

NIELS BLOKKER

International Regulation of World Trade in Textiles

lessons for practice
a contribution to theory

MARTINUS NIJHOFF PUBLISHERS

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by

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Leiden, August 1989

Niels Blokker

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CHAPTER 1: INTRODUCTION

1. SUBJECT MATTER OF THIS STUDY

The subject matter of this study is the international regulation of world trade in textiles. "International regulation", because domestic and EEC law concerning this sector of world trade is excluded (for reasons explained below, paragraph 3). "World trade in textiles" in this study essentially refers to all international trade in textiles between countries which are members of the GATT or parties to the textile arrangements.¹ "Textiles" comprises all textile and clothing products.²

For many less-developed countries, as once for developed countries, the textile industry was a "take-off" industry in the industrialization process.³ Its products not only served the domestic market, but also were exported. Since the 1950s textile exports from Japan and some Southeast Asian states increased and calls for protection against these exports were voiced by textile industries in developed countries. Governments in these countries could not respond at will to such calls, since they had submitted themselves to international rules for the conduct of trade policy, formulated in the General Agreement on Tariffs and Trade (GATT).

The unbridled protectionism of the 1930s was the main factor behind the conclusion of the GATT in 1947. The General Agreement is applicable to all trade in goods between the contracting parties; therefore, originally trade in textile products was governed by this Agreement. GATT's main objective is the liberalization of international trade. To this end, the General Agreement curtails the freedom of the contracting parties to impose barriers to international trade. Tariffs, in principle the only trade policy instrument permitted under the General Agreement, have to be reduced in tariff negotiations (Article XXVIII bis). Article XI lays down a general prohibition of quantitative restrictions. Another cornerstone of the General Agreement is the general prohibition to discriminate between contracting parties; this prohibition finds expression in, for example, Article I (unconditional most-favoured-nation treatment) and Article III (national treatment).

-
1. The textile arrangements were also applied in textile trade between these countries and countries which were neither members of the GATT nor parties to the textile arrangements. China is not a member of GATT, but is currently negotiating its admission; it has been a party to the Multi-Fibre Arrangement since 1984. The Soviet Union is neither member of GATT nor party to the textile arrangements. Nevertheless, for stylistic reasons the title of this study refers to "world trade", and not to "international trade".
 2. See the list of abbreviations and definitions (p. 361).
 3. Following Myrdal, in the present study "less-developed countries" is deliberately used instead of "developing countries". Although the latter notation is now commonly employed, it is nevertheless nothing more than a "diplomatic euphemism". "As with few exceptions the countries in question are not developing very fast - if at all - while most of the rich Western countries are continuously developing at a comparatively rapid rate ...". What distinguishes them from developed countries is that they are to a lesser extent developed, not simply that they are developing. (Quotations from Gunnar Myrdal, *Asian Drama - An Inquiry into the Poverty of Nations*, Harmondsworth, Middlesex (England) 1968, Volume III, p. 1841).

At the same time, the General Agreement has a number of clauses to enable member states to escape their obligations in certain circumstances without acting illegally. One of these clauses is Article XIX, permitting importing parties to take safeguard measures (tariffs or quotas) under certain conditions, when domestic producers suffer serious injury from increased imports.

In 1961 and 1962 the Short-Term Arrangement and the Long-Term Arrangement were concluded to establish separate rules for international trade in cotton textiles. In 1973 the Multi-Fibre Arrangement (MFA) extended this special treatment to trade in textiles produced from man-made fibres and wool.

These textile arrangements are the first, and were for a long time the only, treaties to formulate special rules, distinct from normal GATT rules, for one sector of international trade.⁴ The arrangements deviate from the General Agreement mainly in two fundamental respects: quantitative restrictions are allowed and these restrictions can be introduced on a discriminatory basis. This departure from the General Agreement was justified time and again, as a solution "for the next few years" to the "special problems" existing in this sector of trade. The arrangements have been considerably refined in their course of operation, and have evolved into a semi-permanent and increasingly complex subsystem within the GATT legal order. In 1984 Arthur Dunkel, Director-General of GATT, stated:⁵

"The systems of intervention that have evolved under the MFA are so complex that they can only be understood by experts. And these experts communicate with one other in a language which outsiders cannot understand".

The separate framework of rules for international trade in textiles has become a major example of "managed trade" as an alternative to the neo-liberal GATT approach. As two commentators have stressed:⁶

"... textiles and clothing are the *locus classicus* for the global management of international trade. If one wishes to know what can be either hoped or feared from such a process, it is to this sector that one must turn".

The history of international regulation in the field of textile trade highlights the problems involved in regulating change and adjustment in world trade. It is for the members of GATT to find out how to respond adequately to such problems, and what

-
4. From the outset another part of world trade, trade in agricultural products, has taken place under exceptions to GATT rules (e.g. Article XI.2 and the 1955 waiver under Article XXV.5 for the US), but no special rules were formulated for this sector as a whole. Since 1980, separate treaties are in force for three other sectors of international trade: bovine meat, dairy products and civil aircraft.
 5. In an address at the International Round Table on the MFA, Berlin (West), 26 September 1984; subsequently published in The World Economy, December 1984, pp. 361-368, quotation at p. 367.
 6. Donald B. Keesing/Martin Wolf, Textile Quotas against Developing Countries, London 1980, at p. 2. See also Martin Wolf, Managed trade in practice: implications of the Textile Arrangements, in: William R. Cline, Trade Policy in the 1980s, Washington DC 1983, pp. 455-482; at p. 455 Wolf describes the MFA as "the apotheosis of the concept of managed trade". See on the trend towards managed trade: UNCTAD, Trade and Development Report 1988, pp. 75-89. Cf. the 1987 World Development Report of the World Bank, p. 161: "Trade in textiles and clothing has become the paradigm of managed trade".

the role of law should be, in particular the role of GATT's legal order, in tackling these problems.

The textile arrangements never covered all world trade in textiles. Never all textile exporting and importing countries were party to the arrangements; trade with these countries was in principle not covered by the respective textile arrangements.⁷ In addition, quantitative restrictions introduced under the textile arrangements were not the only trade policy instruments affecting world trade in textiles; apart from quotas having a legal basis different from the textile arrangements, other instruments include mainly tariffs, preferential tariffs (by virtue of Generalized Systems of Preferences), subsidies and countervailing duties, and anti-dumping duties. The main subject of this study are the textile arrangements, created to introduce new safeguard options, *in addition to* those under the General Agreement.

The aims of the present study can now be formulated in general terms; a further specification will be given at the end of this chapter. The study has three aims. Firstly, to describe and analyze in detail the origins, structure, development and functioning of the international regulation of world trade in textiles. Secondly, to examine the relationship between the textile arrangements and the GATT, and to extract lessons from the experience in the textile regulation for the current negotiations on an adaptation of Article XIX of the General Agreement. Thirdly, to contribute to theories of public international law⁸ and international economic law.

The remainder of this chapter will develop a broader perspective for the study. Paragraph 2 provides facts and figures on the history and development of the textile industry and of world trade in textiles. Subsequently, in paragraph 3, the theoretical framework will be set out, as a basis on which, in paragraph 4, the precise aims and structure of this study can be formulated.

2. MAIN DEVELOPMENTS IN TEXTILE PRODUCTION AND WORLD TRADE IN TEXTILES

2.1. SOME DEVELOPMENTS BEFORE 1900

Industry

"Come all you cotton weavers, your looms you may pull down,
You must get employed in factories, in country or in town,
For our cotton masters have found out a wonderful scheme,
These calico goods now wove by hand they're going to
weave by steam".⁹

7. "In principle", because - as will be further discussed in chapters 3 and 4 - the textile arrangements provided for rules on circumvention of the arrangements, inter alia by non-participants. An impression of the scope of the MFA in relation to world trade in textiles in 1984 is given in GATT, *International Trade '85-'86*, p. 58.

8. In the following, for reasons of brevity, "international law" is used instead of "public international law".

9. K. Dallas, *One hundred Songs of Toil*, 1974, p. 97, 119; quoted in: Roderick Floud and Donald McCloskey (eds.), *The Economic History of Britain since 1700*, Vol. I, Cambridge 1981, pp. 103-127, at pp. 111-112.

The textile industry has a long history. Clothing was already produced in early civilizations like the Egyptian, the Greek, the Roman and the Chinese. In the Middle Ages, many changes occurred in the (still small-scale) textile industry in Western Europe. Three important changes were: the spinning wheel was gradually substituted for the hand spindle; the horizontal loom coming from the East replaced the vertical loom; and the so-called "fulling"-process (to remove the natural grease in wool and to make the fibres "mat") originally was carried out by people trampling the cloth, but since the eleventh century this was more and more done by "fulling mills", with wooden hammers driven by water-wheels.¹⁰

Nevertheless, it was not until the end of the eighteenth century that the cotton industry in Britain developed into a large-scale industry, consisting of huge factories ("mills", derived from the early fuller mills), with mechanized mass-production and employing a million and a half people, fundamentally different from the traditional craftsmanship.¹¹ The spinning and carding of cotton, and after 1815 increasingly also the weaving, was concentrated in these factories. "In 1830 "industry" and "factory" in anything like the modern sense still meant almost exclusively the cotton areas of the United Kingdom".¹²

In fact, the Industrial Revolution was mainly the revolution of the cotton industry in Britain.¹³ A number of factors explain this leading role of the cotton industry. The two main factors apply also to the rise of the textile industry in other countries, where also this industry took the lead in the process of industrialization. First, clothing - apart from being a symbol for wealth or power -¹⁴ has always been a basic human necessity, in life, and in ancient Egypt even in the "afterlife".¹⁵ This function of clothing as a basic human necessity explains its occurrence in current human rights standards. Article 25.1 of the Universal Declaration of Human Rights stipulates: "Everyone has the right to a standard of living adequate for the health, well-being of himself and of his family, including food, clothing, ...".¹⁶ This potential mass-consumption is one explanation for the rise of a textile industry.¹⁷ In the Industrial Revolution this market was considerably enlarged since the British cotton industry had extensive export markets at its disposal.¹⁸ The importance of such export markets in addition to domestic consumption was already recognized earlier; without an expanding market abroad, the manufacturers would have soon "arrived at that state at which a

10. Richard L. Hills, Power in the Industrial Revolution, Manchester 1970, p. 2; see more in general on the early development of the cotton industry in Britain: S.D. Chapman, The Cotton Industry in the Industrial Revolution, Tiptree, Essex 1972, in particular pp. 11-16.

11. E.J. Hobsbawm, The Age of Revolution, London 1962, p. 53.

12. Ibidem; as to the precise role of the cotton industry in the general growth of the British economy, opinions diverge; see Chapman, op. cit., pp. 62-72.

13. See for a number of data on the development of the British cotton industry: Phyllis Deane/W.A. Cole, British Economic Growth 1688-1959, Trends and Structure, Cambridge 1962, in particular pp. 182-214.

14. E.g. silk, which was "for long an exotic luxury to the English. Lustrous to the eye, soft to the touch, and high in price, silk fabrics, here as elsewhere, symbolized wealth and power", from: D.C. Coleman, Courtaulds, an economic and social history, part I, Oxford 1969, p. 9.

15. Rosalind Hall, Egyptian Textiles, Aylesbury, Bucks 1986, p. 7: "... everyday dress can be found in a funerary context, used both to clothe the deceased and to provide him or her with an accompanying wardrobe in the afterlife".

16. This is repeated and somewhat elaborated in the 1966 International Covenant on Economic, Social and Cultural Rights, Article 11.

17. This factor, among others (the availability of raw cotton and cheap labour), plays an important role in the explanation of the rise of textile industries in less-developed countries; e.g. Rajat K. Ray, Industrialization in India, Delhi 1979, p. 59.

18. See further below.

pause must naturally have ensued, and beyond which they must have advanced with the slow and gradual increase of population".¹⁹

A *second* factor in explaining the leading role of the cotton textile industry are the low investment costs, generally required to start industrial textile production (although this is not true for the industries producing man-made fibres). This applies both to the early cotton mills in Britain as well as to textile industries established in less-developed countries since the 1950s. In a number of branches of the textile industry only limited investments in capital goods are necessary.

The following statistics illustrate the importance of the British textile industry in the first half of the nineteenth century. The output of cloth in Britain rose from 40 million yards in 1785 to 2,025 million yards in 1850. And, between 1816 and 1848, cotton manufactures formed between 40 and 50 per cent of the annual declared value of all British exports.²⁰

Trade

Trade enabled countries to acquire raw materials and to sell the processed textile products abroad. In the history of international trade in textiles abundant examples can be found of issues that still predominate in current discussions on the Multi-Fibre Arrangement, such as the debate on the advantages and disadvantages of protectionism.

To illustrate these functions of textile trade: in the Middle Ages, Flemish cities imported English wool, then considered to be the finest in Europe. In the nineteenth century, Britain's cotton mills were supplied with, in particular, American raw cotton.²¹ Processed textile products were not only sold in the domestic market, but also abroad. Cloth from Flanders and Leyden was famous throughout Europe, long before the Industrial Revolution.

Developments in British textile trade with India are worthy of particular attention in this context. Originally, India had a flourishing textile industry. "Spinning and weaving were the national industries of India down to the commencement of the nineteenth century".²² Indian cotton goods, named calicoes, were exported and widely sold in Europe. The value of trade in calico increased rapidly from £ 15,000 in 1621 to £ 150,000 in 1677.²³ However, the British woollen industry, seriously affected by the great popularity of printed cotton goods around 1700, claimed to be adversely affected by these imports of calicoes. In line with mercantilist policies, these protests

19. By Lewes Roberts, who in 1641 published his Treasure of Traffike; quoted in Hills, op. cit., p. 9.

20. Hobsbawn, op. cit., p. 54. For the figures on output of cloth he quotes M. Mulhall, Dictionary of Statistics (1892), p. 158.

21. This supply of cotton was closely connected with slave trade. "The African slaves were bought, in part at least, with Indian cotton goods ... The plantations of the West Indies, where the slaves were taken, provided the bulk of the raw cotton for the British industry, and in return the planters bought Manchester cotton checks in appreciable quantities", in: Hobsbawn, op. cit., pp. 49-50. Also Chr. Hill, Reformation to Industrial Revolution, A Social and Economic History of Britain, London 1967, p. 207.

22. Romesh Dutt, The Economic History of India, Vol. II, London 1903, p. 517.

23. Hills, op. cit., p. 7.

in 1700 culminated in an Act that imposed heavy duties on all painted, dyed or stained calicoes from India, effectively pricing them out of the market.²⁴

The rise of the British cotton industry from the end of the eighteenth century was facilitated by high duties or prohibitions on imports of Indian cotton. Without such protection, "the mills of Paisley and Manchester would have been stopped in their outset, and could scarcely have been again set in motion, even by the power of steam", according to H.H. Wilson, historian of India.²⁵

In addition, India was forced to import British processed cotton goods; and successfully so, as can be seen from the following table, showing the value of cotton goods alone exported from England to ports east of the Cape of Good Hope (mainly to India) from 1794 until 1813:²⁶

Table 1.1

Year ending 5th January				Year ending 5th January			
1794	.	.	£ 156	1804	.	.	£ 5,936
1795	.	.	717	1805	.	.	31,943
1796	.	.	112	1806	.	.	48,525
1797	.	.	2,501	1807	.	.	46,549
1798	.	.	4,436	1808	.	.	69,841
1799	.	.	7,317	1809	.	.	118,408
1800	.	.	19,575	1810	.	.	74,695
1801	.	.	21,200	1811	.	.	114,649
1802	.	.	16,191	1812	.	.	107,306
1803	.	.	27,876	1813	.	.	108,824

In a British parliamentary inquiry, held in 1813, Warren Hastings (Governor-General for India from 1774 to 1823) was asked for his opinion on "the probability of a demand for European commodities by the population of India, for their own use". Hastings replied:

"The supplies of trade are for the wants and luxuries of a people; the poor in India may be said to have no wants. Their wants are confined to their dwellings, to their food, and to a scanty portion of clothing, all of which they can have from the soil that they tread upon".²⁷

But his opinion was not shared by Parliament, that in fact favoured the continuation of the trend of rising exports of cotton goods to India. The real object of this Parliamentary inquiry was to promote the interests of the manufacturers of England.²⁸

In 1821 a similar question arose in a parliamentary committee investigating the

24. Ibidem, p. 10.

25. Quoted in Dutt, op. cit., Vol. I, London 1901, pp. 262-263.

26. Ibidem, p. 257.

27. Ibidem, pp. 257-258.

28. Ibidem, p. 268.