

Memo: MFN Commitments and Textile Agreements

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★ MFN Commitment in the BTA.

The BTA's Most Favored Nation (MFN) obligation for goods, contained in Chapter I, Article 1, requires each Party to accord, "immediately and unconditionally," to products of the other Party treatment no less favorable than that accorded to like products from a third country, specifically relating to tariffs, customs formalities, taxes, laws affecting the sale of products, and most quotas. Therefore, if one Party (e.g., Vietnam) agrees to reduce tariffs on the product of a third country (e.g., the EU), it must immediately accord that tariff reduction to like product of the other Party (e.g., the U.S.). Failure to do so would amount to a violation of MFN. The BTA also contains an MFN obligation for services and service suppliers in Chapter III, Article 2. MFN is viewed as a bedrock principle of international trade law. By agreeing to provide MFN, a country promises to treat a product no less favorably than it treats a like product from a third country.

★ Are there exceptions to the MFN principle in the BTA?

Yes, limited exceptions. According BTA Chapter I, Article 1.3, the MFN obligation does not apply to advantages accorded by either Party by virtue of membership in a customs union or free trade area. Therefore, Vietnam is not obliged to accord to the United States the tariff advantages it accords to its AFTA partners. Likewise, the United States is not obliged to accord to Vietnam the advantages it accords to Canada, Mexico, Israel, Singapore, Chile, and other U.S. free trade partners. MFN also does not apply to advantages accorded to third countries for the facilitation of frontier traffic.

★ Are U.S. and Vietnamese textiles exempt from MFN under the BTA?

According to BTA Chapter I, Article 1.4, the MFN obligation does not apply to the application of *quantitative restrictions* (i.e., quotas) or licenses affecting textile products. In other words, the BTA allows either Party to impose non-MFN textile *quotas* on textile imports. However, this exemption does not extend to any other aspect of textile trade. The exemption does not apply to textile tariffs.

★ Can matters covered by a third party textile agreement be exempt from the MFN obligation?

Only provisions of textile agreements establishing quantitative restrictions for textiles are exempt from the BTA's MFN obligation. By contrast, provisions of textile agreements affecting other issues (such as tariff rates for textiles, tariff rates for non-textile products, or services concessions) are not exempt from the BTA's MFN obligation. Any advantage other than textile quotas accorded by one BTA Party to a third country as part of a textile agreement, must be accorded to the other BTA Party.

★ Do other agreements – such as the WTO Agreement on Textiles and Clothing (ATC) or the Multifibre Arrangement (MFA) – provide MFN exemptions for products covered by textile agreements?

The MFA provides rules for the imposition of textile quotas, either through bilateral agreements or unilateral actions, when surges of imports cause market disruption in importing countries. It does not contain any MFN exemption for tariff rates for either textile or non-textile products otherwise covered in a textile quota agreement. Likewise, the ATC establishes a phase-out schedule for existing textile quotas and provides detailed rules for textile safeguard actions and circumvention. It provides no MFN exemptions for tariffs for textile or non-textile products otherwise covered in a textile quota agreement. Neither the ATC nor MFA affects the BTA's MFN obligations. Tariff concessions for both textile and non-textile products granted by one BTA Party to a third country in textile agreements are still subject to MFN provisions and must be granted to the other BTA Party immediately and unconditionally.

★ What will be the impact of WTO Membership on textile quotas?

WTO accession will allow Vietnam to avail itself of one of biggest advantages the WTO provides textile exporting countries, which is the elimination of all textile quotas between WTO Members beginning on 1 January 2005. Until the Uruguay Round, textile quotas fell outside the scope of normal GATT rules and were instead governed by the Multifibre Arrangement (MFA) and predecessor agreements. Under the MFA, countries were able to conclude bilateral textile quota agreements, which discriminated between exporters on quota levels. However, one of the key results of the Uruguay Round negotiations was the landmark Agreement on Textiles and Clothing (ATC) under which WTO Members agreed to integrate the textiles and apparel sector into GATT rules and phase-out all textile and apparel quotas over a ten year period, ending on 31 December 2004.