure, or purchases goods;
   d. a government makes payments to a funding mechanism;

(II) there is any form of income or price support in the sense of Article XVI of GATT 1994.

The most important aspect in determining whether a subsidy falls under the scope of the Agreement is the existence of specificity. Article 2 of the Agreement determines when specificity exists. There are four types of "specificity" within the meaning of the SCM Agreement.[8]

- Enterprise-specificity: A government targets a particular company or companies for subsidisation;
- Industry-specificity: A government targets a particular sector or sectors for subsidisation;
- Regional specificity: A government targets producers in specified parts of its territory for subsidisation; and
- Prohibited subsidies: A government targets export goods or goods using domestic inputs for subsidisation.

Therefore, subsidies provided specifically to the textiles and clothing sector or enterprise fall in the scope of the SCM Agreement.

The Agreement on Subsidies and Countervailing Measures prohibits two kinds of subsidies: (I) subsidies to help export performance, for example, grants and loans that are given to promote exports; (II) subsidies to promote the use of domestic over imported goods, for example, grants and loans that favour manufacturers using domestic material. Annex 1 of the Agreement on Subsidies and Countervailing Measures provides an illustrative list of export subsidies.

Article 27 of the Agreement on Subsidies and Countervailing Measures specifies the rights that developing countries have in the context of special and differential treatment. This Article recognizes that subsidies may play an important role in economic development programmes of developing country members.

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8 WTO website http://www.wto.org/english/tratop_e/scm_e/subs_e.htm

The prohibition of subsidies contingent upon export performance noted above does not apply to developing-country members referred to in Annex VII of the Agreement on Subsidies and Countervailing Measures. These countries include LDCs and those developing countries whose GNP per capita has not reached $1,000 per annum. Among the African countries that participated in the Conference (see footnote 1), Malawi, Madagascar, Lesotho, Tanzania, and Zambia are exempt from the prohibition of export contingent subsidies as they are LDCs, while Ghana, Côte d'Ivoire, Kenya, Nigeria, and Zimbabwe are exempt due to the GNP per capita threshold.[9] Other developing countries had a transition period of eight years from the date of entry into force of the WTO Agreement, but now the rule on the prohibition of subsidies contingent upon export performance applies to them.

A different rule is in place for the elimination of subsidies contingent upon the use of domestic over imported goods. All developing countries including LDCs had been granted five years and eight years of transition period, respectively, from the date of entry into force of the WTO Agreement, and thereafter the rule applies to all of them as well.

Actionable Subsidies

Actionable subsidies are not prohibited, but they are subject to challenge, either through multilateral dispute settlement or through countervailing action, in the event that they cause adverse effects to the interests of another member. The Agreement on Subsidies and Countervailing Measures does not indicate directly what actionable subsides are, but rather it defines in Article 5 what adverse effects are. As noted above, export subsides are prohibited subsidies rather than actionable. Most subsidies, however, such as production subsidies, fall in the "actionable" category. Developing countries and LDCs including those exempt from prohibition of export subsides are subject to the rules set for actionable subsidies, however, as noted later in this sub-section, there are some provisions for special and differential treatment for developing countries and LDCs. Furthermore, a proposal was made to treat subsides used in developing countries and LDCs for regional growth, technology research and development funding, production diversification and development and implementation of environmentally sound methods of production as non-actionable subsidies.[10] This proposal is one of the Implementation-Related Issues and Concerns being negotiated in the Doha Negotiations.

9 Ethiopia is a LDC, but it is not WTO member.
10 Doha Declarations, p.38, WTO, 2002.

The adverse effects of actionable subsidies include:
(I) injury to the domestic industry of another member;
(II) nullification or impairment of benefits accruing directly or indirectly to other members under GATT 1994; and
III) serious prejudice to the interests of another member.

Article 6 defines that serious prejudice exists in the case of:
(I) the total ad valorem subsidisation of a product exceeding 5 percent;
(II) subsidies to cover operating losses sustained by an industry or an enterprise;
(III) direct forgiveness of debt, i.e. forgiveness of government-held debt, and grants to cover debt payments.

Also, Article 6 stipulates that serious prejudice may arise in any case where one or several of the following apply:
(I) the effect of the subsidy is to displace or impede the imports of a like product of another member into the market of the subsidising member;
(II) the effect of the subsidy is to displace or impede the exports of a like product of another member from a third country market;
(III) the effect of the subsidy is a significant price undercutting by the subsidized product as compared with the price of a like product of another member in the same market or significant price suppression, price depression or lost sales in the same market;
(IV) the effect of the subsidy is an increase in the world market share of the subsidising member in a particular subsidised primary product or commodity as compared to the average share it had during the previous period of three years and this increase follows a consistent trend over a period when subsidies have been granted.

However, for actionable subsidies granted or maintained by developing countries and LDCs other than those with serious prejudice defined in Article 6, countervailing action cannot be taken.[11]

Also, countervailing actions cannot be taken on a product originating in developing countries and LDCs in the following cases:
(I) the overall level of subsidies granted upon the product in question does not exceed 2% of its value calculated on a per unit basis; or
(II) the volume of the subsidised imports represents less than 4% of the total imports of the like product in the importing country, unless imports from developing countries, whose individual shares of total imports represent less

11 Article 27.9 of the Agreement on Subsidies and Countervailing Measures.

than 4%, collectively account for more than 9% of the total imports of the like product in the importing member.

(2) WTO Instruments for Special and Differential Treatment: Part IV of the GATT 1994 and Decision on Measures in Favour of Least-Developed Countries

Part IV of the GATT 1994 is entitled Trade and Development, and it recognises the need for special treatment for developing countries in making international trade contribute to their development. It starts with Article XXXVI with a statement of principles and objectives relevant to the position of developing countries. Specific recognition is given to the following needs: greater export earnings, positive efforts to increase trade, better access to world markets for primary products, diversification and collaboration with international lending agencies and other agencies concerned with economic development.

One of the major aspects of Part IV is the non-reciprocity principle contained in paragraph 8 of Article XXXVI: the developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries. Developing countries do not have to make contributions, which are inconsistent with their individual development, financial and trade needs.

Paragraph 1 of Article XXXVII stipulates certain commitments on behalf of contracting parties: The developed-country members are obliged to: (I) accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to developing countries; (II) refrain from introducing, or increasing the incidence of customs duties or non-tariff import barriers on products currently or potentially of particular export interest to developing countries.

The Decision on Measures in Favour of Least-Developed Countries recognises the plight of the LDCs and the need to ensure their effective participation in the world trading system, and to take further measures to improve their trading opportunities. It makes pledges as follow: (I) expeditious implementation of all special and differential measures taken in favour of LDCs including those taken within the context of the Uruguay Round; (II) to the extent possible, MFN concessions on tariff and non-tariff measures agreed in the Uruguay Round on products of export interest to the LDCs may be implemented autonomously, in advance and without staging; (III) consideration shall be given to further improve the Generalized System of Preferences (GSP) and other schemes for products of particular export interest to least-developed countries; (IV) the rules set out in the various agreements and instruments and the transitional provisions in the Uruguay Round should be applied in a flexible and supportive manner for the LDCs; and (V) LDCs shall be accorded substantially increased technical assistance.

The Committee on Trade and Development in the WTO reviews the progress and discusses the problems related to the issues of trade and development. The Sub-Committee on LDCs created under the Committee on Trade and Development deals with issues and problems specific to LDCs.

The Generalized System of Preferences (GSP) which was agreed in UNCTAD in 1964 became operational by the Part IV of the GATT 1994.[12] Schemes like the Everything But Arms (EBA) and the African Growth Opportunity Act (AGOA) were developed under the GSP schemes of the respective countries. At present, developing countries and LDCs are seeking improvements in the GSP schemes i.e. expansion of product coverage, making rules of origin flexible, and elimination of conditionalities. Moreover, in the Doha Round, LDCs have proposed to bind the duty-and-quota free market access given to products from LDCs, which is highly relevant to textiles and clothing from the LDC African countries. At present, such concessions are unilaterally given, and preference-giving countries could withdraw them at their will.

Special and differential treatment provisions are also found in various Agreements in the Results of the Uruguay Round of Multilateral Trade Negotiations. The issue of technical assistance is being dealt with in the Committee on Trade and Development and the Sub-Committee on LDCs. For textiles and clothing, the discussions are taking place in the Sub-Committee on LDCs in relation to the post-ATC adjustment and the adequacy of technical assistance in the sector provided by the international community and bilateral donors. Furthermore, in the WTO Council for Trade in Goods, Turkey submitted a proposal to establish a work programme in the WTO that is specifically designed for developing countries to address adverse effect caused by the ATC expiry.[13] However, some countries oppose to this proposal arguing that the issue of post-ATC adjustment should be dealt with the overall trade adjustment programme and that textiles and clothing should not be treated separately as they are fully integrated into the WTO rules.

(3) Tariffs

Tariffs are often used as protection of industries, and the textiles and clothing sectors are not an exception both in developed and developing countries. Particularly in developed countries, the textile and clothing sectors are protected by high

12 At that time Part IV was contained in the GATT 1947, which became the GATT 1994 after the Uruguay Round of the Multilateral Negotiations.

13 Also, the issue of post-ATC adjustment is being discussed in the Council for Trade in Goods addressing concerns of developing countries in general that are affected by the ATC expiry.

tariffs resulting in tariff peaks for the sectors. In the WTO-Doha round, market access for non-agricultural goods is being negotiated in the NAMA negotiations, and formulae for tariff reduction are being considered. The developments in the NAMA negotiation and their implications are discussed in the following section.

3. NAMA Negotiations

The NAMA (Non-Agricultural Market Access) negotiation addresses tariffs and non-tariff barriers for non-agricultural products.

3.1. The July 2004 Framework

(1) Tariff Negotiations

Prior to the 6th WTO Ministerial Conference in Hong Kong, 13-18 December 2005, the NAMA negotiation discussed the tariff reduction formula based on the July 2004 – Framework, which had endorsed a non-linear approach. Paragraph 4 of Annex B of the July Framework stipulates that "the Negotiating Group should continue its work on a non-linear formula applied on a line-by-line basis which shall take fully into account the special needs and interests of developing country participants, including through less than full reciprocity in reduction commitments." A linear approach reduces fixed rates of tariffs across the board, while a non-linear approach results in larger tariff reduction for higher tariffs.

Various formulae for tariff cuts have been proposed, some of them aiming at ambitious tariff reductions which would result in higher tariff cuts for developing countries than those for developed countries as the average tariff rates of the former are higher. Although there are figures in brackets in the July Framework which indicate that these figures are not yet agreed, the July Framework, nevertheless, provides the basis for a preliminary analysis on the consequences of the NAMA negotiations for African countries.

(I) The July Framework agreed in paragraph 5 of Annex B lists seven points: product coverage shall be comprehensive without a priori exclusions;
(II) tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; however, for unbound tariff lines, the basis for commencing the tariff reductions shall be [two] times the MFN applied rate in the base year;
(III) the base year for MFN applied tariff rates shall be 2001 (for applicable rates on 14 November);

(IV) credit shall be given for autonomous liberalisation by developing countries provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round;
(V) all non-ad valorem duties shall be converted to ad valorem equivalents on the basis of a methodology to be determined and bound in ad valorem terms;
(VI) negotiations shall commence on the basis of the HS 96 or HS 2002 nomenclature; and
(VII) the reference period for import data shall be 1999-2001.

Flexibilities provided for developing countries which are non-LDCs, are:
(I) applying tariff cuts of less than what the formula specifies for up to [10] percent of the tariff lines, if it does not cover more than [10] percent of input; or
(II) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines, if this does not represent more than [5] percent of import.

However, this flexibility could not be used to exclude entire Chapters of Harmonized System of Customs Tariff Classification. Flexibilities provided to LDCs are:
(I) LDCs shall not be required to apply the formula nor participate in the sectorial approach;
(II) LDCs are expected to substantially increase their level of binding commitments.

For LDCs, the July Framework calls on them to substantially increase their level of binding commitments, however, it does not specify the binding coverage rate for them, nor the level at which tariffs should be bound. As shown in Table 1 Lesotho has already bound all the tariff lines, and, therefore, the country would not have to take any measures. However, for other LDCs among the African countries, Table 1 indicates very low level of binding coverage of their tariff lines, i.e. Madagascar (19%), Malawi (20%), Tanzania (none), and Zambia (4%). For these countries a substantial increase in their level of binding commitments is expected.

Another important consideration in the July Framework is the exemption from tariff reductions (i.e. from participating in the formula reduction approach) for non-LDC developing countries with a very low binding coverage of less than [35] percent. These countries would be exempt from tariff reductions of currently bound rates but they would instead have to bind [100] per cent tariff lines at the average tariffs for all developing countries. However, clarity is required as regards which average tariffs would be used, namely, whether this would be the simple or trade-weighted average to establish the tariff level at which the binding is set.

The choice will make a substantial difference, since the simple average is about 28 percent and the weighted average is 12 percent.

Table 1 indicates that among the African countries, Côte d'Ivoire (23%), Ghana (1%), Kenya (2%), Mauritius (5%), Nigeria (7%), and Zimbabwe (10%) have very low binding coverage, and thus the 35% rule applies. These countries would have to bind all tariff lines at either about 28 percent or at 12 percent depending on the decision on the application of simple average or weighted average.

Tables 2 and 3 indicate simple and weighted averages of bound rates and MFN applied rates for textiles and clothing. For the countries noted above, Côte d'Ivoire, Ghana, and Zimbabwe have relatively low MFN applied rates (17% to 20%) in simple average and (15% to 18%) in weighted average, while Mauritius and Nigeria have relatively high MFN applied rates (51% to 77%) in simple average and (38% to 61%) in weighted average for their textiles. For the latter countries, their textile industries might feel the impact of the NAMA results as they are currently protected by the high MFN applied tariff rates. The same can be said for clothing. Côte d'Ivoire, Ghana, Kenya, and Zimbabwe have relatively low MFN applied rates (5% to 35%) in simple average and (8% to 35%) in weighted average, while Mauritius and Nigeria have relatively high MFN applied rates (55% to 77%) in simple average and (55% to 61%) in weighted average.

Namibia, South Africa and Swaziland have bound 96% of their tariff lines, and for these countries, the tariff reduction formula, which will be agreed for developing countries, will apply.

(2) Sectoral Initiatives

The July Framework in paragraph 7 provides for a sectoral tariff-reduction component „aiming at elimination or harmonisation of tariffs". It is another key aspect of the NAMA negotiation. The possible sectors for the sectoral initiatives are: electronics and electricals; fish and fish products; stones, gems and precious metals, clothing, footwear, leather goods and motor vehicle parts. LDCs are not required to participate in the sectoral initiatives.[14]

(3) Non-Tariff Barriers

Non-Tariff Barriers (NTBs) are trade distorting measures and policies other than tariffs that impede the flow of trade. They can include administrative procedures and government regulation such as technical standards. The July Framework calls for an intensification of work on NTBs, i.e. completing the identification and

14 Paragraph 9 of Annex B of the July Framework.

inventory of the NTBs, and establishing modalities to remove these NTBs. The July Framework suggests that the modalities for addressing NTBs could include request/offer, horizontal or vertical approaches.

(4) Treating Erosion of Preferential Market Access

The July Framework commits WTO members to examine the challenges faced by preference-receiving countries in relation to the problem of preference erosion. For countering this problem, the preference-giving countries would have to undertake measures that could involve a mixture of:

(I) enhancing the utilisation of the existing trade preferences;
(II) putting in place compensatory and adjustment mechanisms to help preference-receiving countries to improve supply capacity and competitiveness;
(III) binding duty-free market access given to LDCs.

Paragraph 10 of Annex B calls upon developed-country members and other members who so decide to grant, on an autonomous basis, duty-free and quota-free access to non-agricultural products originating in LDCs. A timeline was to have been set for the accomplishment of this goal but no agreement was reached on it, and, thus, remains an issue to be clarified in the negotiations.

3.2. Lines of Disagreement Between Groups of Countries

Preparing for the 6th WTO Ministerial Conference to be held in Hong Kong, 13-18 December 2005, the NAMA negotiation intensified, however, little convergence emerged on the coefficients to be associated with the tariff reduction formula and the flexibilities to be accorded to developing countries when making tariff cuts. The US and the EU, among others, have argued that developing countries should generally have to give up the flexibilities provided to them in return for a more lenient formula. Countering this position, South Africa tabled a statement on behalf of countries including Argentina, Brazil, China, Egypt, Pakistan, India, and Indonesia denouncing the attempt to link the flexibilities accorded to developing countries to the structure of the tariff reduction formula.

Also, the Trade Ministers of some African countries submitted their proposal addressing the Hong Kong Ministerial Conference.[16] For the NAMA negotiation, they made the following proposals:

15 WTO document, TN/MA/W/65 and a report by the ICTSD BRIDGES Weekly Trade News Digest – Vol. 9, Number 38, 9 November 2005.

16 Egypt, Kenya, Mauritius, Rwanda, Senegal, South Africa, Tunisia, Zambia, and Zimbabwe. WTO document WT/L/626, „ Consultative African Meeting on WTO Negotiations, Cairo, 27 October 2005, Communication from Egypt“, 8 November 2005.

(1.) Applying the formula with differentiated coefficients in a manner that reflects proportionality in reduction commitments and fully incorporates the principle of Less than Full Reciprocity to address African countries' needs;
(2.) Taking as priority Special and Differential Treatment, to address African countries' developmental needs;
(3.) Stressing that less than full reciprocity and the flexibilities provided under paragraph 8 are two-stand-alone provisions, complementary in nature rather than substitute;
(4.) The issue of preference erosion should be addressed through an appropriate methodology to be negotiated;
(5.) Stressing that any sectoral initiatives should be implemented on a voluntary rather on a mandatory basis;
(6.) Re-affirming the exemption of LDCs from tariff reduction commitments;
(7.) Effectively addressing non-tariff barriers negotiations in tandem with those on tariff reductions.

While reaffirming all the elements of the July Framework, in the 6th WTO Ministerial Conference it was decided that a so-called Swiss tariff reduction formula be adopted and that for unresolved issues like coefficients, and the question of linkage or non-linkage between coefficients and flexibilities for developing countries, be negotiated and agreed no later than 30 April 2006. Furthermore, comprehensive draft schedules based on these modalities should be submitted no later than 31 July 2006. For Sectoral Initiatives, the question was whether the participation in the Initiatives would be compulsory or voluntary, and it was decided that participation should be on a non-mandatory basis.

4. Issues for Consideration and Conclusions

First and foremost, the benefit that the African textiles and clothing industries receive from the WTO is the protection provided by the predictable and rule based multilateral trading system. Without this system, the industries would not be protected from sudden and arbitrary trade restriction measures in importing countries, and, therefore, be exposed to uncertainty, which would have negative impact on businesses and efforts to attract foreign investors.

As discussed above, application of the WTO instruments to protect the domestic textiles and clothing industries from import surge requires technically complex procedures that necessitate adequate knowledge and skills, up-dated trade, production and other economic data, as well as adequate legal infrastructure. While South Africa has been a user of anti-dumping measures for its imports of textile products, the question that needs to be addressed for the other African

countries is whether the institutional capacity exists to appropriately use the WTO contingency protection measures. Taking actions to build this capacity would be a priority for those countries that lack the necessary capacity to effectively use such measures.

Subsidy is an important policy tool for developing countries and LDCs, but the challenge for them is to use this policy tool effectively. For example, providing a subsidy to the area where little potential exist, or making the industry dependent on subsides, are typical cases of misuse of subsidies. The challenge to effectively use subsidies for development in developing countries and LDCs is indeed an important subject, and requires further study.

The provisions under Part IV of the GATT 1994 and the Decision on Measures in Favour of LDCs provide legal frameworks for developed countries, and developing countries that are in the position to do so, to provide preferential treatment and technical assistance to developing countries to increase their participation in the international trading system. In this context, the African countries should press for improvement of the GSP schemes for their textiles and clothing, in particular for simplification of administrative procedures and improvement of rules of origin. Also, technical assistance can be sought under these provisions to enhance the institutional capacity to appropriately use the WTO rules.

It is important to note that the provisions for special and differential treatment in the WTO rules are largely non-contractual but best endeavour nature. In the Doha Round negotiations, developing countries and LDCs are pressing for making such treatment contractual and operational, but it is no way an easy task. The textiles and clothing industries in the African countries should actively support the effort of the negotiators to gain commitments for meaningful special and differential treatment.

In addition to the preference erosion due to the outcome of the NAMA negotiations, the non-LDC African countries could face substantial loss of tariff protection for their textiles and clothing industries. In this regard, adjustment assistance referred to in the July Framework need to be ensured. Such assistance includes technical and financial support to enhance supply capacity and competitiveness, and it will be demand-driven. Hence, the textiles and clothing industries in the African countries should have clear ideas as to what they need to achieve in the context of post-ATC adjustments and make active demands for assistance to the international organisations and other donors.

Application of WTO rules and effective participation in the WTO negotiations require the institutional capacity that is backed by knowledge and skills, as well as the system of compiling up-dated economic and business data. Concerted efforts by governments, the private sector, research institutes, as well as assistance from the international community are necessary to build such capacity in the African countries.

Appendix

Table 1: **Industrial Goods: Tariff and Binding Coverage of the WTO-Member African Countries**
(The tariff and trade years cover the period from 2001-2005)

Country	Duty Type	Simple Average	Weighted Average	Binding Coverage in %
Côte d'Ivoire	Bound Rate	9	10	23
Côte d'Ivoire	MFN Appl. Rate	12	10	
Ghana	Bound Rate	35	33	1
Ghana	MFN Appl. Rate	13	10	
Kenya	Bound Rate	56	56	2
Kenya	MFN Appl. Rate	12	6	
Lesotho	Bound Rate	60	60	100
Lesotho	MFN Appl. Rate	8	18	
Madagascar	Bound Rate	25	14	19
Madagascar	MFN Appl. Rate	4	3	
Malawi	Bound Rate	43	49	20
Malawi	MFN Appl. Rate	13	11	
Mauritius	Bound Rate	22	17	5
Mauritius	MFN Appl. Rate	18	13	
Namibia	Bound Rate	16	21	96
Namibia	MFN Appl. Rate	8	10	
Nigeria	Bound Rate	48	53	7
Nigeria	MFN Appl. Rate	27	15	
South Africa	Bound Rate	16	16	96
South Africa	MFN Appl. Rate	8	5	
Swaziland	Bound Rate	16	22	96
Swaziland	MFN Appl. Rate	9	12	
Tanzania	Bound Rate	120	120	0
Tanzania	MFN Appl. Rate	12	7	
Zambia	Bound Rate	43	42	4
Zambia	MFN Appl. Rate	13	9	
Zimbabwe	Bound Rate	11	9	10
Zimbabwe	MFN Appl. Rate	15	16	

Source: UNCTAD TRAINS database

Table 2: **Textiles: Tariff and Binding Coverage of the WTO-Member African Countries**
(The tariff and trade years cover the period from 2001-2005)

Country	Duty Type	Simple Average	Weighted Average	Binding Coverage in %
Côte d'Ivoire	Bound Rate	20	19	17
Côte d'Ivoire	MFN Appl. Rate	16	18	
Ghana	Bound Rate	45		0.35
Ghana	MFN Appl. Rate	17	17	
Kenya	Bound Rate	–	–	0
Kenya	MFN Appl. Rate	20	23	
Lesotho	Bound Rate	60	60	100
Lesotho	MFN Appl. Rate	18	21	
Madagascar	Bound Rate	18	14	1
Madagascar	MFN Appl. Rate	5	6	
Malawi	Bound Rate	–	–	0
Malawi	MFN Appl. Rate	19	21	
Mauritius	Bound Rate	–	–	0
Mauritius	MFN Appl. Rate	14	3	
Namibia	Bound Rate	23	2624	99
Namibia	MFN Appl. Rate	18	2119	
Nigeria	Bound Rate	60	60	0.69
Nigeria	MFN Appl. Rate	51	38	
South Africa	Bound Rate	23	2223	99
South Africa	MFN Appl. Rate	18	17	
Swaziland	Bound Rate	23	25	99
Swaziland	MFN Appl. Rate	18	20	
Tanzania	Bound Rate	120	120	0.35
Tanzania	MFN Appl. Rate	20	1729	
Zambia	Bound Rate	–	–	0
Zambia	MFN Appl. Rate	16	1917	
Zimbabwe	Bound Rate	28	2526	5
Zimbabwe	MFN Appl. Rate	20	1817	

Source: UNCTAD TRAINS database

Table 3: **Clothing: Tariff and Binding Coverage of the WTO-Member African Countries**
(The tariff and trade years cover the period from 2001-2005)

Country	Duty Type	Simple Average	Weighted Average	Binding Coverage in %
Cote d'Ivoire	Bound Rate	15	15	42
Cote d'Ivoire	MFN Appl. Rate	20	20	
Ghana	Bound Rate	–	–	0
Ghana	MFN Appl. Rate	20	20	
Kenya	Bound Rate	–	–	0
Kenya	MFN Appl. Rate	25	25	
Lesotho	Bound Rate	60	60	100
Lesotho	MFN Appl. Rate	38	34	
Madagascar	Bound Rate	–	–	0
Madagascar	MFN Appl. Rate	19	19	
Malawi	Bound Rate	–	–	0
Malawi	MFN Appl. Rate	25	25	
Mauritius	Bound Rate	–	–	0
Mauritius	MFN Appl. Rate	77	61	
Namibia	Bound Rate	47	46	100
Namibia	MFN Appl. Rate	38	39	
Nigeria	Bound Rate	–	–	0
Nigeria	MFN Appl. Rate	55	55	
South Africa	Bound Rate	47	47	100
South Africa	MFN Appl. Rate	38	39	
Swaziland	Bound Rate	47	46	100
Swaziland	MFN Appl. Rate	38	34	
Tanzania	Bound Rate	–	–	0
Tanzania	MFN Appl. Rate	25	25	
Zambia	Bound Rate	–	–	0
Zambia	MFN Appl. Rate	25	25	
Zimbabwe	Bound Rate	–	–	0
Zimbabwe	MFN Appl. Rate	5	10	

Source: UNCTAD TRAINS database

Post Scriptum
Tariff Cut Scenarios Under the NAMA Negotiations and How They Would Impact on African Textiles and Clothing Industries

To have some ideas as to how the results of the NAMA negotiations would impact the African textiles and clothing industries, simulation exercises can be conducted using the UNCTAD/World Bank World Integrated Trade Solution (WITS). The simulation exercises attempt to examine two aspects: (I) What would be the new (post-Doha) tariff structures for textiles and clothing imports in non-LDC African countries?; (II) How would the NAMA results reduce the current preference margins that African countries are enjoying under the AGOA?

(I) Post-Doha Tariff Scenario

It is to be noted that African LDCs (like all other LDCs) will only be required to bind their tariffs, but they are not subject to any tariff reductions. Only African non-LDCs, i.e., Ghana, Kenya, Mauritius, Namibia, Nigeria, South Africa, Swaziland and Zimbabwe will be required to cut tariffs.

No matter what coefficient will be used, non-LDCs will have to bind all tariff lines, while at present, their tariff lines for textiles and clothing may not be bound at all or only by a small percentage (of Zimbabwe's current textile tariff lines only 5 percent are bound). Consequently, all textiles and clothing tariff lines for non-LDCs will be bound.

The formula to be applied for calculating tariff reductions is the Simple Swiss Formula. Tariff cuts are calculated as follows: final bound tariff = ([initial bound tariff] x [coefficient]) / ([initial bound tariff] + [coefficient]).

Tariff cuts are calculated for bound tariffs (ceiling, above which no tariff can be increased), and not directly to applied tariffs. For the treatment of currently unbound tariffs, it is assumed that the tariff will be bound at the double of the applied tariff rate, and the formula for cutting tariffs will be applied thereupon. If, however, the assumed rate for bound tariffs would be higher than 40 percent it would be replaced with 40 percent.

Applied rates used in the tariff cut simulation are from 2001 as agreed in the NAMA, but for Ghana and Mauritius, the years are 2000 and 2002, respectively, due to data availability. Applied rates in column (7) of Table A below, however, are from the latest year available in the WITS database as the purpose of the column is to compare the degree of future protection as opposed to the present one that is given to the textiles and clothing sectors.

Table A shows the post-Doha tariff scenarios with coefficients 40, 25, and 15 for the countries concerned.[17] The results of the simulation exercise can be summarised as follows:

- The lower the coefficient the higher the tariff cut will be;
- Coefficient 40: though the degree of impact differs, the clothing industries in Mauritius, Namibia, Nigeria, South Africa, and Swaziland, and Nigeria‘s textile industry would be notably affected. For example, Mauritius‘ and Nigeria‘s clothing industries would lose 57 percentage points and 35 percentage points of tariff protection, respectively, from the present applied rates. Also, the clothing industries of Namibia, South Africa and Swaziland would be heavily impacted by the tariff cut losing 16 percentage points of tariff protection;
- Coefficient 25: bound rates for textiles and clothing for the countries concerned would be about 5 percent lower than what would be with a coefficient of 40. However, for the textile industries in Mauritius, Namibia, South Africa and Swaziland, the bound rates would be similar to those with a coefficient of 40;
- Coefficient 15: both the textile and clothing industries in the countries concerned would be affected to a great extent ranging from a 66 percentage points loss for Mauritius‘ clothing industry, around 40 percentage points loss for Nigeria‘s textile and clothing industries, a 27 percentage points loss for the clothing industries in Namibia, South Africa and Swaziland, from the current applied rates.

It is uncertain what coefficient would be agreed for developing countries, and moreover, it has not been decided whether one coefficient would be used, or different coefficients would be applied depending on the levels of the country‘s average bound tariff. In any case, the simulations show that

- the tariff protections that the textile and clothing industries in non-LDC African countries are receiving at present would be substantially reduced in the post-Doha period, and
- import competition would intensify.

17 The Press reported that some simulation exercises have been undertaken by some developed and developing countries in NAMA negotiations and that the coefficients used for developing countries were 15, 20, 25, 30, 35 and 40. “FEW SEE AG, NAMA SIMULATIONS AS MOVING WTO TALKS FORWARD”, Inside US Trade, 17 February 2006.

Table A: **Post-Doha Tariff Scenarios for Textiles and Clothing in Non-LDC African Countries** (Percentage)

Country	Products	(1) Pre Binding Coverage	(2) Post Binding Coverage	(3) Pre Average Bound Rate	(4) Post Average Bound Rate (40)	(5) Post Average Bound Rate (25)	(6) Post Average Bound Rate (15)	(7) Average Current Applied Rate
Ghana	Textile	0	100	n.a.	18	14	10	17
	Clothing	0	100	n.a.	20	15	11	20
Kenya	Textile	0	100	n.a.	19	15	10	20
	Clothing	0	100	n.a.	20	15	11	25
Mauritius	Textile	0	100	n.a.	5	4	3	14
	Clothing	0	100	n.a.	20	15	11	77
Namibia	Textile	99	100	23	14	12	9	18
	Clothing	100	100	47	22	16	11	38
Nigeria	Textile	0	100	n.a.	20	15	11	51
	Clothing	0	100	n.a.	20	15	11	55
South Africa	Textile	99	100	23	14	12	9	18
	Clothing	100	100	47	22	16	11	38
Swaziland	Textile	99	100	23	15	12	9	18
	Clothing	100	100	47	22	16	11	38
Zimbabwe	Textile	5	100	28	18	14	10	20
	Clothing	0	100	n.a.	20	15	11	5

Source: UNCTAD/World Bank World Integrated Trade Solution Database
Average rates in Table A are all simple average.

Notes:

1. *Column (1) shows the percentages of bound tariff lines before the NAMA tariff cut. For example, the figure 99 for textile in Namibia means that 99% of textile tariff lines are bound at present in the country.*
2. *Column (2) shows the percentages of bound tariff lines after the NAMA tariff cut. The NAMA negotiation has agreed that non-LDC countries would bind all the tariff lines.*

3. *Column (3) shows the average of the bound tariff rates before the NAMA tariff cut. For example, as indicated in Column (1) Zimbabwe binds 5% of textile tariff lines at present, and the average rate of the bound tariffs is 28%. For clothing, however, since no tariff is bound at present (Column 1), a pre average bound rate is not applicable (n.a.).*
4. *Columns (4) to (6) show the average of the bound tariff rates after the NAMA tariff cut. The numbers in the parentheses are coefficients.*
5. *Column (7) indicates the average of current applied rates.*

(II) Erosion of AGOA Preferential Margins

Post-Doha tariff scenarios for textiles and clothing for the US were examined to assess the impact of the tariff reductions on the AGOA tariff preference. Products that have heavy protection in the US fall in the categories of woven fabrics of wool or animal hair (HS Chapter 51), cotton yarn and fabrics (HS Chapter 52), man-made filaments (HS Chapter 54), yarn and fabrics of man-made fibre (HS Chapter 55), terry towelling (HS Chapter 58), knitted or crocheted fabric (HS Chapter 60) and apparel (HS Chapters 61, 62 and 63).

Table B shows the post-Doha tariff scenarios for the products noted above. For each category, the range of tariffs is indicated in the Table. At present, countries that have duty-free access for their textiles and clothing in the US market enjoy about 10 to 28 percent of tariff margins for the products concerned, as compared to those countries whose products enter in the US with the MFN duty rates. The preferential margins are particularly high for apparel. For simulation the same Swiss formula as above was used, and coefficients of 15, 5 and 2 were applied.[18] With a coefficient of 15, the preferential margins become 5 to 10 percent, while with a coefficient of 5, the margins would be between 2 to 4 percent. With a coefficient of 2, the preferential margins would almost disappear.

The simulation shows that NAMA tariff reduction would lead to substantial erosion of preference margins even when the most lenient coefficient is applied. Duty-free access for textiles and clothing under the AGOA may not be sufficient for African suppliers to compete successfully with textiles and clothing exports from other countries in the US market.

18 The press report referred to in footnote 1 noted that for developed countries, 2,5,10, and 15 were used for coefficients.

Table B: **US Post-Doha Tariff Scenarios for Highly Protected Textiles and Clothing Products** (Percentage)

Product	(1) Bound Rate	(2) Post-Doha Bound Rate (15)	(3) Post-Doha Bound Rate (5)	(4) Post-Doha Bound Rate (2)
Woven fabrics of wool or animal hair	11 - 16	7 - 8	4	2
Cotton yarn and fabrics	10 - 13	5 - 7	3	2
Man-made filaments	10 - 17	5 - 8	4	2
Yarn and fabrics of man-made fibre	10 - 19	5 - 8	3 - 4	2
Terry towelling	10 - 20	6 - 9	3 - 4	2
Knitted or crocheted fabric	10 - 19	6	3	2
Apparel of knitted or crocheted fabric	10 - 28	6 - 10	2 - 4	2
Apparel of *not* knitted or crocheted fabric	10 - 25	6 - 8	3 - 4	2
Other made-up textile articles	10 - 13	6	2 - 3	2

Source: UNCTAD TRAINS Database

Notes:

1. *Column (1) shows bound rates agreed during the Uruguay Round of Multilateral Trade Negotiations.*
2. *Columns (2)-(4) show post-Doha bound rates with a coefficient of 15, 5 and 2.*

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