L.L.B. DISSERTATION

THE EVOLUTION OF INTERNATIONAL TRADE LAW IN TEXTILES AND CLOTHING: THE FALLACY OF UNIVERSAL TRADE LIBERALIZATION FROM A SUB-SAHARAN AFRICAN PERSPECTIVE.

BY CHRISTINA WANJIKU NDIHO
G34/9678/03
8TH INTAKE

SUPERVISED BY: DR. KITHURE KINDIKI
DEDICATION

This work is dedicated to my Almighty Father, who has made all things possible and who has never broken a promise.

To my loving sisters, thank you for the nuggets of wisdom and the constant encouragement. I owe you everything.

To Danny, your hunger for excellence has become contagious, and inspired to give my very best in all that I do. Thank you.

To my dear parents, who worked tirelessly to ensure that their children had better opportunities than they had. I hope that I can touch as many lives as you did.
I would like acknowledge and appreciate Idris Ahmed, my classmate and Dr. Kithure Kindiki, my supervisor, who took time out of their busy schedules to guide my thoughts on this topic. Your contribution was invaluable.

I would also like to thank Robert and Rachel Ndiho, for their technical support.
DECLARATION

This dissertation is submitted in partial fulfillment of the requirements of the Bachelor of Laws degree (L.L.B) offered at the University of Nairobi, School of Law. This work is my original work and has not been copied from any source, neither has it been submitted to any other institution. Where other people's works have been used, references have been provided, and in some cases quotations made.

Author's signature ...........................................

Date .......................................................[17/7/07]

Supervisor's signature .......................................

Date .......................................................[20/7/07]
# TABLE OF CONTENTS

## ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7</td>
</tr>
</tbody>
</table>

## CHAPTER ONE: INTRODUCTION

1.1. BACKGROUND......................................................... 8
1.2. STATEMENT OF THE PROBLEM........................................ 11
1.3. OBJECTIVES......................................................... 11
1.4. JUSTIFICATION OF THE STUDY....................................... 12
1.5. RESEARCH QUESTIONS............................................... 13
1.6. CONCEPTUAL FRAMEWORK............................................ 13
1.7. HYPOTHESIS.......................................................... 14
1.8. METHODOLOGY......................................................... 15
1.9. LITERATURE REVIEW................................................ 15
1.10. CHAPTER OVERVIEW................................................ 18

## CHAPTER TWO: THE HISTORICAL EVOLUTION OF INTERNATIONAL TRADE LAW IN TEXTILES AND CLOTHING

2.1. INTRODUCTION......................................................... 19
2.2. BEFORE THE MULTIFIBRE AGREEMENT............................... 20
2.3. THE MULTIFIBRE AGREEMENT........................................ 21
2.4. THE AGREEMENT ON TEXTILES AND CLOTHING..................... 23
2.5. PREFERENTIAL TRADE AGREEMENTS................................ 25
  2.4.1. The African Growth and Opportunity Agreement.............. 29
  2.4.2. The Cotonou Agreement......................................... 31

## CHAPTER THREE: THE POST-ATC EXPERIENCES OF KENYA AND SOUTH AFRICA

3.1. INTRODUCTION......................................................... 34
3.2. A CASE STUDY OF KENYA............................................. 35
  3.2.1. The Development of Textiles and Clothing Manufacturing in Kenya... 36
  3.2.2. Kenya’s Post ATC Experiences.................................. 38
3.3. A CASE STUDY OF SOUTH AFRICA ................................................................. 40
  3.3.1. Introduction ......................................................................................... 40
  3.3.2. The Evolution of Textiles and Clothing Manufacturing In South Africa 40
  3.3.4. South Africa’s Post ATC Experiences .................................................. 42

CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS ..................... 43
  4.1. CONCLUSION ....................................................................................... 44
  4.2. RECOMMENDATIONS ........................................................................ 46
    4.2.1. DEEPENING PREFERENTIAL TRADE AGREEMENTS TO SUSTAIN SUB-SAHARAN AFRICAN COUNTRIES CLOTHING AND TEXTILES INDUSTRIES ........................................................................ 46
      4.2.1.1. Introduction .................................................................................. 46
      4.2.1.2. Supply-Chain Technical Assistance ............................................. 47
      4.1.2.3. Rules of Origin .......................................................................... 48
      4.1.2.4. Tariff Rent ................................................................................ 50

  4.2.2. ADVOCATING FOR A PARADIGM SHIFT WITHIN THE MULTI-LATERAL TRADE REGIME ................................................................. 50

BIBLIOGRAPHY ............................................................................................ 52
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACP</td>
<td>African, Caribbean and Pacific States</td>
</tr>
<tr>
<td>AGOA</td>
<td>United States African Growth and Opportunities Act</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
</tr>
<tr>
<td>ATC</td>
<td>WTO Agreement on Textiles and Clothing</td>
</tr>
<tr>
<td>DC</td>
<td>Developing countries</td>
</tr>
<tr>
<td>EBA</td>
<td>Everything but Arms</td>
</tr>
<tr>
<td>EPZ</td>
<td>Export Processing Zones</td>
</tr>
<tr>
<td>GSP</td>
<td>Generalized System of Preferences</td>
</tr>
<tr>
<td>LDCs</td>
<td>Least-Developed Countries</td>
</tr>
<tr>
<td>MFA</td>
<td>Multifibre Arrangement</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
</tr>
<tr>
<td>SSA</td>
<td>Sub-Saharan Africa</td>
</tr>
<tr>
<td>T&amp;C</td>
<td>Textiles and Clothing</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>
CHAPTER ONE

INTRODUCTION
1.1. BACKGROUND

International trade in textiles and clothing is quota free for the first time in over 40 years to the detriment of developing and least developed countries. The trade in Textiles and Clothing was governed by bilateral agreements, before the rules of the Multifibre Arrangement came into force in 1974 until 1994. The arrangement allowed countries to impose quantitative restrictions when there was a large influx of a particular textile or clothing product, which threatened to cause damage to the local industries of the importing country. This discriminatory measure operated to the benefit of developed countries, in that they were permitted to restrict the importation of textiles from developing countries.

In January 2005 the Multifibre Arrangement was replaced by the W.T.O. Agreement on Textiles and Clothing which was a transitional instrument that aimed at removing quotas so as to progressively integrate textiles and clothing into the G.A.T.T. 1994, under which tariffs are the preferred and acceptable forms of protection. This happened over a period of 10 years and in three stages ending in January 2005. The commercial significance of the integration was not particularly noteworthy until the very end of the ATC phase-out period, because the ATC integration programme included unrestricted textiles and clothing products (i.e. products which were not limited by quotas) as well as ones restricted by quotas, and, in the process of the negotiation of the ATC, the selection of products for integration was left to the discretion of the restricting countries. As a result majority of restricted products remained restricted until the final phase of the integration programme, allowing developed countries to continue to discriminate against developing countries in order to protect their local textile industries. Consequently the end of the ATC was hailed as an end to discrimination and the restoration of an equitable multi-lateral trading system.

---


2 Article XI of GATT 1947 provides for the general elimination of quantitative restrictions.

3 Textiles and Clothing Commentary, www.wto.org
It should be noted that the elimination of quotas occurred parallel to the creation of a number of Preferential Trading Agreements including the African Growth and Opportunity Act (AGOA) and the Cotonou Agreement, which both offer Sub-Saharan African Countries opportunities to gain preferential market access to countries to the United States and the European Union, the single largest trading block.

AGOA which was signed into law on May 18, 2000 as Title 1 of The Trade and Development Act of 2000. AGOA gives higher levels of trade and direct investment in support of positive economic and political developments. It expands the list of products, which eligible Sub-Saharan African countries may export to the United States subject to zero import duty under the Generalized System of Preferences (GSP). While the GSP covers approximately 4,600 items, AGOA GSP applies to more than 6,400 items, including a wide range of textiles and apparel. Currently AGOA grants preferential access to imports from 48 eligible Sub-Saharan African countries into the United States until September 30, 2015.

It appears that in this post-ATC environment developing countries such as China and India seem to be the only developing countries gaining. For these countries, the end of quotas implies head-to-head competition albeit along a broader set of factors including low manufacturing and policy costs and not just labour considerations. Sub-Saharan African countries on the other hand appear to be reaping detrimental effects to the expiry of the ATC despite having an inherent comparative advantage of a huge labour force for the production of apparels, which is a labour intensive industry. Since its expiry textile exports from Africa

---


5 www.agoa.gov

under AGOA fell by 25% in the first quarter of 2005 and are still on the decline. Further in the first quarter of 2005, Kenya has been hard hit, with the loss of 6,000 jobs out of 39,000 as well as a decrease in exports in its textile and clothing industry.7

1.2. STATEMENT OF THE PROBLEM

The evolution and the liberalization of the multi-lateral trade regime in textiles and clothing has continuously discriminated and disregarded the interests of developing countries especially those in Sub-Saharan Africa, as it has hindered these countries from engaging in trade in textiles and clothing and the diversification of their local industries in spite of their inherent comparative advantage in this labour intensive industry.

1.3. OBJECTIVES

The study has the following objectives:

1. To trace the liberalization of T&C with a view to demonstrating the discrimination inherent in the successive normative regimes and it proposes more appropriate frameworks from a developing country perspective particularly SSA.
2. To establish that the abolition of quotas has had a detrimental effect on developing Sub-Saharan African countries' textile and clothing industries and their economies
3. To expound on the experiences of SSA countries in the Post ATC environment, which have not been adequately have not been adequately discussed.
4. To establish what steps developing countries can take to maintain the economic gains that they have made thus far, with particular reference on the need to improve the terms of current multilateral trade regimes.

1.4. JUSTIFICATION OF THE STUDY

This study is important in that it highlights perpetual discrimination against developing countries by developed countries, within the multi-lateral trading system under the guise of facilitating what is termed as free and fair trade. The elimination of quotas in textiles and trade is a perfect example of the disconnect between the principles of free trade on the one hand and fair trade on the other, especially from a developing country’s perspective.

This study is critical in that the manufacture of textiles and clothing is a labour intensive industry. On account of the fact that developing countries have huge labour forces, this grants them inherent and evolving comparative advantage, in this industry. Further this industry not only has significance because it provides employment but also provides for foreign exchange.

The implicit question as to how developing countries agreed to the evolution of the law governing trade in textiles and clothing that would be detrimental to their industries comes to light in the fact that developing countries have been relegated to the periphery in multi-lateral trade negotiations.

The need for developing countries which have large populations and which depend on textile and clothing industries as an alternative source of employment aside from agriculture, to mobilize and make the best use of whatever bargaining chips they possess, needs to be emphasized. Bargaining requires not only bargaining assets, but also knowledge, information about the issues concerned, and training for undertaking trade negotiations. Countries need to not only strengthen the capacity of commercial diplomacy to enhance bargaining skills, but also for strengthening the capacity for trade and industrial policy formulation and implementation.

---

Gains that the developing counties made need to be maintained through commercial diplomacy and strategic partnerships. The campaign for greater special and differential treatment for developing and least developing countries must not be abated but be continued with concerted and unified efforts amongst developing countries.

Further there exist a lacuna in current literature on T&C as does not adequately address the challenges faced by SSA countries.

1.5. RESEARCH QUESTIONS

This study grapples with the following questions:

1. Is the theory of Universal Liberalization of Trade detrimental to developing countries participation in the global economy?

2. To what extent have the successive legal frameworks that have governed international trade in textiles and clothing been biased against developing especially Sub-Saharan countries?

3. Have Sub-Saharan African countries benefited from these frameworks and from PTAs?

4. Has the abolition of quotas had a detrimental effect on developing Sub-Saharan African countries' textile and clothing industries and their economies?

5. What steps can be taken to improve the current multi-lateral trade regime to the benefit of developing countries?

1.6. CONCEPTUAL FRAMEWORK

The theory of Comparative Advantage as propounded by Adam Smith and David Ricardo dictates that each country should specialize in the production and export of those commodities that employ the factor of production which is, relatively speaking, the most abundant in the country. The T&C industry offers developing countries an alternative to means of achieving industrialization, apart from agriculture which is the basis of most of their economies. Thus
being labor intensive, the T&C sector has the potential of generating employment while also providing opportunity for developing country to diversify the products that its exports.

Yet, the theory of universal trade liberalization, one of the philosophical underpinning of the W.T.O., operates to the detriment of developing countries, which that free trade is not necessarily fair. The theory of fair trade remains a myth for developing countries.

According to the neoclassical school of economic thought, which propounded the laissez faire theory, a market is best left to its own devices, and will dispense with inefficiencies in a more deliberate and quick manner than any legislating body could. It embodies free trade in that a state should not use protectionist measures, such as tariffs so as to curtail trade between nations. This doctrine is off particular relevance to trade in textiles which is quota free from the first time in over 40 years, resulting in detrimental effects to the developing countries.

1.7. HYPOTHESIS

1. The evolution and the liberalization of the multi-lateral trade regime in textiles and clothing has consistently been discriminatory and unfair to developing countries especially Sub-Saharan African countries.

2. Preferential Trading Agreements do not in fact offer developing countries beneficial market access but are aimed primarily geared towards benefiting developed countries by providing them with an alternative market for their goods and provide for offshore investments that merely result in massive profits being returned to developed countries not being invested in developing countries.

3. The discriminatory nature of multi-lateral trade has prevented the growth of textile and clothing industries in Sub-Saharan Africa and has resulted in the closure of industries, widespread unemployment, and a large scale capital shift from Africa to Asia. In
addition it has prevented the diversification of their economies, to the benefit of developed countries.

1.8. METHODOLOGY

The study is written from an analytical perspective in that it shall critique the relevant international trade law and agreements relating to clothing and textiles. It make recommendations and in this regard I have adopted a prescriptive approach. Information utilized in this study was obtained from both primary and secondary sources of data.

My primary source of information has been the internet. The official source of the WTO documentation, The W.T.O. Online Database is the source of WTO agreements and commentaries. I have also used the Internet to access a variety of electronic journals published by various scholars and institutions. In addition I have consulted policy briefs, working papers, annual reports and other documents that have been published by relevant non-governmental organisations such as the United Nations Conference on Trade and Development and the Organisation for Economic Cooperation and Development.

In addition I have referred to news briefs, economic magazines and periodicals.

1.9. LITERATURE REVIEW

According to Hayashi, developing countries contributed significantly to the growth of the Textiles and Clothing sector. He asserts that this sector continues to play a vital role in their economies on account of inherent and evolving comparative advantage. The theory of comparative advantage propounded by Ricardo dictates that a country should focus on producing that which it can produce efficiently taking into account the resources that it has.
Textiles and Clothing in this regard is one sector that in his opinion offers good prospects for diversification away from traditional commodity exports, for entry into the area of manufactures, for absorption of large pools of labour, for crossing the great divide between the rural and urban sectors, and for generating foreign exchange. The economic performance of the sector has important implications for socioeconomic issues such as equitable distribution of income, employment opportunities for women, development of small- and medium-scale, enterprises, spillover to the informal sector, integration of remote regions into the global economy, promotion of rural development and poverty alleviation. However he does not consider the influence that Preferential Trading Agreements have had on trade in Textiles and Clothing. In addition key theories, aside from the theory of comparative advantage, that that govern the multilateral trade regime were not considered in his work.

Nauman captures the rationale for the evolution of international trade law in textiles and clothing to what it is today. He states that the MFA had the primary objective of regulating the uncontrolled expansion of exports from producers into the markets of developed countries, in particular, European countries and the US. In his opinion the unintended consequence was that quotas led to the wide profusion of the sector globally, and became an important cog in the wheel of many developing countries seeking to diversify their economies away from being based largely on agriculture. He mentions that structured removal of quotas under the ATC was initially heralded as an important victory for developing countries, began exposing deep economic vulnerabilities of a number of developing countries in particular. Nauman’s article is a historical critique of international trade regimes in textiles and clothing. Nonetheless he does not consider the implications that the elimination of quotas has had on Sub-Saharan African countries neither does he take into account the Preferential Trading Arrangements.

---


Audet discusses how the MFA lead to the international defragmentation of the textiles and clothing supply chain by accelerating the diversification of suppliers. He asserts that this process was to the disadvantage of more efficient quota constrained suppliers many of which subcontracted clothing assembly to third developing countries. Hence the MFA benefited less efficient suppliers most of which are found in developing countries. Further he states that the elimination of quotas will increase the attractiveness of preferential trading arrangements to developing countries. His article therefore brings to light the influence that Preferential Trading Arrangements will have on developing countries, however he does not critique WTO principles that negate the gains that developing countries may make from the later arrangements.

Abernathy and Vope, consider who the main beneficiaries of the abolition of quotas are in the current post ATC environment. They advance the argument that the end of quotas implies head-to-head competition, albeit along a broader set of factors other than just labor costs. For example, quota-constrained producer nations like India, already successful in the market due to lower combined manufacturing and policy costs, stand to expand market. This article provides a useful comparative essay on the gains that the newly developed countries stand to make in comparison to developing countries. However it does not consider specific challenges that sub-Saharan African countries are facing.

Wattanapruttipaisan, asserts that structural adjustments, policy reforms and additional investment will be necessary for in least developing countries Textiles Industries to survive, in the post-ATC trading environment. This article discusses the challenges that the ASEAN

---


13 T. Wattanapruttipaisan,(2005), 'Note On The Impact Of Quota Phasing Out
countries are facing in the Post ATC environment but does not discuss the history of the regime governing trade in textiles and clothing nor the experience of sub Saharan countries.

Shaffaeddin argues that there are a number of fallacies and assumptions surrounding the theory of universal trade liberalization and, in particular, perceptions about the interests of developed countries in universal and across-the-board trade liberalization by developing countries. He argues that rapid and across-the-board liberalization is not in the interest of developed countries- let alone that of developing ones. This article however does not discuss the influence that theory has had on the regime governing trade in textiles and clothing.

1.10. CHAPTER OVERVIEW

This study is divided into chapters. Chapter one is an introduction to the study. In chapter 2 the historical evolution of legal frameworks governing the international trade in textiles and clothing shall be analysed in light of the benefit they have offered to SSA countries. In addition I shall also discuss certain crucial PTAs that SSA countries are a party to. Chapter three is a case study of the development of T&C industries in Kenya and South Africa and their current Post ATC experiences, in consideration of these PTAs Chapter four shall contain the conclusion and the recommendations of the study.

On Textiles and Clothing Production and Trade', Bureau for Economic Integration (BEI), ASEAN Secretariat, Jakarta, Indonesia.

CHAPTER TWO

THE HISTORICAL EVOLUTION OF INTERNATIONAL TRADE LAW IN TEXTILES AND CLOTHING
2.1. INTRODUCTION

In the 1950s and the 1960s the theory of non-reciprocity and Special and Differential Treatment (S&DT) were adopted in multi-lateral trade negotiations and were considered as the beginning of recognition by developed countries of the inequality that exists between them and developing countries. In fact the preamble to GATT (1948) agreement stressed the importance of substantially reducing discriminatory treatment and emphasised on reciprocal and mutually advantageous arrangements. In light of the privileges and benefits conferred by these developments, developing countries pursued economic development primarily along the lines of import substitution that allowed them to develop their local industries to export those widgets that they produced, while protecting their local industries.

The pursuit of their endeavors was however hindered by the emergence of the neo-liberalization school of thought adopted by international financial institutions under the guise that import substitution was promoting inefficiency because of lack of competition domestically, by virtue of the fact the developing countries were not obliged to open up their markets to developed countries. In addition even though developing countries exports enjoyed lower tariffs, developed countries began to implement non-tariff barriers which continued to increase especially with regard to textiles.

This chapter will trace the evolution of the legal frameworks governing the international trade in T & C, while highlighting the key characteristics of these agreements, and the role and contribution made (if any) by developing and developed countries in their creation. These agreements in T & C were concluded ostensibly outside the GATT (1947), before the institutionalization of this sector under the WTO, through the ATC which led to the phasing out of quotas in T & C.

---

15 The term industrialized countries shall be used interchangeably with the term developed countries to highlight economic disparity as well differences in industrialization.
Quotas have been the common denominator that have spurred and shaped the development path of this industry. Trade developments under the quota regime, and post-quota developments, emphasize the impact that these trade restrictions have had and will continue to have on developed, developing and least developing countries and highlights the economic imbalance in international trade, particularly in this sector.

2.2. BEFORE THE MULTIFIBRE AGREEMENT

In the late 1600s, the British Parliament prohibited the importation of Indian Cloth into Britain so as to safeguard and protect the interest of its young textile industry. The rationale adopted by the British Parliament in the 1600s is much the same as the reasoning adopted by countries that imposed Quantitative Restrictions on imports after the First and Second World Wars, and still forms the basis for the imposition of tariff barriers in the current global economy.

In 1932, Britain and the US, considering Japan, who was at the time one of the largest suppliers of cotton and textiles, to be a threat to their local textiles industries instituted protective measures against Japanese imports, in the form of quantitative restrictions to reduce the amount of T & C entering into their country. The Second World War allowed these states some respite from the Japanese imports but soon Japan’s clothing industry recovered, forcing

---


the United States to enter into a bilateral trading agreement with Japan, to limit these imports for a number of years. Newly industrialized countries such as Hong Kong, Pakistan, India and South Korea, however, also posed a challenge to the US textile and clothing industries, and agreed to voluntary export restraints for cotton textile products to the United States, in the 1950s. 19

In 1955, Japan became a member of the GATT which provides for the principles of non-discrimination20, but which also allows restrictions to safeguard balance of payments deficits under Article XII of GATT. However, the degree of balance of payments disruptions sufficient to trigger a response in the form of quantitative restrictions was not provided for under the GATT, thereby leaving the door open for countries to address their concerns through this facility. The US therefore convinced Japan to enter into another bilateral agreement that required Japan to accept another voluntary export restraint, in 1957. Thereafter in 1959, the US proposed to make the bilateral agreements that it had entered into more formal.

Consequently in 1961 a formal forum was established within GATT, to deal with the increasing market distortion, after pressure from various countries including the United States. This forum resulted in the conclusion, first of a ‘Short-term Arrangement Regarding International Trade in Cotton and Textiles’ (STA). The STA, which was adopted by almost 20 countries, provided for the unilateral imposition of quotas on cotton-based T & C in cases where the exporting country did not itself voluntarily and satisfactorily restrict its exports.

In 1962 The Long-term Arrangement Regarding International Trade in Textiles’ (LTA) was signed under the auspices of the GATT (replacing the 1-year short-term agreement). The LTA, initially covering a five-year period but subsequently renewed in 1967 and 1970, provided the basis for further, yet more precise restrictions. But since both the STA and LTA covered only cotton-based textiles, the growing trade in man-made fibres remained largely unaffected by

19  Ibid, pg 6. In the early 1960s Hong Kong accounted for 80% of T & C exports from developing countries.
20  Article 1 of the GATT provides for the Most Favoured Nation Treatment principle.
these trade measures. Voluntary agreements were nonetheless concluded mainly between the US and various key suppliers of man-made fibre products, as well as of wool products.

These agreements sought to restrict key suppliers' exports to the US and thus limit domestic market disruptions brought about by this surge in foreign competition. While this approach initially provided a fair amount of relief, it proved to be difficult to sustain. European countries, which until then had benefited from the more limited LTA concurrently experienced an increasing inflow of non-cotton textile imports. The uncertainty associated with the bilateral approach under the LTA likewise appeared to find little favour with developing countries, some of which had become substantial players in the global textile and clothing industry.21

All these developments contributed to the negotiation and subsequent conclusion, in 1973, of the MFA.

2.3. THE MULTIFIBRE AGREEMENT

Between 1974 and 1995, trade in textile and apparel products was governed by the Multi-fibre Agreement (MFA) The MFA aimed at an orderly opening of restricted market in T & C in order to avoid market disruptions. Like the LTA, it was supposed to be a temporary measure. 22

Under this agreement, industrialized countries were allowed to negotiate complex quantitative restrictions with textile and apparel producing countries on a country-by-country basis, contrary to guidelines set forth in the General Agreement on Tariffs and Trade (GATT).

Countries were permitted to tailor quantitative restrictions differentially according to their own particular requirements, thereby demonstrating the MFA’s most significant departure from GATT rules, particularly that of non-discrimination. The MFA also went against other principles of the multilateral system in that it violated the most favoured nation principle, it discriminated against developing countries and it was non-transparent.\textsuperscript{23}

The MFA, also extended restrictions on trade to wool and man-made fibres in addition to cotton thereby expanding the product coverage considerably, in comparison to the LTA.

The first years of the existence of the MFA saw the conclusion of a significant number of bilateral agreements, mainly between the US and Europe, the chief quota imposing countries. However many of these agreements went even beyond what the MFA envisaged, with restrictions that differed from the word and certainly the spirit of the MFA. By the end of the second MFA (1981), 80 per cent of imports of textiles and apparel into United States were covered by bilateral quota agreements with 20 countries and territories and by consultative mechanisms with another 11 countries. These “reasonable departures” from the original text became the norm based on obligations acquired under the previously negotiated bilateral agreement, eventually spurring quota-restricted (developing) countries into providing a more coordinated response. This eventually led to the removal of the ‘reasonable departures’ facility, although little real progress was made beyond nonbinding commitments on the part of quota-imposing countries.\textsuperscript{24}

The MFA was renegotiated four times, the last time in 1991, and it finally expired in 1994. In the most recent guise, the MFA’s product coverage was extended (to include, among others, vegetable fibre products), although it also removed provisions that could have provided the


\textsuperscript{24} Olson K. M.,(2003),‘Sourcing Patterns and the Elimination of Textile and Apparel Quotas’, American University, Department of Economics, pg 1, Available at http://www.nw08.american.edu. Accessed on 23\textsuperscript{nd} September 2006.
basis for a tightening of existing quotas. Positions around quotas became increasingly polarised, with major importing countries (such as the US and EU) pressing for a broadening of the MFA, and developing and exporting countries opposing it. Six developed countries applied quotas under the MFA during the final years of the agreement (the EU, Austria, Canada, Finland, Norway and the United States), and the quotas were applied almost exclusively to imports from developing countries, showing how the multi-lateral trade regime even then was polarized against developing countries. The fact the MFA product coverage continually expanded to cover even cloth made from vegetable fibres, which was produced by developing countries such as India, shows how developed countries perpetually sought to hinder the growth and development of the T&C industry in developing countries, by limiting their production of a wider range of T&C products.

The expiration of the MFA did not, however, mean the end of quotas on T&C exports from developing countries. Instead the MFA was followed by the ATC, which came into force with the establishment of the WTO in 1995.

2.3. THE AGREEMENT ON TEXTILES AND CLOTHING

The ATC, came into effect on 1st January, 1995 and expired on January 1, 2005. Being a W.T.O. Agreement, the ATC was binding on all the members of the WTO. It is neither an extension nor a continuation of the MFA but rather, it is a transitory regime between the MFA and the full liberalization and integration of T&C into the multilateral trading system. It provided for gradual process through which importing countries could adjust their domestic T&C sectors to new rules.

---


26 Ibid.

The ATC had a number of features. Firstly it designated of list of products subject to MFA restrictions, out of which the importing countries could select the items to gradually integrate to GATT-WTO rules\textsuperscript{28}. This list of products was defined as to include all T&C items (yarns, fabrics, made-up textile products, and clothing) that were previously subject to MFA. Consequently it was fully possible to 'liberalise' imported products a country did not even produce or trade and had never restrained or intended to restrain, depending on how the list was manipulated.\textsuperscript{29}

Secondly it provided for a progressive integration program and a quota liberalization program which were to happen in three stages: 1995-1997, 1998-2001 and 2002-2004, as shown in the table below. It is important to note that the percentages to be liberalized refer to total volume.

The last column in Table 5 refers to increases in the quotas that remained under restrictions. The 16 per cent in the first step is understood to mean that the annual increase carried over from the MFA should be multiplied by 1.16. For example, if the quota on a particular item increased by 6 per cent annually under the MFA, it should increase by $6 \times 1.16 = 6.96$ per cent annually under the first phase of the ATC. Since the restricting countries had different quota increase rates during the MFA, the differences remaining under the ATC were such that the accumulated aggregate increase of the quotas over the 10-year ATC period were 17.8 per cent in the EU and 25 per cent in the United States, compared to what they would have been with the continuation of the MFA.\textsuperscript{30}

\textsuperscript{28} Article II of the ATC.


The results of the first two stages were seen as being disappointing for developing countries as most of integration to GATT-WTO rules occurred in T&C products of little commercial interest while the high value items were kept out until the end of the program. It should be noted that at this time, the developing world still considered liberalization as a means for them to increase their market share, and consequently there was little comment about potential negative implications.

Finally, ATC allowed for special transitional safeguard mechanisms which allowed the importing country to impose temporary restrictions on a specific exporting countries, provided it can prove damage as a result of increases in imports from all sources including those T&C product which are had not yet been integrated under GATTWTO, and a sharp and substantial increase from the country against whom they want to impose restrictions.

Extensive use of the safeguard measures according to Article 6 in the ATC during the first stage of liberalization further contributed to the perception of lack of will to liberalize. No less than 33 requests for consultations were registered from January 1995 to July 1997 (i.e., stage 1); 26 from the United States and 7 from Brazil. Of these, 24 came in the first half of 1995. Most of the measures were found to be unjustified when challenged by the Textile Monitoring Body (or the Dispute Settlement Body in some cases).

---

31 Dean Spinneger, “Faking Liberalization and Finagaling Protection, the ATC at its best”, World Bank Economic Review

32 Art VI of the ATC.


### Table 1: ATC Phase Out Quantity Volumes

<table>
<thead>
<tr>
<th>Step</th>
<th>Percentage of products to be brought under GATT (including removal of any quotas)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: 16%</td>
<td>1: 16% (minimum, taking 1990 imports as base)</td>
</tr>
<tr>
<td>2: 17%</td>
<td>2: 17%</td>
</tr>
<tr>
<td>3: 18%</td>
<td>3: 18%</td>
</tr>
<tr>
<td>4: 49%</td>
<td>4: 49% (maximum)</td>
</tr>
</tbody>
</table>

> Full integration into GATT (and final elimination of quotas).

> Agreement on T & C terminates.

Adapted from table of integration of T&C under the ATC.

### 2.4. PREFERENTIAL TRADE AGREEMENTS

A preferential trade agreement is a bi-lateral or a plurialteral trade arrangement between countries. The negotiation of trade agreements provides an opportunity to formalise trade

---

facilitation initiatives within a broader framework of multiple trade increasing measures. Trade facilitation was made a formal trade objective of the World Trade Organization (WTO) at the Ministerial Conference in Singapore in 1996.36

2.4.1. The African Growth and Opportunity Agreement

The African Growth and Opportunity Act (AGOA) was signed into US law on 18th May 2000, under Title 1 of the US Trade and Development Act of 2000 and has since been extended twice modified twice to offer greater preferential treatment to sub-Saharan Africa (SSA)37 on the one hand, and the Caribbean on the other, who meet a certain criteria.38

Primarily its objectives are to increase trade, through the reduction of tariff, non-tariff and other barriers. AGOA is a non-reciprocal trading agreement in that SSA countries have no obligation to extend the same treatment to imports from the US, that are offered to their exports to the US. The key element of AGOA is greater trade preferences with increased commodity coverage beyond that of the Generalized System of Preferences (GSP), for developing countries. AGOA allows duty-free entry into the US market for 1,835 new products


38 Access to AGOA benefits is not automatic for SSA countries. Section 14 of the Trade and Development Act of 2000. provides for Eligibility conditions which include: (i) progress towards the establishment of a market based economy with minimal government intervention, protection of private property rights, and an open rules-based trading system; (ii) maintenance of rule of law; (iii) removal of barriers to US trade and investment and ‘national treatment’ of US investors; (iv) poverty reduction policies; (v) anti-corruption policies, and (vi) compliance with international workers’ rights www.agoa.gov, (accessed on 20th March, 2007). Besides these requirements, countries wishing to export garments into the US duty-free are required, moreover, to implement a visa system approved by the US Trade Representative, Prospects of Kenya’s Clothing Exports under AGOA after 2004 Moses M. Ikiara Lydia K. Ndirangu Productive Sector Division Kenya Institute for Public Policy Research and Analysis KIPPPRA Discussion Paper No. 24 January 2003
from SSA in addition to the 4,650 products that previously enjoyed preferential access under the General System of Preferences (GSP). Therefore AGOA can be said to entrench the preferences available under the GSP by guaranteeing benefits until September 2008. In addition it benefits LDCs as well non-LDCs, who were excluded from the GSP as they did not meet the GSP’s eligibility criteria.

Through AGOA, apparel manufacturing has become a key sector for many SSA developing countries since they can exploit their comparative advantage in low labor cost operations, while diversifying exports with positive effects on incomes, employment, and poverty.

Eligible SSA countries are allowed to export (until 2008) apparel made from fabric made in any country, duty free, after which they will be required to meet the yarn-forward African-origin rule or source fabric from the US itself. This allows SSA countries to compensate for their weak capacity by accessing the world’s most competitive fabrics. However under the GSP scheme duty-free treatment is to be applied to any designated article that meets the requirements of the basic GSP origin which is that 35 percent value addition within the country claiming preference. However the AGOA preference is only offered to least developing countries.  

It should be noted that in 2000, when AGOA came into force, only 2 countries in SSA were formally subject to quotas: Mauritius and Kenya. And only Mauritius faced quotas (on about 25 percent of its exports) that could be considered binding.

---


40 “Mauritius and South Africa were the only two countries that are eligible for clothing preferences but which have not been granted liberal rules of origin as they were not considered to be least developing countries. However in 2004, AGOA was revised to allow Mauritius to be considered as an LDC and therefore does not have manufacture clothing from materials that originate from an African country or from the US til 2008 Paul Brenton and Takako Ikezuki The Initial and Potential Impact of Preferential Access to the U.S.Market under the African Growth and Opportunity Act 1 World Bank Policy Research Working Paper 3262, April 2004. Available at: [http://www.ssrn.com](http://www.ssrn.com), accessed on 27th January, 2007.
Apparel exports have recorded a substantial increase following AGOA: both in terms of values and quantities, exports in 2001 were about 27 percent higher than in 2000. It is striking that the most impressive gains have been recorded by the least developed beneficiary countries: Madagascar, Kenya, Swaziland, and Lesotho have recorded gains varying from 47 percent to 83 percent. In contrast, South Africa and especially Mauritius, have posted more modest growth.41

Sub-Saharan Africa trade in T & C is however occurring in an international context of T&C trade liberalization, and SSA export opportunities are evolving together with shifts in the position of competing suppliers. Thus, the elimination of quotas in 2005 and tariff liberalization was expected to have deep impacts on trade, as international producers are forced to develop new strategies to retain their market share in T&C trade as higher cost producers are displaced by more efficient producers.42

AGOA is also expected to eventually lead to creation of free trade areas (FTAs) between the US and interested SSA countries. 43

2.4.2. The Cotonou Agreement

Togo) which was then renewed in 1980, 1985, 1991 and 1996. The overriding goals of the Agreement are to reduce poverty and promote sustainable development.45

Through the Cotonou Agreement, the EU has grants non-reciprocal trade preferences to their ACP partners. However, this system will be replaced by a new scheme which is to take effect in 2008: the Economic Partnership Agreements (EPAs). This new arrangement provides for a reciprocal trade agreement, meaning that not only the EU provides duty-free access to its markets for ACP exports, but ACP countries also provide duty-free access to their own markets for EU exports.

Not all ACP countries have to open their markets to EU products after 2008. The group of least developed countries is able to either continue cooperation under the arrangements made in Lomé or the "Everything But Arms" clause. Non-LDCs, on the other hand, who decide they are not in a position to enter into EPAs can for example be transferred into the EU’s Generalized System of Preferences (GSP).

While African Least Developed Countries (LDCs) under the Everything-But- Arms (EBA) initiative have duty-free access to the European Union (EU) market, exports of apparel from African least developed countries (LDCs) to the EU have stagnated despite preferences, while exports to the US under AGOA have grown very strongly. Exports of apparel from African LDCs to the EU and US were almost equal in 2000, but the value of exports to the US in 2004 was almost four times greater than the value of exports to the EU.46

The key factor explaining why exports to the US have grown much faster than to the EU is the rules of origin. EU rules stipulate production from yarn. This entails that a double transformation process must take place in the beneficiary with the yarn being woven into

fabric and then the fabric cut and made-up into apparel. These rules prohibit the use of imported fabric, although cumulation provisions allow for the use of inputs produced in other ACP countries. 47

To obtain preferences, apparel producers must use local, EU or ACP fabrics. They may not use fabrics from the main fabric-producing countries in Asia and still qualify for EU preferences—binding restrictions, since few countries in Africa have competitive fabric industries. The EU rules do not allow producers in African LDCs the flexibility they currently have under AGOA to source fabrics globally.

It is worth remembering that the EU has granted preferences to African countries for apparel subject to these strict rules of origin for more than 20 years under the Lome and then Cotonou Agreements. However, these strict rules have done little to encourage the development of an efficient fabric industry in Africa and are likely to have severely constrained the impact of preferences in stimulating the apparel industry. 48

---


CHAPTER THREE

THE POST-ATC EXPERIENCES OF KENYA AND SOUTH AFRICA
3.1. INTRODUCTION

Before the expiry of the ATC it was predicted that the elimination of quotas would have a negative effect on small international producers. For those countries who were not utilizing their quotas fully, it was predicted that they would mostly likely suffer detrimental effects of extreme competition from this liberalization. Those countries that fully utilized their quotas were predicted to increase their market share dramatically. Textile and clothing manufacturers in Sub-Saharan Africa in particular, were predicted to suffer huge losses due to the deterioration of their terms of trade despite the existence of preferential trading agreements such as AGOA and the Everything But Arms Agreement that offer majority of their textiles and clothing quota free access to their markets.

The textiles and clothing industry is important to Sub-Saharan Africa as it provides employment for the large populations in these countries. In this regard, Sub-Saharan African countries are said to have comparative advantage in the T & C industry. In addition the T& C industry provides these countries with an opportunity to diversify from economies which solely based in agricultural trade. Further a T & C industry is particularly important in capacity building for women, as they provide majority of the labour in T & C industries.

Currently the international environment in T & C has changed significantly then the way it was a decade ago.

Firstly there has been an international fragmentation in production. The production of T & C products has been divided into specialized activities each of is located where it can be performed the cheapest. LDCs are at the bottom of the supply chain as their role is mainly in assembly. Kenya and South Africa are two countries that provide an interesting comparative study of the international trade regime as their terms of trade are different under AGOA but are similar in all other respects.

49 Kara M. Olson (2003) 'Sourcing Patterns and the Elimination of Textile and Apparel Quotas'.
Secondly the amount of time taken to produce certain T & C products eg. ladies clothing which changes very quickly, has become a factor that developing countries have had to contend with as international retailers require ie. those with a quick turn around time. Thirdly, in the international trade in T&C, there has emerged a number of large scale retailers who dictate the market price for products, thereby driving profitability for manufacturers and producers lower and lower.

Africa’s overall share of US apparel imports fell, notwithstanding AGOA preferences. During the first three months of 2005, textile and apparel exports from Africa to the US fell to $270 mn, from $370 mn during the same period the year before, when the MFA quotas were still in effect.

3.2. A CASE STUDY OF KENYA

3.2.1. The Development of Textiles and Clothing Manufacturing in Kenya

The Eradication of poverty and the creation of employment opportunities has been on the Kenya Governments development Agenda since independence in 1963. This agenda has been characterized by initiatives aimed at creating industries in light of Kenya’s comparative advantage in that it has a large pool of human resources. For Kenya, T&C provide a suitable opportunity in this regard.50

The manufacturing sector in Kenya in 2004 accounted for over 20 percent of the country’s Gross Domestic Product (GDP), provided employment opportunities to about 300,000 people in the formal and 3.7 million persons in the informal sectors of the economy.51

The Kenyan textile industry was characterized by closed market policies that made the importation of clothing and textiles illegal in the 1980s. Therefore, this policy spurred growth


of the clothing and textiles manufacturing sector domestically. However, in 1993 Kenya's economy was liberalized. With the liberalization of imports, the importation of textiles grew and increased dramatically to the detriment of local manufacturers, who had to compete with these imports. In addition the US placed quotas against textiles from developing countries in the 1990s. The US quota imposition proved to the Kenya government that dependence on one large external market can be dangerous. All these factors contributed to the decline of the textile and clothing industries in the 1990s. 52

Kenya's industry and development strategy in the 1990s was shifting from an inward to an outward oriented perspective, through the country's Export Development Program. Desiring to facilitate and increase the amount of foreign direct investment into the manufacturing sector so as to create employment, the Export Processing Zones (EPZs) and Manufacturing Under Bond was implemented in 1990, under the Export Processing Zones Act, (Chapter 517) Laws of Kenya, however production activities did not start until 1993. 53

The Act defines EPZs as a designated part of Kenya where any goods introduced are generally regarded, insofar as import duties are concerned, as being outside the customs territory but are duly restricted by controlled access.54

The objective of the programme is to promote exports, foreign exchange earnings, transfer of technology and skills, employment creation and enhancement of industrialization. The EPZ incentive regime in Kenya provides exporting firms with a 10-year tax holiday, unrestricted foreign ownership and employment, and freedom to repatriate unlimited amount of earnings. The firms are also exempt from observing some core labour laws and regulations. 55

52 The Director of Industries, Ministry of Trade and Industry, Speech at the Apparel Investors Opportunity Workshop, 27th November 2003 pg. 3.
55 For example, until 2003, trade unions could not organise workers in the EPZ firms.
Through Sessional Paper No. 2 of 1996, the Government espoused its conviction on the necessity to of concluding more regional and international trade agreements in order to facilitate the growth of trade between Kenya and developed countries. The Ministry of Trade and Industry working together with the private sector established an effective visa system and as a result Kenya was accredited to start exporting textiles and other goods to the USA, under AGOA on 18th January 2001. 56 The Kenyan government, removed taxes on all cotton ginning and textile manufacturing machinery in 2002, to encourage imports of more modern equipment and dropped taxes to be paid by T&C companies within the EPZ so as to facilitate greater manufacturing of T&C products in Kenya.

3.2.2. Kenya’s Post ATC Experiences

Kenya’s post ATC experience must be understood in the context of other preferential trading agreements that it is a party to.

AGOA and the Cotonou Agreement contribute to increased interest in the T&C industry from within and outside Kenya. Indeed, since Kenya qualified for AGOA, its exports to the US have expanded remarkably and so has investment in this sector. Kenya’s textile exports to the US increased from US$ 39.5 million in 1999 to US$ 277 million in 2004. Total investment in the sector rose from Kshs. 1.2 billion to KShs. 9.7 billion, a 41% increase while jobs generated increased from about 26,000 in year 2002 to 37,000 in 2003, but dropped to 32,000 by end of 2004. Indeed Kenya exported US$60 million worth of T&C products to the United States.

In addition, the Factories Act (Chapter 514) is not being enforced in the zones. Available data shows that the number of gazetted EPZ zones in the country increased gradually from 10 in 1993 to 41 in 2004. The number of operating enterprises within the zones has also grown from 12 in 1993 to 74 in 2004, representing an average annual increase of 47 percent Local investor participation, especially in the EPZs, has been significant. About 11 percent of the total EPZ firms are wholly Kenyan while joint ventures are 74 percent. The investors in the sub-sector are mainly drawn from Britain, Sri Lanka, Korea, China, India, Taiwan, Australia, South Africa, Germany, Italy and the United States of America.

56 The Director of Industries, Ministry of Trade and Industry, Speech at the Apparel Investors Opportunity Workshop, 27th November 2003
between January and March 2005, which represents a drop of 13 per cent or US$9 million compared to the same period in 2004.\(^{57}\) Kenya the second-largest exporter of clothing to the US from Sub-Saharan Africa.\(^{58}\)

This growth was facilitated by greater expansion in East Asian-owned\(^{59}\) enterprises in Kenya because of factors including greater access to capital, longer experience with the type of production pursued under AGOA and the availability of cheap labour. A view of the current ownership and management of textile mills and apparel manufacturing indicates a majority Indian investment India is currently lobbying East African nations, particularly Kenya, to form partnerships under AGOA by which India would provide manufacturers in Kenya with the raw materials for textile production - a provision provided to Kenya and other designated LDCs until September 2007.\(^{60}\)

Between 1997 and 2004, while Kenya registered an increase in terms of export growth to the US market, it registered a decline of more than 50 per cent, as the European Union as diverted most of the garment sourcing to the Eastern Europe, Asian countries and to a lesser extent the North-African countries. This has tended to discriminate against the sub-Saharan African region which in general experienced decline in their exports to the EU market, despite preferential market access under Cotonou Agreement. Consequently even though Kenya enjoyed

---


\(^{59}\) Given the deeply implicated histories of South Asians (particularly Indians) in Kenya, as elsewhere in East Africa, attention must be paid to their role in establishing and indeed expanding textile production under the current AGOA regime. Nauman however notes the T&C industries in Kenya have grown mainly due to investment from Chinese and Taiwanese companies.

\(^{60}\) ‘African cloth, Export Production, and Secondhand Clothing’, Tina Mangieri, Department of Geography, University of North Carolina at Chapel Hill, Paper prepared for the workshop and conference: “Clothing Europe: Comparative Perspectives on Trade Liberalization and Production Networks in the New European Clothing Industry”, University of North Carolina at Chapel Hill October 15-16 2004
preferential market access under the Everything but Arms clause, it provides little prospects for Kenya T&C industry.

In January, 2005, the ATC expired and the trade in T&C was liberalised. As noted previously in late 2004, the number of jobs in the Kenya’s T&C industry decreased.

3.3. A CASE STUDY OF SOUTH AFRICA

3.3.1. Introduction

South Africa’s industries have long been protected from competition with world markets by high tariff and non-tariff barriers. The effect of these tariff and non-tariff barriers has been to shift domestic demand for inputs from international to South African sources, available at higher domestic prices. This policy of protection has had two effects. First, it makes domestically produced and imported goods more expensive in South Africa than they would be in the absence of these policies. Second, it makes South African exports more expensive on international markets, because of the higher cost of inputs. As a result, the textile and clothing industries in South Africa have long been inwardly focused, rather than export oriented. Thus while the textile and clothing sector is significantly more developed in South Africa than elsewhere in Sub-Saharan Africa, the challenges it faces with respect to export competitiveness are still significant. How South Africa manages its transition to global market participation therefore may offer insights for other, more nascent industries in the region.

3.3.2. The Evolution of Textiles and Clothing Manufacturing In South Africa

The history of the textiles and clothing industry in South Africa and its development is told in three phases namely: before independence of South Africa,
Before gaining independence in 1990, South Africa’s integration into the world trading system, the clothing and textiles industry was focused on import substitution\textsuperscript{61} and was characterized by a great deal of protectionism in the favour of domestic industries. This inward oriented policy, allowed inefficiencies in the manufacturing to go unchecked, and resulting in the limited ability and capacity to export abroad and compete effectively in the international markets the industries. From the early 1970’s the country entered a period of increasing political turbulence and international isolation.

In 1994, South Africa (SA) joined the World Trade Organisation (WTO) and opened its market to international trade. Under GATT 1994, the South African government underwent trade liberalization through which all of the non-tariff barriers were converted to ad valorem to tariffs. In addition it abolished local content requirements and export incentives to its manufacturers.

During the late 1990s and early 2000s the South African currency, the Rand, depreciated eventually being significantly undervalued. This combined with an incentive scheme named the Duty Credit Certificate Scheme that gave duty exemptions or rebates on goods imported for the production of exports accelerated depreciation rates, and subsidised loans, \textsuperscript{62} led to the increased export of increased textile and clothing exports, whilst at the same time remaining competitive against imports, despite liberalization.

However since 2002, the value of the local currency appreciated substantially leading to a decline in export revenues as well as decreased exports. In addition, due to liberalisation of trade and accession to the WTO, South Africa opened up its markets to increased cheap and

\textsuperscript{61} South Africa’s post World War II import-substituting industrialisation (ISI) strategy relied heavily on the country’s mining industry and the social and economic structure of apartheid.

\textsuperscript{62} ‘Promoting The Competitiveness Of Textiles And Clothing Manufacture In South Africa,’ African Economic Policy Paper Discussion Paper Number 32, September 1999, B. Lynn Salinger, Haroon Bhorat, Diane P. Flaherty, and Malcolm Keswell AIRD, University of Cape Town and University of Massachusetts
ever increasing imports from China. This led to an unprecedented crisis in the industry, characterised by large-scale loss of employment.  

3.3.4. South Africa’s Post ATC Experiences

Under AGOA, South Africa is not considered a least developing country. Consequently it does not have the same advantages that LDCs have under AGOA, but faces stricter conditions to comply with. All South African exports under AGOA must be from African fabric or from American Fabric to enter into the US duty free. Under the E.U. Cotonou Agreement all T & C exports must be made from South African fabrics.  

A depreciating currency and preferential access to the markets of certain developed countries (the United States (US) and European Union (EU) through the African Growth and Opportunities Act (AGOA) and the SA-EU trade agreement), resulted in a significant rise in exports during the late 1990s and early 2000s.

However since 2005, the industry has been on the decline for a number of reasons. The appreciation of the currency, South African T & C exports have declined. Firms that took advantage of the opportunities provided by AGOA have suffered the most in terms of loss of orders and the resulting employment losses. Textile exports grew by 60% from 1995 to 2002, but declined by 35.6% through 2003 and 2004. Currently, effective levels of protection are substantially lower, under the terms of the Duty Credit Certificate Scheme (DCCS). Duty credit certificates significantly reduced the real levels of protection afforded both the clothing and textiles industries.

---

63 The SA Clothing and Textile Workers’ Union (SACTWU) recorded more than 55,500 job losses since 2003, and official statistics show a 37% reduction in employment since 1996

64 Simon Roberts and John Thorburn, Adjusting to Trade Liberalisation; the Case of Firms in the South African Textile Sector, Journal of African Economics, (2003) Vol. 2 No. 1

CHAPTER FOUR

CONCLUSION

AND

RECOMMENDATIONS
4.1. CONCLUSION

The end of quotas in the international T&C regime and the resulting detrimental effect on Su-Saharan Africa is evidence of the fact the internationally trade is grossly skewed against developing and least developing countries.

Before the expiry of quotas least developing countries met with developed countries\(^6\) to discuss the potential effects that the abolition of quotas would have on their countries. They feared that the expiry of the ATC would allow more cost-effective countries with proximity to major markets\(^7\), who have links in supply chains and distribution networks, who are in bargaining position with the transnational intermediaries, and who by virtue of their sheer economic size could capture their market share in key export destinations such as the EU and US. This would consequently lead to devastating unemployment and increase in poverty.

These concerns that were raised at this meeting have in fact become a reality for developing countries in the current Post ATC environment despite the existence of Preferential Trade Agreements that offer them greater market access. It is important not to forget that the textile and clothing sector plays a key role in the economic development of LDCs, as it not only provides valuable export earnings but also acts as a viable alternative to the export of raw commodities by offering opportunities for diversification, foreign exchange earnings, contributions to the development of Small and Medium scale enterprises and, most

\(^6\) The WTO Sub-Committee on Least-Developed Countries met on 29 October, 2004 to discuss identify the problems associated with the phase-out of the ATC; (b) analyse the scenario of market access in the textiles and clothing sector for LDCs after the expiry of ATC; and (c) suggest measures allowing the market share of LDCs to be retained, the adjustment process in the post ATC period to be less painful, and the transition to the integration of the textiles and clothing sector into the multilateral trading system for LDCs to be smooth and market disruption minimal. Market Access for LDCs in the Textiles and Clothing Sector After the Expiry of ATC, WT/COMTD/LDC/W/36, Available at http://docsonline.wto.org

\(^7\) Munir Ahmad, UNCTAD Meeting on Strengthening the Participation of Developing Countries in Dynamic Sectors in World Trade: Trends, Issues and Policies Geneva, 9 February 2005, 'the proximity of markets is an important competitive factor in the T&C industry.'
importantly, generating employment at comparatively low cost.\textsuperscript{68} It should be noted that LDCs do not necessarily have a comparative advantage in clothing over all developing countries. Several developing countries have a highly competitive clothing sector and export more clothing to LDCs than they import from LDCs. \textsuperscript{69}

\textsuperscript{68} International Center for Trade and Sustainable Development, Weekly Trade News Digest, Volume 8 Number 37, available at http://www.ictsd.org/.

\textsuperscript{69} Sub-Committee On Least-Developed Countries, 'Options For Least-Developed Countries To Improve Their Competitiveness In The Textiles And Clothing Business', World Trade Organization, Wt/Comtd/Ldc/W/37, 28 June 2005, (05-2756).
4.2. RECOMMENDATIONS

The recommendations that I make are two-fold yet inter-related in a number of respects. Firstly as short term measure to protect whatever benefits that they have gained SSA countries should advocate for deeper Preferential Trade Agreements that provide them with deeper and meaningful terms of trade that will results in SSA countries actually reaping the benefits from a monetary and a capacity building perspective. My second recommendation, made from a broader perspective of current multi-lateral trade regime, calls for SSA countries, in conjunction with developing and LDCs to advocate for a paradigm shift from adjustment and charity to a paradigm of development and fairness justified by the fact the economic equality no longer appears to be the guiding principle behind the current global development agenda.

4.2.1. DEEPENING PREFERENTIAL TRADE AGREEMENTS TO SUSTAIN SUB-SAHARAN AFRICAN COUNTRIES CLOTHING AND TEXTILES INDUSTRIES

4.2.1.1. Introduction

AGOA and the EBA are PTAs that offer SSA countries preferential market access. However, it appears that in monetary terms the profits accrued are to the benefit of the developed countries that grant the preferential market access.

The characteristic response of academics to the challenges faced by developing countries in International Trade in Textiles and Clothing has been that LDCs and developing countries should negotiate PTA agreements with better terms to sustain whatever gains they achieved before the liberalization of the trade in T&C. In addition they suggest that stringent rules of origin should be abolished immediately.

However, central to the issue of negotiation of PTA agreements is whether LDCs should in fact depend on them to provide sustained market access to the economies of developed countries. Undoubtedly preferential access does benefit LDCs and developing countries but as the adage
goes, nothing lasts forever. PTAs are inherently discriminatory and unstable. Their benefits last for as long as the PTA does. What happens after its expiry is determined by the amount of diplomatic cajoling and conditions that the receiving state is willing to meet in order to sustain gains made before its expiry.

Therefore developing and LDCs are constantly at the mercy of their developed trading partners perpetuating the cycle of poverty and dependence on exports to developed countries at terms that far outweigh any cost benefit analysis.

4.2.1.2. Supply-Chain Technical Assistance

Developing countries in my view should be negotiating PTAs that not only offer them better terms of trade but those that build their capacity to produce T&C in a manner at par with most efficient producers so that after the expiry of a PTA they are able to compete effectively in the international T&C market. This is possible through supply chain technical assistance.

The production of T & C products is dependent on a network of suppliers of different items required and the performance of different functions at different locations. Therefore developing countries should advocate for terms of trade that facilitate the production of materials necessary for manufacture domestically or regionally.

Countries in a region should negotiate as a block for technical assistance that will enable them to perform different functions in the supply chain in one region e.g. the EAC could negotiate with the US government to provide technological support, by helping Tanzania develop its cotton growing and ginning industry, assisting Uganda develop its capacity to manufacture

---


71 Sub-Committee On Least-Developed Countries, ‘Options For Least-Developed Countries To Improve Their Competitiveness In The Textiles And Clothing Business’, World Trade Organization, Wt/Comtd/Ldc/W/37, 28 June 2005, (05-2756).
the constituents of clothing e.g., zips, buttons etc and thereafter aiding Kenya to develop its tailoring industry.

This would provide a number of solutions faced by developing countries currently in the T&C trade. Firstly, the countries would each benefit in that in light of their different comparative advantages, a particular industry is being developed which allows for progress in facilitating greater efficiency. Secondly because the countries are not far apart geographically the cost of manufacturing the textiles is reduced drastically and thirdly the countries gain technical know how on how to manufacture T&C products such that after the expiry of the PTA they would be able to compete in the international T&C trade market as they would be able to supply products at a reasonable price and faster. In addition on expiry of the PTA the countries would then be able to manufacture clothes for regional and domestic markets thereby reducing the quantity of imports from developed countries.

This suggestion is in line with the current regime governing international trade T &C that seeks to ensure equality of competitive opportunities. \(^72\)

4.1.2.3. Rules of Origin

International trade is important for development and poverty alleviation. It helps raise and sustain growth—a fundamental requirement for reducing poverty. Measures that restrict market access for developing countries’ exports goods and services have direct negative effects on investment incentives and the growth potential of their economies. \(^73\)

\(^72\) The Panel Report in US Taxes and Petroleum and certain imported products Art III (2) protects expectations on the competitive relationship between imported and domestic products.

Rules of origin are one such measure that reduce market access in the T&Cs as they require that a country use materials manufactured by itself or by other specified countries failure to which the countries' products no longer have preferential market access.74

The AGOA rules of origin require that most garments be made from yarn and textiles produced in the region or the US ('the yarn forward' rule). This requirement is temporarily waived for the least developed qualifying countries, which will be permitted to source cloth anywhere for AGOA garment exports, but only until 2008.

EU rules stipulate production from yarn. This entails that a double transformation process must take place in the beneficiary state with the yarn being woven into fabric and then the fabric cut and made-up into apparel. These rules prohibit the use of imported fabric, although cumulation provisions allow for the use of inputs produced in other ACP countries.

The rules of origin may be considered beneficial for those countries that have capacity to produce the textiles themselves however; SSA countries do not have the capacity to implement the rules of origin as they do not have efficient manufacturing textile industries, if at all.75

Therefore as suggested developing countries and LDC should be negotiating for deeper PTAs that not only provide preferential market access but assist the countries to be able to produce cotton for ginning, production of textiles and the efficient assembly of garments.

74 However, the WTO Dispute Settlement Case “United States – Rules of Origin for Textiles and Apparel Products” showed that it is difficult for affected countries to prove that they are impacted negatively by these rules. The panel ruled in favour of the United States, arguing that India had failed to show how the purported US measures undermined Indian textile exports. This ruling may have serious systemic implications from the point of view of developing countries that export textiles and do not have preferential trade agreements with the major importing countries and hence are not covered by preferential rules of origin, because WTO document, “United States – Rules of Origin for Textiles and Apparel Products”, WT/DS243/R, 20 June 2003.

4.1.2.4. Tariff Rent

Exporters from SSA countries which have preferential market access under AGOA and the EBA should benefit from a price increase that equals the amount on the tariff that has ceased to be imposed on their goods. This is known as the tariff rent. However research shows that companies that import goods for countries under PTA are still the paying the same amount for goods despite not having to pay taxes for T & C products.

Consequently from a monetary perspective it is not the developing country that reaps the benefit of the tax rebate but it is the countries importers. The tariff rent could be used by SSA countries to develop their T&C manufacturing industries such that when the PTA ends they would be able to compete in the international T & C market. 76

4.2.2. ADVOCATING FOR A PARADIGM SHIFT WITHIN THE MULTI-LATERAL TRADE REGIME

International trade in T & C is quota free for the first time in over 40 years77. Quantitative restrictions in international trade in goods have been the characteristic of economic relations between states and can be traced as far back as the middle ages. However their consistent usage, in the T & C industry is un-paralleled to any other sector of the global economy. 78

As mentioned previously in the 1950s and 1960s developed countries were considered to have began to appreciate the economic disparity between them and developing countries in that

76 The data showed that the unit prices of apparel exports from the major sub-Saharan exporters increased six per cent on average after AGOA was implemented. The average MFN tariff faced by these products was 20 per cent


they adopted the theory of non-reciprocity and S&DT. Consequently adjustments were made on the basis of extra time, extra help in order to help them “catch up”. 79

With the emergence of new economic powers in the global economy, the theory of neoliberalization began rear its head in multi-lateral trade discussions. Intellectuals, policy makers and negotiators in the developed world advocated for the removal of tariff and nontariff barriers to trade under the guise of facilitating free trade, the result of which led to a quota free T&C environment within which SSA countries, must now battle for a piece of the economic pie despite inequalities that exist between them and their development partners.

Consequently the T&C regime is perfect example of adjustment that has resulted in the expiry of time and less help that was needed from developing countries to achieve economic development.

The current premise underlying multi-lateral trade is that free trade is development. However as has been clearly evidenced by the experiences of SSA countries free trade has not facilitated development. Consequently it lacks legitimacy to even be considered as fair. Free trade can never be fair in light of the disparities between developing and developed economies.

In addition since the WTO has adopted a liberalist approach to trade, a definition of fairness ought to be adopted from the liberal school of thought as well. In-tandem with the current challenges faced by developing countries, Rawls principle of difference is significant to SSA countries in that it advocates for distributive justice based on inequalities,80 and is therefore the most appropriate criteria for determining fairness in multilateral trade.


According to Rawls people are treated as equals not by removing all inequalities but by removing those that unjust inequalities i.e. those that cannot be justified in terms of their benefit to the least advantaged. Consequently the current multi-lateral trade regime which is focused on liberalism and attaining free trade is unjust and consequently not fair in that developing countries which are not on the same
Consequently a shift in the ideological view of the WTO that adjustment will facilitate trade and development needs to be totally done away with for developing countries to be able to participate in global trade and industry. The WTO ought to adopt a development oriented approach to multi-lateral trade negotiations.
BIBLIOGRAPHY

STATUTES

1. Export Processing Zones Act, Chapter 517 of the Laws of Kenya

TREATIES

1. General Agreement on Tariffs and Trade 1947
2. Agreement on Textiles and Clothing

ARTICLES


the workshop and conference: Clothing Europe: Comparative Perspectives on Trade Liberalization and Production Networks in the New European Clothing Industry.


MAGAZINES


POLICY PAPERS


REPORTS

1. The Sub-Committee On Least-Developed Countries, 'Options For Least-Developed Countries To Improve Their Competitiveness In The Textiles And Clothing Business', World Trade Organization, Wt/Comtd/Ldc/W/37, 28 June 2005, (05-2756).


SPEECHES

WEBSITES

1. www.agoa.gov

2. www.acp-eu-trade.org


4. www.wto.org

5. www.cta.int