

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MDF/W/28/Rev.1

7 June 1985

Special Distribution

Working Party on Textiles and Clothing

CHECKLIST OF POINTS

Revision

1. As agreed at the meeting of the Working Party held on 14/15 March 1985, the secretariat has prepared, on its own responsibility, a checklist of points relating to options for action which have been raised and discussed so far in the Working Party. This Checklist of points has not been approved by the Working Party.
2. The purpose of the list is to facilitate the further discussions in the Working Party. An effort has been made to list the various points under a number of headings. This is for convenience only. The headings do not necessarily correspond to those used in previous documents.
3. Whilst every effort has been made to cover all the substantive points, these points are not necessarily presented in the order in which they were raised during discussions. An effort has also been made to avoid repetition.
4. Additional points raised in future discussions in the Working Party may be added to the list in due course, as may be decided. The present revision incorporates points made at the meeting of the Working Party held on 25 April 1985 and also suggestions made by delegations in ensuring more precise presentation of the points they made in earlier meetings.

CHECKLIST OF POINTS

(Discussions up to 25 April 1985)

I. General

A. Rôle of the Working Party

1. "To examine" is not to choose, or to decide upon, but to investigate, to assess, to analyse and to see the pros and cons of any modalities.
2. Both the terms of reference of the Working Party and the Ministerial Declaration allow the drawing-up of conclusions and recommendations. It is the clear understanding at the commencement of the work of the Working Party that conclusions and recommendations will not be ruled out. That view has been expressed in the informal group's drafting of the terms of reference for the Working Party.
3. It will be helpful if there can be some overall commitments from all to the ultimate goal of achieving liberalization.
4. Commitments or the adoption of positions will mean over-stepping the terms of reference of the Working Party.
5. The Working Party is considering actual liberalization of trade, not liberalization of the criteria or terms or rules under which trade is conducted. The objective of the Working Party is not to achieve the goal of full application of GATT; but to examine modalities for trade liberalization and to determine their implications.
6. There has been a continuing erosion of the MFA. It has become important to consider how trade in textiles and clothing can be conducted according to the same system as trade in other sectors.
7. The Working Party has to examine both the principles and the practicality of all modalities.
8. It is important that the Working Party should list out all options and their interpretations by both importing and exporting countries which will allow capitals to examine them. Then negotiations can start to see what the next textiles régime should be, whether the MFA should be continued or that textiles trade should be governed by GATT rules.
9. Improvements in the rules will certainly improve trade. Liberalization of the régime governing international trade in textiles will inevitably produce an overall improvement in the terms of trade for that group of exporters which have been denied the benefit of comparative advantage and non-discriminatory treatment in the past twenty years or so.
10. In accordance with the Ministerial Decision, the Working Party should look at trade liberalization for textiles and clothing in terms of its impact not only in that sector but also on economic activity and trade prospects of the participating countries generally.

B. Time-frame for work

1. It is necessary for the Working Party to finish its work before the Textiles Committee meets so that decision-makers can make a choice.
2. The Textiles Committee meeting in July may be only procedural, but if the Working Party report is to be of value to decision-makers in capitals, it must be issued in sufficient time.
3. It is desirable that the results of the Working Party be available in July 1985 when the Textiles Committee considers the future of the MFA. But the terms of reference (L/5760/Rev.1) are open. The possibility of continuing work in the two bodies after July, in parallel, cannot be discounted.

II. Specific points relating to discussions on Option A

A. The objective of trade liberalization

1. Liberalization of trade in textiles and clothing should be construed as a positive process that can only lead to an improvement of developing countries' present access to the markets of developed countries.
2. It is not possible to contemplate a scenario which would include a system more restrictive than the present one.
3. The present régime is a derogation from the MFN and non-discriminatory principles. A return to these principles will represent liberalization.
4. The objective of the Working Party is first and foremost to consider a return to the free-trade MFN principle of GATT. A non-MFN oriented MFA cannot be expected to be more liberal than an MFN-based GATT.
5. Trade liberalization based on GATT principles might benefit some exporting countries and harm some others.
6. Option A is the only effective way to achieve liberalization. If full application of GATT rules is not accompanied by grey-area measures, then textiles trade will be liberalized. Those who maintain the opposite view will have started from the premise that such grey-area measures will be maintained after the return of textiles to GATT rules, but that is not the signal given by the safeguards negotiations in the past six years.
7. Option A is the objective as well as the modality for trade liberalization.

B. Approaches to trade liberalization

1. The Working Party should approach these issues from the premise that progress towards further trade liberalization is a responsibility shared by all. All participants should therefore be prepared to contribute to the achievement of better balance in trade relations in this sector.
2. Common efforts mean joint efforts. Contributions could be made on the basis of possibilities.
3. Contributions have to come from those who are maintaining the restrictions. It is up to the developed countries to make common efforts to liberalize trade in textiles. The onus of liberalization does not fall on those who are already sacrificing.
4. If by July 1986 there is no agreement to renew or continue the MFA, de jure, the trade in textiles and clothing will be governed by the full application of GATT. In this situation, there can be no question of looking for any balance or counter-balance. Since no price was paid to establish the MFA, no price should be paid to dissolve it. False linkages should not be established. The question of phase-out should similarly be kept within those parameters.
5. Under the MFA, the responsibility for avoiding market disruption should be shared by all parties. At present, it is only the developing countries which have to bear this burden.
6. An approach that the removal of discriminatory restrictions against their textiles and clothing exports be conditional upon reciprocal trade concessions on their part cannot be accepted by developing countries.

C. What is meant by "the full application of GATT provisions"?

(a) General

1. Full application of GATT provisions does not necessarily mean liberalization of trade. If all GATT Articles relating to the use of restrictions were fully applied, the net result could be one in which trade is more restricted than at present.
2. The Working Party should determine the circumstances under which the acceptance of full application of GATT provisions would be advantageous. Would full application of GATT provisions lead to free trade, or would it lead to a large number of Article XIX actions or grey-area measures?
3. It would be necessary to consider what treatment handicraft textile products would receive under Option A.
4. The treatment for handicraft textile products could be considered in the context of Part IV which enjoin more favourable treatment for developing countries.

5. There will be two possibilities if the system for restraints under the MFA is replaced by GATT rules. One is that there will be no additional safeguard measures to replace those foregone, the other is that some safeguard actions will be taken to replace some or all of those foregone. In either case, there will be some significant impact on trade flows.

6. It would be meaningful and necessary for the Working Party to determine whether the GATT will be applied to textiles and clothing in the same way as GATT is applied to other sectors. If GATT provisions are applied to textiles and clothing, this could modify the manner in which these provisions are generally applied to other sectors of trade.

7. It is necessary to consider whether the replacement of QRs by tariff measures would result in liberalization.

8. Liberalization should be regarded as an instrument to reach the goal of free trade. The MFA is an instrument for achieving balanced progress in liberalization and structural adjustment. The GATT itself contains provisions allowing the maintenance of restrictions; in the absence of the MFA, there would be a strong possibility that Article XIX measures would be applied.

9. Technically speaking, it is feasible to bring about full application of GATT rules in the field of textiles and clothing, but the question of whether it is economically or politically desirable to do so is an issue to be addressed by the Working Party.

10. The difficulties and problems envisaged in an immediate return to the full application of GATT rules are only a part of the questions of how such a return may be achieved and how long this may take and do not detract from the feasibility or desirability of affirming that such a return should be the ultimate goal.

11. The full application of GATT rules with a movement towards liberalization will have to be guided by the principles and objectives of Article XXXVI, in Part IV of the GATT. The developed contracting parties should reduce and eliminate tariff or non-tariff barriers on imports of textiles and clothing from less developed contracting parties. Such efforts will include elimination of tariff escalation. The developed contracting parties, while applying measures such as countervailing and anti-dumping measures, will have special regard to the trade interests of less developed contracting parties. Whenever effort is not being given to the commitments of Part IV, the matter should be reported to the CONTRACTING PARTIES and consultations should be undertaken to reach satisfactory solutions. International trade in textiles and clothing will be conducted on the basis of MFN (Article I) and regulation of trade through tariffs (Article II), national treatment on internal taxation and regulation (Article III) and by Article XI which prohibits restrictions. Special exceptions under Articles XI, XII, XVIII(B), XX and XXI should be governed by Articles XIII and XIV. Liberalization of trade through tariff negotiations should be

governed by Articles XVIII, Part IV and the 1979 Decision regarding Differential and More Favourable Treatment for Developing Countries. Emergency actions could be taken in accordance with Article XIX on the basis of non-discrimination, and would be temporary in nature, limited to tariff measures and accompanied by compensatory adjustments. If the compensatory adjustment is not satisfactory to the party affected, then remedial action could be sought in accordance with Articles XXII and XXIII. Both parties could seek recourse to joint action by the CONTRACTING PARTIES either in terms of Article XXV:1 or of Article XXV:5.

12. The General Agreement, if applied diligently, would provide for more liberal treatment of textiles and clothing than the MFA.

13. A return to GATT would entail the abolition of the present discriminatory régime which penalizes developing countries and benefits developed countries. In effect, that régime allows importing countries to single out those trade partners with less economic and political clout, thus less likely to resist or take retaliatory action. Such a pattern would doubtless undermine the whole GATT structure if, instead of being terminated quickly in the field of textiles and clothing, it is allowed to spread to other sectors of trade.

14. The following principles should be included in any discussion of full application of GATT provisions:

- (a) Equal treatment and non-discrimination. (b) Elimination, or roll-back, of protectionist measures in various forms, including QRs and NTMs. (c) No abuse of safeguard measures. (d) Efforts to ensure LDC exports secure a share commensurate with their economic development.

15. Liberalization of the legal framework through a return to GATT rules should be accompanied by tighter Article XIX and anti-dumping provisions, thereby resulting in an increase of LDC exports.

16. Whilst there have been derogations and distortions of the GATT discipline, they cannot be regarded as having changed the GATT, nor can they form the basis for an examination of the possibilities for bringing about full application of the GATT to textiles. The fundamental question of full application of GATT provisions has to be examined against the pure doctrine of both the GATT and of the MFA, i.e., to compare like with like, and only against such a background can a proper assessment of which is intrinsically the better of the two systems be made.

(b) Articles XIX and XIII - some specific points

1. Although Article XIX is an escape clause, it does not comprise the possibility of being discriminatory. Under full application of GATT provisions, the treatment of textiles would not be different from any other sector in the sense that Article XIX would be the "last refuge".

2. Actions under Article XIX should take the form of tariff measures. A contracting party using quantitative restrictions should seek a waiver from the provisions of GATT.
3. Linking the process of dismantling existing restrictions with putting all such restrictions under Article XIX might result in a situation more restrictive than the one at present.
4. Article XIX is a provision of general application which is expected to apply to textiles and clothing in the same way as to other sectors of trade.
5. The Article has been designed to provide import relief on an emergency basis, related to an unforeseen and abrupt increase in imports. The MFA has been designed to ensure an orderly and equitable development in trade in textiles and clothing. It is difficult to see how, on the expiry of the MFA, after twenty years of institutionalized restraint, domestic industries could still be injured by unforeseen rises in imports. There should be no shelter, both in Article XIX and in any programme of action to put textiles and clothing back under the aegis of GATT, for concepts such as "threat of injury". On the other hand, if one seeks to avoid a threat of injury, then the procedures of Article XXVIII should be followed.
6. In the absence of a comprehensive understanding on safeguards, contracting parties should be expected to abide by the existing GATT obligations, which do not permit selectivity. Since the Ministerial Declaration aims at liberalization, whenever MFA provisions are more liberal than GATT rules, they should prevail. For instance, any quota restrictions should be based on past quota rights rather than trade levels, in order to avoid the curtailment of access rights previously recognised. A few elements in the MFA such as surveillance and time-limits can be useful in the discussions of safeguards.
7. Under the GATT, developed contracting parties should be in a position to offer a level of security and effective liberalization higher than that implied in the MFA.
8. Even if a return to GATT might involve some risks, it is worthwhile to give it a try.
9. Article XIX tends to freeze existing patterns and levels of trade whereas the MFA does not. For this reason, one country moved over from an Article XIX régime to the MFA.
10. The termination of the MFA would not in itself lead to greater liberalization. In at least one country, there has been a major campaign to revert to the use of Article XIX on the grounds that this should provide greater protection than the MFA. Moreover, there is at present a considerable proliferation of grey-area measures. It is difficult to believe that such measures will not be applied to textiles and clothing in the absence of the MFA.

11. Even if QRs are applied in a non-discriminatory manner, their impact could be discriminatory.

12. A system of country quotas could make the situation of new entrants worse. Also, a global quota could be set lower than the sum of the access provided now under the MFA.

13. The present application of Article XIX does not require the use of tariffs over quotas.

14. Security in trade is an important element for both exporters and importers. Article XIX actions, even if strictly applied, might lead to a lack of security and predictability. There are also other measures, like subsidies and anti-dumping actions, which could be taken. There has been reduced reliance on these measures because of the existence of the MFA. In the absence of the MFA, there might be a more systematic use of such measures.

15. It would be more difficult to try to improve the disciplines of Article XIX if the use of this Article were to become the "last refuge" to trade in textiles and clothing.

(c) Part IV

1. One country's trade relations with other contracting parties are described as being governed by the contractual and regulatory provisions of the General Agreement, i.e. Parts I, II and III.

2. The status of Part IV of the GATT is susceptible to different views. It contains facilitating provisions but not obligations. Some portions of the GATT are precatory, meaning that they require sincere efforts but do not impose obligations.

3. Full application has to be guided by the basic objectives of the GATT. Article XXXVI is only one part of GATT containing objectives. A distinction certainly exists between developed and developing countries with respect to the obligations under the GATT, but the relationship of Part IV and the other GATT provisions might need closer examination. There are wider objectives of reciprocity and mutual advantage. While the bulk of Article XXXVII refers to aims which developed countries should try to achieve, paragraph 4 of that article refers to appropriate actions by LDCs in the implementation of Part IV towards other LDCs.

4. Part IV is a commitment by contracting parties which, given goodwill, is as strong as a contractual obligation. If Part IV is regarded as only a facilitating provision, that will considerably water-down the commitment. Part IV is legal as well as institutional.

5. The question arises whether under Part IV, developing countries will be considered "developing countries" in trade in textiles and clothing.

D. Possible approaches to full application and elements of a transition period

1. One approach would be to start the process of dismantling existing restrictions by removing consistently under-utilized quotas. The question would arise whether all under-utilized quotas in all countries should be dismantled or whether it would be done on an importer-by-importer basis, or an exporter/importer basis.
2. The enlargement of quotas could be on a product basis or on a country basis. Some quotas could be reallocated for the benefit of new entrants.
3. It would be more practical to build on the present MFA rather than to invent a totally new instrument. There could be four different approaches to dismantle existing restrictions: (a) there could be an undertaking to liberalize 10 per cent per annum at the option of the importer; (b) under-utilized restraints could be reduced and made available under a global or other arrangement for new entrants and smaller suppliers; (c) a fixed growth rate could be agreed; or (d) a growth rate could be tied to the growth in the market of the importing country, e.g. if the growth rate in the market is 5 per cent, then the growth rate in the quota could be 5 per cent plus X per cent.
4. Could there be a case for having an extraordinary safeguard mechanism outside Article XIX and within the textiles and clothing framework during the transition period?
5. Relevant factors for the consideration of a transition period would be the evolution of the world economy as a whole; the development of trade in the sector, including trends in export earnings and their distribution among developing countries; progress in the technology of textile and clothing manufacture; changes in production capacity and the prospects for demand.
6. The possibility that certain subsectors might be able to move faster than others towards liberalization need not be excluded.
7. It would be quite disruptive if the system changed from 31 July to 1 August. Account would also have to be taken of bilateral agreements negotiated under the present MFA and which run beyond the length of that Arrangement. It would also be worthwhile for the Working Party, in talking about the transition period, to address the question of the length of the transition period and a formula for phasing-out.
8. A transition period would be necessary in order to allow one to draw conclusions about the effects on trade flows.
9. A phase-out programme should not lead to a more restrictive Article XIX régime but should result in liberalization on the basis of GATT rules. A phase-out should permit a smooth transition to a more liberal situation.

10. Full application of GATT provisions could be completed during or immediately after a transition period.

11. A transition period could be from two to twenty years. The difficulty would be to narrow it down. With a fixed date, one could ensure an orderly phase-out. A review point should be provided for a phase-out programme; for example, after five years, one could verify whether or not things were on the right track or that some fine tuning would be required.

E. How would trade relations be maintained with non-contracting parties in the absence of the MFA?

1. If MFN treatment is applied between contracting parties and non-contracting parties, there is no need for specific agreements between them in the field of textiles and clothing.

III. Specific points relating to discussions on Option B

A. General

1. It is not clear if Option B is a real option. It is not possible or practicable to liberalize legal measures when the elimination of illegal ones presents such great difficulties.

2. Option A should stand by itself and the liberalization under this Option should not be conditional upon liberalization of other measures covered under Option B. A commitment to liberalize legal measures cannot be taken in exchange for a termination of the MFA.

3. The discussions under the 1982 Ministerial Decision on textiles and clothing should not be expanded to cover areas such as tariffs, the use of QR's, countervailing duties, etc. These matters are being dealt with on a common basis in GATT and there is no scope for textiles to be examined under these items separately from other sectors.

4. A sectoral approach should not be used with respect to the provisions under Article XVIII(B) or those relating to state enterprises and subsidies, etc. This would create further sectoralization of GATT and be inimical to a multilateral trading system.

5. Under Option B, contributions would not be confined to those measures which do not have GATT cover; accordingly, this Option widens the scope for consideration of liberalization beyond the GATT.

6. The Working Party's terms of reference are broad and do not rule out examination of measures which are GATT-consistent or GATT-inconsistent. The concept that Option B might limit GATT rights should be considered in the light of how GATT rights are exercised. If it is felt that action on "Option B" is a price to be paid for action on "Option A", then another view could be that "Option B" is a companion piece to "Option A" or the linkage between the two could be totally removed.

7. The concept that the Working Party should not be looking at liberalization of "other trade measures" is puzzling because the mandate of the Working Party is to examine modalities for liberalizing trade in textiles. As an example, several countries are banning textile imports outright; something could be done to liberalize imports into such countries. It appears that the possibility exists for at least an examination of the modalities for trade liberalization, not implying in any way that certain measures have to be liberalized or traded for some other concessions.

B. What are the possible approaches to liberalization?

(a) Tariffs

1. Liberalization of tariffs on textiles and clothing might best be carried out in the context of an across-the-board process of tariff reduction. This approach could also be used in addressing other types of measures.

2. Inclusion of textiles in GSP schemes is a positive step and should be considered by countries which excluded textiles in their GSP schemes.

3. The binding of tariffs is an important step which helps to remove insecurity from trade and is a contribution to trade liberalization.

(b) Articles XII and XVIII - some specific points

1. There can be no exchange of concessions under Article XVIII, and actions under this Article can only be dealt with in the BOP Committee.

2. Countries applying Article XVIII(C) are operating fully within their rights under GATT and they cannot be asked to renounce those rights. Measures for BOP reasons are not negotiable by nature. Their seriousness and the credibility of the motives underlying them would be at stake if it were not so. The removal of barriers for BOP reasons are not dependent on exchange of concessions, but can be achieved unilaterally when conditions improve.

3. Article XVIII(B) measures cannot be equated with measures under the MFA. The best way to help reduce resort to Article XVIII(B) would be to take action to improve the export prospects of developing countries.

4. Countries which avail themselves for protection for BOP reasons have quite a number of possibilities to liberalize imports of textiles and clothing. The BOP situation of a country would not be affected by tariff bindings or actions on licensing.

(c) Subsidies, countervailing and anti-dumping measures

1. There should be no pre-judgement with regard to the distortive effect of subsidies on trade and the need to take action on subsidies. If the question of action on subsidies is taken up, the question of how anti-dumping and countervailing measures are applied should also be examined.
2. It is desirable for more countries to adhere to the Subsidies Code.
3. The point has repeatedly been made in the Sub-Group on Protective Measures that anti-dumping and countervailing measures have been used as a protective device and this should be tackled in this context.

(d) Others

1. "Administrative obstacles" should be added to the list of measures to be examined.
2. "Rules of Origin" should be added to the list of measures to be examined.

C. Transition period

1. If there were some form of a transition régime, consideration might be given to some provision for review during the course of the transition in the light of developments in other GATT fora.

IV. Specific points relating to discussions on Option C

A. General

1. Option C is an option pointing to the direction of liberalization in that it does not contradict the main objective of restoring the full application of GATT rules governing trade in textiles and clothing. This option is a means by which the progressive elimination of the MFA can be dealt with. It is not an option dealing with the perpetuation of the MFA. It concentrates on the liberalization of the existing MFA but that is not an end in itself. It is in effect a phase-out, at the end of which there will be no renewal, when textiles trade will be governed by the normal GATT rules.
2. Option C is not a free-standing option. The objective is Option A. Option C is a route to go to Option A but it is not the only route.
3. Option C provides an interesting intermediary stage on the way to liberalizing trade in textiles and clothing, a temporary structure which will facilitate a transition régime.
4. Option C is not an option because the Ministerial Decision of 1982 aims at liberalization of the MFA after its expiry. It is understood, implied or clear that the MFA and its Protocol have no place at all in the discussion of trade liberalization.

B. Possible approaches towards liberalization

(a) General

1. It is already good enough if the 1981 Protocol were to be extended without its restrictive provisions and that the text would be faithfully implemented. It would represent a great movement towards liberalization relative to the existing situation.

(b) Article 4 agreements

1. Article 4 agreements are more liberal to developed importing countries than to exporting countries in that they permit the application of comprehensive agreements, basket-exit mechanism, anti-surge, etc. It is desirable, in the case of a phase-out framework, that all bilateral agreements be concluded under Article 3. It will be a concrete and substantive aspect for liberalization because the very strict rules for a safeguard mechanism in Annex A of the MFA refers to Article 3 agreements only. A new perishable MFA should start with the elimination of Article 4 agreements which deal with a threat of market disruption. After more than twenty years of restrictions, it is no longer justifiable that any increase in imports can be an unforeseen threat.

2. Article 4 agreements are necessarily more advantageous to exporting countries in the light of the provisions of Article 4, paragraph 3. They permit a certain amount of security in the level of exports, an aspect in trade which is of interest to both importing and exporting countries.

3. One importing country has consistently used Article 4 and a much smaller recourse to Article 3 because it believes that Article 4 is a more liberal approach which will produce more liberal results.

4. The merits of Article 3 and Article 4 agreements hinge on the central question of liberalization and what is meant by liberalization. Past experience shows that concepts tend to get reversed. What is meant to be minima in actual fact becomes maxima and what is meant by balanced becomes unbalanced. Liberalization has to be liberalization in every respect and for every party without exception. It is not a blanket arrangement to allow liberalization in a smaller area to cover a large increase in restraints which has been the pattern in the past.

(c) Product categorization

1. Over-categorization of products is a real problem which has to be dealt with in a credible way.

(d) Article 6

1. Article 6 has been interpreted in a restrictive fashion.
2. It is important to find out the kind of ideas and interpretations for both importing and exporting countries concerning the provisions of Article 6.

(e) Annex A

1. Paragraph III of Annex A needs to be qualified and quantified in an objective manner.

(f) Annex B

1. The provisions in Annex B concerning the reference period have been interpreted and applied in a restrictive fashion.

(g) Others

1. The following possible approaches towards liberalization should be included for examination:
 - the rôle of the TSB;
 - the necessity of following the recommendations of the TSB;
 - how to implement the concept of non-discrimination in accordance with Article 1, paragraph 6 of the MFA.