

Annex III.1

Textile and Apparel Goods

Section 1: Scope and Coverage¹

1. This Annex applies to the textile and apparel goods set out in Appendix III.1.1.1.
2. In the event of any inconsistency between this Agreement and the WTO Agreement on Textiles and Clothing (ATC) or any other existing or future agreement applicable to trade in textile or apparel goods, this Agreement shall prevail to the extent of the inconsistency, unless the Parties agree otherwise.

Section 2: Duty-free Treatment of Certain Goods

The Parties may identify at any time particular textile and apparel goods that they mutually agree fall within:

- (a) hand-loomed fabrics of a cottage industry;
- (b) hand-made cottage industry goods made of such hand-loomed fabrics; or
- (c) traditional folklore handicraft goods.

The importing Party shall grant duty-free treatment to goods so identified, if certified by the competent authority of the exporting Party.

Section 3: Elimination of Existing Quantitative Restrictions

Canada will eliminate, at the entry into force of this agreement, the existing restriction of Costa Rican exports on underwear adopted under the rules of the Multi-Fibre Arrangement and lately notified to the WTO, under the rules of the ATC.

Section 4: Bilateral Emergency Actions (Tariff Actions)²

¹ The general provisions of Chapter II (General Definitions), Chapter III (National Treatment and Market Access of Goods), Chapter IV (Rules of Origin) and Chapter VI (Emergency Action) are subject to the specific rules for textiles and apparel goods set out in this Annex.

² For purposes of Sections 4 and 5:

- (a) “increased quantities” is intended to be interpreted more broadly than the standard provided in Article VI.2.1 (Bilateral Actions), which considers imports “in absolute terms” only. For purposes of these sections, “increased quantities” is intended to be interpreted in the same manner as this standard is interpreted in the WTO Agreement on Textiles and Clothing; and
- (b) “serious damage” is intended as a less stringent standard than “serious injury” under Article VI.2.1 (Bilateral Actions). The “serious damage” standard is drawn from the WTO Agreement on Textiles and Clothing. The factors to be considered in determining whether the standard has been met are set out in Section 4.2 and are also drawn from that Agreement. “Serious damage” is to be interpreted in the light of its meaning in that Agreement.

1. Subject to paragraphs 2 through 5 and during the transition period only, if, as a result of the reduction or elimination of a duty provided for in this Agreement, a textile or apparel good originating in the territory of a Party, or a good that has been integrated into the WTO and entered under a tariff preference level set out in Appendix 6.1, is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the minimum extent necessary to remedy the damage or actual threat thereof:

- (a) suspend the further reduction of any rate of duty provided for under this Agreement on the good; or
- (b) increase the rate of duty on the good to a level not to exceed the lesser of:
 - (i) the most-favoured-nation (MFN) applied rate of duty in effect at the time the action is taken; and
 - (ii) the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement.

2. In determining serious damage, or actual threat thereof, the Party:

- (a) shall examine the effect of increased quantities of those imports on the state of the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, none of which, either alone or combined with other factors is necessarily decisive; and
- (b) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

3. A Party shall deliver without delay to the other Party written notice of its intent to take such action, and on request shall enter into consultations with that Party.

4. The following conditions and limitations apply to any emergency action taken under this Section:

- (a) no action may be maintained for a period exceeding three years or, except with the consent of the Party against whose good the action is taken, have effect beyond the expiration of the transition period;
- (b) no action may be taken by a Party against any particular good originating in the territory of the other Party more than once during the transition period; and
- (c) on termination of the action, the rate of duty shall be the rate that, according to the Schedule for the staged elimination of the tariff, would have been in effect one year after the initiation of the action, and beginning January 1 of the year following the termination of the action, at the option of the Party that has taken the action:
 - (i) the rate of duty shall conform to the applicable rate set out in that Party's Schedule to Annex III.3.1 (Tariff Elimination); or
 - (ii) the tariff shall be eliminated in equal annual stages ending on the date set out in that Party's Schedule to Annex III.3.1 (Tariff Elimination) for the elimination of the tariff.

5. The Party taking an action under this section shall provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. Such concessions shall be limited to the textile and apparel goods set out in Appendix III.1.1.1, unless the Parties otherwise agree. If the Parties are unable to agree on compensation, the exporting Party may take tariff action having trade effects substantially equivalent to the action taken under this Section against any goods imported from the other Party. The Party taking the tariff action shall only apply the action for the minimum period necessary to achieve the substantially equivalent effects.

Section 5: Bilateral Emergency Actions (Quantitative Restrictions)

1. A Party may take bilateral emergency action against non-originating textile or apparel goods that have not been integrated into the WTO and which enter into the territory of the other Party under a tariff preference level (TPL) in accordance with this section and Appendix III.1.5.1.

2. If a Party demonstrates that a non-originating textile or apparel good entered under a tariff preference level set out in Appendix III.1.6.1 is being imported into its territory from the other Party in such increased quantities, in absolute terms or relative to the domestic market for that good, under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good in the importing Party, the importing Party may request consultations with the other Party with a view to eliminating the serious damage or actual threat thereof.

3. The Party requesting consultations shall include in its request for consultations the reasons that it considers demonstrate that such serious damage or actual threat thereof to its domestic industry is resulting from the imports of the other Party, including the latest data concerning such damage or threat thereof.

4. In determining serious damage, or actual threat thereof, the Party shall apply Section 4(2).

5. The Parties shall begin consultations within 60 days of the request for consultations and shall endeavour to agree on a mutually satisfactory level of restraint on exports of the particular good within 90 days of the request, unless the Parties agree to extend this period. The request for consultations shall be accompanied by specific and relevant factual information, as up to date as possible, particularly in regard to the factors stated in paragraphs 2, 3 and 4 of this section. The information shall be related, as closely as possible, to identifiable segments of production and to the reference period set out in paragraph 7. The Party taking the action shall also indicate the specific level at which imports of the product in question are proposed to be restrained; such level shall not be lower than the level referred to in paragraph 7. In reaching a mutually satisfactory level of export restraint, the Parties shall:

- (a) consider the situation in the market in the importing Party;
- (b) consider the history of trade in textile and apparel goods between the Parties, including previous levels of trade; and
- (c) seek to ensure that the textile and apparel goods imported from the territory of the exporting Party are accorded equitable treatment as compared with treatment accorded like textile and apparel goods from non-Party suppliers.³

³ In paragraph 5(c), the term “equitable treatment” is intended to have the same meaning as it has in customary practice under the *WTO Agreement on Textiles and Clothing*.

6. If the Parties do not agree on a mutually satisfactory level of export restraint, the Party requesting consultations may impose annual quantitative restrictions on imports of the good from the territory of the other Party, subject to paragraphs 7 through 13.

7. Any quantitative restriction imposed under paragraph 6 shall be no less than the sum of:

- (a) the quantity of the good imported into the territory of the Party requesting consultations from the other Party, as reported in general import statistics of the importing Party, during the first 12 of the most recent 14 months preceding the month in which the request for consultations was made; and
- (b) 20 per cent of such quantity.

8. The period of any quantitative restriction imposed under paragraph 6 for the first year shall begin on the day after the date on which the request for consultations was made and terminate at the end of the calendar year in which the quantitative restriction is imposed. Any quantitative restriction that is imposed for a period of less than 12 months shall be prorated to correspond to the time remaining in the calendar year in which the restriction is imposed, and the prorated amount may be adjusted in accordance with the flexibility provisions set out in Appendix III.1.5.1.

9. For each successive calendar year that the quantitative restriction imposed under paragraph 6 remains in effect, the Party imposing it shall:

- (a) increase it by six per cent; and
- (b) accelerate the growth rate for quantitative restrictions on cotton, man-made fibre and non-cotton vegetable fibre textile and apparel goods as required by the WTO Agreement on Textiles and Clothing;

and the flexibility provisions set out in Appendix III.1.5.1 apply.

10. A quantitative restriction imposed under paragraph 6 before July 1 in any calendar year may remain in effect for the remainder of that year, plus two additional calendar years. Such a restriction imposed on or after July 1 in any calendar year may remain in effect for the remainder of that year, plus three additional calendar years. No such restriction may remain in effect beyond the transition period or one year following the full integration into the WTO.

11. Neither Party may take an emergency action under this section with respect to any particular textile or apparel non-originating good against which a quantitative restriction is in effect.

12. Neither Party may adopt or maintain a quantitative restriction under this section on a particular textile or apparel good that otherwise would be permitted under this Annex, if that Party is required to eliminate such measure under the WTO Agreement on Textiles and Clothing.

13. Neither Party may take a bilateral emergency action after the expiration of the transition period with respect to cases of serious damage, or actual threat thereof, to domestic industry arising from the operation of this Agreement.

Section 6: Special Provisions

Appendix III.1.6.1 sets out special provisions applicable to certain textile and apparel goods.

Section 7: Definitions

For purposes of this Annex:

average yarn number, as applied to woven fabrics of cotton or man-made fibres, means the average yarn number of the yarns contained therein. In computing the average yarn number, the length of the yarn is considered to be equal to the distance covered by it in the fabric, with all clipped yarn being measured as if continuous and with the count being taken of the total single yarns in the fabric including the single yarns in any multiple (folded) or cabled yarns. The weight shall be taken after any excessive sizing is removed by boiling or other suitable process. Any of the following formulas can be used to determine the average yarn number:

$$N = \frac{BYT}{1,000}, \quad \frac{100T}{Z'}, \quad \frac{BT}{Z} \quad \text{or} \quad \frac{ST}{10}$$

when:

N is the average yarn number,
B is the breadth (width) of the fabric in centimetres,
Y is the metres (linear) of the fabric per kilogram,
T is the total single yarns per square centimetre,
S is the square metres of fabric per kilogram,
Z is the grams per linear metre of fabric, and
Z' is the grams per square metre of fabric.

Fractions in the resulting "average yarn number" shall be disregarded;

exporting Party means the Party from whose territory a textile or apparel good is exported;

flexibility provisions means the provisions set out in Appendix III.1.5.1;

importing Party means the Party into whose territory a textile or apparel good is imported;

integrated into the WTO means subject to the obligations of the WTO Agreement;

product category means a grouping of textile or apparel goods defined in the *Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States, 1995* (or successor publication), published by the United States Department of Commerce, International Trade Administration, Office of Textiles and Apparel, Trade and Data Division, Washington, D.C.;

specific limit means a level of exports for a particular textile or apparel good that may be adjusted in accordance with Appendix III.1.5.1;

square metres equivalent (SME) means that unit of measurement that results from the application of the conversion factors set out in Appendix III.1.6.2 to a primary unit of measure such as unit, dozen or kilogram;

tariff preference level (TPL) means a mechanism that provides for the application customs duty at a preferential rate to imports of a particular good up to a specified quantity, and at a different rate to imports of that good that exceed that quantity;

transition period means the seven-year period beginning on the date of entry into force of this Agreement;

wool fabric means:

- (a) fabric in chief weight of wool;
- (b) woven fabric in chief weight of man-made fibres containing 36 per cent or more by weight of wool; and
- (c) knitted or crocheted fabric in chief weight of man-made fibres containing 23 per cent or more by weight of wool; and

WTO Agreement on Textiles and Clothing means the *Agreement on Textiles and Clothing* which is part of the WTO Agreement.