

TREADING WATER IN THE CARIBBEAN:  
RECENT DEVELOPMENTS IN UNITED STATES  
TEXTILE AND APPAREL TRADE POLICY

DAVID M. LAZARUS\*

1. INTRODUCTION

Textiles and apparel currently represent the principal United States import from the Caribbean Basin.<sup>1</sup> Despite an overall decline in imports from the region since 1984, the value of textile and apparel imports from Caribbean nations has more than doubled since 1985. In 1990, textile and apparel imports constituted 26.7 percent of all U.S. imports from the region.<sup>2</sup> United States textile and apparel imports from the Caribbean Basin increased 14.4 percent from 1989, reaching \$2.0 billion in 1990.<sup>3</sup> Demand for Caribbean textile and apparel products continues to grow owing to proximity, low production costs and market access advantages over other suppliers.<sup>4</sup>

The development of the Caribbean Basin's apparel and textile industries has been intricately connected with United States regional trade policy. United States interests in the region are substantial. The Caribbean Basin is the third border of the United States, the second largest source of illegal immigration, and a vital sea passage through which much of the nation's oil imports travel. Since the 1980s the United States has pursued regional economic development as a means of protecting its own interests and advancing the economic progress of the region's nations.<sup>5</sup>

A renewed focus on United States trade policy in the Caribbean Basin is important at this time due to changes presently occurring in world trading patterns. Despite years

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\* J.D. Candidate, 1992, University of Pennsylvania Law School; A.B., 1989, Harvard College.

<sup>1</sup> 2322 U.S.I.T.C. ANN. REP. ON THE IMPACT OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT ON U.S. INDUSTRIES AND CONSUMERS 2-7 (1991).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 2-9.

<sup>4</sup> *Id.*

<sup>5</sup> Thomas L. Raleigh III, *The US Caribbean Basin Initiative*, 15 INT'L BUS. LAW. 136, 136 (1987).

of effort, a lag in the industrial development of the Caribbean Basin and other less developed nations persists. New trading blocs are emerging in the Pacific Rim and as a result of the pending unification of the European Community. Furthermore, both the collapse of the Warsaw Pact and the opening of Eastern Europe are likely to create trade opportunities that could distract investors and policy-makers from the trade problems of the Caribbean.

This Comment discusses recent developments in the United States textile and apparel trade policy in the Caribbean and offers assessments of the potential impact on industries located in the Caribbean Basin. The first section describes the Caribbean Basin Initiative<sup>6</sup> and the trade regime under which the region's apparel and textile industries have developed. The second section outlines the Enterprise for the Americas Initiative,<sup>7</sup> recently announced by President Bush, which contemplates a hemisphere-wide free trade zone and the creation of a North-South trading bloc.

World textile and apparel trade is currently governed by the Multi-Fiber Arrangement (the "MFA")<sup>8</sup> and a web of bilateral trade agreements, which restrict free trade in textiles and apparel. These trade agreements constitute a significant departure from the general principles of free trade outlined under the General Agreement on Trade and Tariffs ("GATT").<sup>9</sup> Proposals to eliminate the MFA are the most important recent development in international textile.

Textile negotiators at the presently stalled Uruguay Round negotiations on the renewal of GATT have focused on proposals to reintegrate the MFA into GATT by phasing out world-

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<sup>6</sup> Caribbean Basin Initiative, Pub. L. No. 98-67, 97 Stat. 384 (1983).

<sup>7</sup> OFFICE OF THE WHITE HOUSE PRESS SECRETARY, PRESS RELEASE, TEXT OF REMARKS BY THE PRESIDENT ON THE ENTERPRISE FOR THE AMERICAS ADDRESS (June 27, 1990).

<sup>8</sup> Arrangement Regarding International Trade in Textiles, Dec. 20, 1973, 25 U.S.T. 1001, T.I.A.S. No. 7840 (hereinafter "MFA"); *extended* Dec. 14, 1977, 29 U.S.T. 2287, T.I.A.S. 8939 (hereinafter "MFA II"); *extended* Dec. 22, 1981, T.I.A.S. No. 10,323 (hereinafter "MFA III"); *extended* July 31, 1986, GATT Doc. COM.TEX/W/183 (hereinafter "MFA IV").

<sup>9</sup> Protocol of Provisional Application of the General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A 2051, T.I.A.S. No. 1700, 55 U.N.T.S. 308.

wide restrictions on trade in textiles and apparel.<sup>10</sup> The phaseout of these restrictions will change the current legal structure of international textile trade. The mechanism of the phaseout, as well as its ultimate terms, has the potential to protect, to harm, or even to destroy the textile and apparel operations which currently exist in the Caribbean Basin. These concerns are addressed in the third section of the Comment.

The Comment concludes that apparel and textile industries in the Caribbean Basin will continue to develop as they have in the past. However, ongoing free trade negotiations and the pending phaseout of the MFA are likely to increase competition in apparel trade and could adversely affect the Caribbean Basin's competitive position. The long-term future of the industry remains uncertain, pending the determination of the duration and exact mechanism that will govern the phaseout of the Multi-Fiber Arrangement.

## 2. THE CARIBBEAN BASIN INITIATIVE

### 2.1. *The Initiative*

President Reagan announced a United States proposal for a "Caribbean Basin Initiative" in February, 1982.<sup>11</sup> Calling the Initiative "an economic program that integrates trade, aid and investment," the President proposed "a long-term commitment to countries of the Caribbean and Central America."<sup>12</sup> Congress enacted the trade aspects of the President's proposal in the "Caribbean Basin Economic Recovery Act" (the

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<sup>10</sup> See, e.g. Statement by the United States Delegation at the Meeting of the Negotiating Group on Textiles and Clothing, 21 Sep. 1989, MTN.6N6/N64/W/26.

<sup>11</sup> *President Reagan's Address to Organization of American States, Feb. 24, 1982, Announcing Caribbean Basin Initiative, and Excerpts of White House Fact Sheet on Initiative*, Int'l Trade Rep. (BNA), No. 397, at 609 (March 2, 1982) [hereinafter "CBI Announcement Speech"].

<sup>12</sup> CBI Announcement Speech, *supra* note 11, at 611. The President's specific proposals included (1) free trade for Caribbean Basin products exported to the U.S., with the exception of textile and apparel products covered under other agreements; (2) tax incentives to promote investment and bilateral investment treaties; (3) increased concessional aid up to \$350 million; (4) technical assistance and training to promote private sector, local enterprise; (5) encouragement of other nations to increase aid; and (6) measures to benefit Puerto Rico and the Virgin Islands. *Id.*

"CBERA" or "Caribbean Basin Initiative" or "CBI") on August 5, 1983.<sup>13</sup> The Caribbean Basin Initiative arose out of the United States' interest in promoting development and increasing the stability of small, developing and newly independent nations. As early as 1981, massive illegal immigration from the Caribbean, perceived Communist infiltration in the region, and the impact of escalating oil costs on fragile Caribbean economies led the United States to consider strategies for protecting U.S. interests in its "backyard" by promoting stable economies in the region.<sup>14</sup>

In general, an importer's primary means of controlling the flow of goods into its markets are tariffs and quotas. Whereas quotas control trade flows by setting quantitative limits on the amount of a product that may be imported, tariffs limit imports by placing a duty on imported goods, increasing their costs and reducing their ability to compete in the marketplace. In general, high tariffs and low quotas on a product discourage free trade. Additionally, the impact of a reduced tariff might be nullified by a corresponding decrease in quota allowances, and conversely the impact of more generous quotas might be nullified by increased tariffs. In the United States, quotas on textiles and apparel products are established through bilateral agreements negotiated between trading partners under the MFA. Tariffs are established by Congress and implemented through the Harmonized Tariff Schedule.<sup>15</sup>

The CBERA created an executive power to eliminate tariffs on certain products imported from Caribbean nations<sup>16</sup> and

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<sup>13</sup> Pub. L. No. 98-67, 97 Stat. 384 (1983).

<sup>14</sup> Raleigh, *supra* note 5. See generally CBI Announcement Speech, *supra* note 11.

<sup>15</sup> 19 U.S.C. § 1202 (1988 & Supp. 1991).

<sup>16</sup> For the purposes of this paper, the "Caribbean Basin" is defined to include the following countries which are designated beneficiaries under CBERA as of January 1, 1991: Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, the Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, the Netherlands Antilles, Nicaragua, Panama, Saint Christopher-Nevis (St. Kitts), Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago. U.S.I.T.C. ANN. REP. *supra* note 1, at 1-2.

The President has the discretion to designate eligible countries that have met the criteria of economic and/or investment reforms required under the Act. These criteria include non-Communist government; no expropria-

designated by the legislation.<sup>17</sup> Through tariff reduction, the CBERA sought to promote the economic development of the Caribbean region by encouraging manufacturing and increasing exports.<sup>18</sup> The CBERA program tariff reductions were to remain in effect until 1995.

Products were specifically exempted from the CBERA's coverage in areas where an industry of the United States required special protection.<sup>19</sup> The most significant exempted area was trade in textile products. As a result of this exemption, trade in textiles and apparel continued to be governed by bilateral agreements negotiated under the MFA.

## 2.2. Sections 807 and 807A of the United States Tariff Code

Although trade in textiles and apparel was not covered by CBERA, a large number of apparel imports from the Caribbean were already receiving the benefits of lower duties allowed under Section 807<sup>20</sup> of the U.S. Tariff Code. Section 807,

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tion of U.S. property, cooperation with U.S. drug enforcement efforts, adequate protection of intellectual property rights, recognition of worker collective bargaining rights; and the establishment of self-help measures. Raleigh, *supra* note 5, at 137(3).

<sup>17</sup> Pub. L. No. 98-67, 97 Stat. 384 (1983).

<sup>18</sup> The CBERA contains strict rules of origin to insure that gains from trade benefit Caribbean exporters. These rules require a minimum of 20 percent local content, direct importation into the United States, and substantial transformation of a product prior to its importation. These rules are designed to prevent "pass-through" operations which, in effect, transfer the preferential treatment aimed at CBI beneficiaries to other suppliers.

In the Caribbean Basin textile trade, pass-through operations are most likely to be established by large exporters from the Far East—Hong Kong, South Korea, and Taiwan—known as the "Big Three", whose textile trade is subject to large restrictions. These exporters would establish operations in the Caribbean to gain increased or more preferential access to the United States market than their quota or tariff structure allows. Rules of origin attempt to limit this circumvention of tariffs or quotas by requiring a substantial transformation of products prior to their exportation. Pass-through operations are generally disliked by domestic manufacturers, but are likely to be promoted by Caribbean nations to the limits allowed under the rules of origin.

<sup>19</sup> Limits were also placed on imports of sugar and other perishable products. 19 U.S.C. § 2703(f)(5). Safeguard measures were created to allow restoration of tariffs on products covered by CBERA upon a showing that imports were a substantial cause of serious injury or a threat to domestic industries. *Id.*

<sup>20</sup> Harmonized Tariff Schedule § 9802, 19 U.S.C. § 1202 (1978 & Supp. 1991).

which is not limited to textiles or to any particular nation or group of nations, relieves manufacturers of duty payable on the value of goods assembled overseas from parts manufactured in the United States when those goods are reimported into the United States as finished products.<sup>21</sup>

In a typical Section 807 apparel operation, fabric is cut by American workers in domestic manufacturing facilities, and is then shipped to Caribbean nations where the fabric pieces are assembled in facilities that are owned by either American or foreign concerns. The finished products are then shipped back into the United States, with duty paid only on the value added in the CBERA assembling nation.

Apparel assembly in the Caribbean Basin has been the primary beneficiary of Section 807.<sup>22</sup> Greater restrictions on trade and increased costs of textile and apparel imports from traditional Far Eastern sources have contributed to this growth.<sup>23</sup> In 1990, the value of textile and apparel imports on a customs value basis from CBERA beneficiaries were nearly two-and-one-half times their comparable value in 1986.<sup>24</sup> The proximity of the Caribbean Basin to the United States and the Section 807 tariff advantage have increased the Caribbean Basin's share of total United States textile and apparel imports from three percent to six percent between 1986 and 1990.<sup>25</sup> Textiles and apparel now represent the principal United States import from CBERA-designated countries.<sup>26</sup>

Caribbean apparel export operations have grown in response to increased investment from the United States and from the Far East. However, due to the predominance of

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<sup>21</sup> Under this provision, "an article which has been assembled abroad is subject to duty on the freight and insurance that is paid to get the components and supplies from the U.S. port of exportation to the factory door plus the cost of labor in that foreign country. To this will be added the cost of any assists (such as a sewing machine which is given to the factory free of charge)." Norman E. Gelber, *Deciphering the CBI and Tariff Nomenclature*, BOBBIN, July 1989, at 20.

<sup>22</sup> P. STEELE, *THE CARIBBEAN CLOTHING INDUSTRY* 49 (1988).

<sup>23</sup> STEELE, *supra* note 22, at 2.

<sup>24</sup> U.S.I.T.C. ANN. REP., *supra* note 1, at 2-9.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* Apparel imports predominate over textiles, which include yarns and fabrics.

United States investment, the industry's development has been patterned largely upon the requirements of the United States market and the Section 807 program, with apparel assembly operations predominating over weaving and other textile manufacturing.<sup>27</sup> Furthermore, Caribbean exporters remain heavily dependent on the United States market, having failed to develop significant relationships with other trading partners. Therefore, the viability of the Caribbean Basin textile and apparel industry continues to depend heavily on United States regional trade policy, and in particular, on provisions that affect apparel assembly operations.<sup>28</sup>

In the early 1980s, domestic apparel manufacturers began to show an increased interest in Section 807 operations to reduce labor costs and increase their competitiveness. Domestic producers also showed increased concern over the activities of Far Eastern investors in the Caribbean Basin.<sup>29</sup>

Although many existing apparel assembly operations were already benefitting from the lower tariffs under Section 807, domestic manufacturers and Caribbean Basin operators began to pressure for an expansion of the CBERA "no-duty" provisions to Section 807 and non-Section 807 apparel imports.<sup>30</sup>

Instead of reducing or eliminating existing tariffs, President Reagan announced in February 1986 a "Special Access Program" to increase quota allowances on restricted textile and apparel imports from the Caribbean Basin.<sup>31</sup> Under the program, textile and apparel products assembled in CBERA beneficiary countries from goods cut in the United States from

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<sup>27</sup> STEELE, *supra* note 22, at 1.

<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.* at 53-55.

<sup>30</sup> *Id.* See also Joyce E. Santora, *USAIC Addresses Real-World 807*, BOBBIN, May 1989, at 98-100. The Apparel Industry Council, representing domestic apparel manufacturers, was successful in lobbying for the inclusion of a short-supply provision in CBI II legislation, and has continued to play an active role as an advisor on legislative issues that affect the industry.

<sup>31</sup> Raleigh, *supra* note 5, at 138. Although the Special Access Program was not implemented under the CBERA, the legislative history of the Act indicates that in lieu of duty-free treatment for textiles, provisions were to be made to grant more liberal access levels for textile and apparel exports of CBERA beneficiaries. See Brenda A. Jacobs, *New CBI Legislation Proposes Duty-Free GALs*, BOBBIN, May 1989, at 26.

domestically produced fabric<sup>32</sup> receive effectively unlimited access to the U.S. market.<sup>33</sup>

Under the "Special Access Program," also known as "Section 807A," countries may obtain, through bilateral agreements, guaranteed access levels ("GALs") for eligible products in excess of levels negotiated or allowed under the MFA. GALs are established solely on the basis of the exporter's capacity to produce, and may be increased upon request, effectively creating unlimited access to the United States market for conforming goods.<sup>34</sup> In exchange, the United States has indicated its intention to impose tighter restrictions on other categories of goods, and to make increased use of the safeguard mechanisms available under the MFA.<sup>35</sup>

With the exception of some customs bureaucracy, Sections 807 and 807A have accomplished many of their goals. The development of outward processing operations has expanded both the manufacture and the assembly of apparel in the Caribbean. Textile and apparel exports to the United States from the region totaled \$1.73 billion in 1989.<sup>36</sup> Unlimited access under Section 807A, reduced tariffs under Section 807 and access and cost advantages over Far Eastern suppliers have enabled the Caribbean to carve out a protected niche exporting apparel to the United States. The continuation of these advantages is important to the continued growth and security of regional apparel industries.<sup>37</sup>

Sections 807 and 807A have also benefitted producers in the United States. Combined with continued restrictions on

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<sup>32</sup> Harmonized Tariff Schedule § 9802, 19 U.S.C. § 1202 (1978 & Supp. 1991). Under Section 807, goods cut from imported fabric are eligible for duty reductions. However, to be eligible under the "Special Access Program," the fabric must be domestically produced. *Id.* This provision reflects the domestic weaving industry's concern over the use of imported fabric.

<sup>33</sup> STEELE, *supra* note 22, at 56.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* These provisions are directed at preventing pass-through operations of Far Eastern suppliers located in the Caribbean. *See supra* note 18.

<sup>36</sup> Ken I. Boodhoo, *The Caribbean*, BOBBIN, November 1990, at 54.

<sup>37</sup> *See Id.* at 64. *See also* STEELE, *supra* note 22, at 4.



Big Three import levels,<sup>38</sup> domestic manufacturers have benefitted from low cost labor supplied by Caribbean workers that has enabled them to remain competitive with other world suppliers.<sup>39</sup> Apparel reimported under Sections 807 and 807A has largely been made from domestically produced fabric. Furthermore, the development of the Caribbean textile industry has developed in a highly specialized manner, where apparel-assembly operations predominate, thus protecting other operations of domestic manufacturers, such as weaving, from new competition.<sup>40</sup>

### 2.3. Recent Developments: The CBI II Legislation

The CBERA was recently extended by Congress in the Customs and Trade Act of 1990,<sup>41</sup> but without several proposals which were designed to expand its coverage. As introduced by Representative Sam Gibbons, the Caribbean Basin Economic Recovery Act of 1989 ("CBI II"),<sup>42</sup> proposed several changes to the existing CBI program. The most significant of these proposals included: (a) the extension of duty-free treatment to textile and apparel products entering the United States under Section 807 and 807A; (b) the codification of the "Special Access Program"; (c) a "short-supply" provision for the duty-free entry of 807 and 807A products assembled from foreign fabric that is cut in the United States when that fabric is determined to be a type not formed in the United States or where the fabric, although formed in the United States is in critical shortage; and (d) phrasing to deal with domestic concern over pass-through operations and quota allocations by

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<sup>38</sup> Protectionist sentiment in Congress is evidenced by the passage of the Textile, Apparel and Footwear Trade Act of 1990, which was recently vetoed by President Bush. The act contained provisions which would have imposed sharper restrictions on the imports of clothes, textiles and shoes. Peter Passell, *Apparel Makers' Last Stand?*, N.Y. TIMES, Sept. 26, 1990, at D2.

<sup>39</sup> Products sourced most effectively in the Caribbean as opposed to the Far East, generally require a substantial amount of workmanship and labor. Low cost labor in the Caribbean and reduced duties under 807 and 807A give the region a competitive edge. *Manuel Gaetan, Going for the Gold in 807/CBI*, BOBBIN, June 1988, at 88-90.

<sup>40</sup> STEELE, *supra* note 22, at 4.

<sup>41</sup> Customs and Trade Act of 1990, 19 U.S.C. § 2701-06 (Supp. 1991).

<sup>42</sup> H.R. 1233, 101st Cong., 1st Sess. (1989).

Caribbean nations to East Asian operations in the Caribbean.<sup>43</sup>

As enacted, the CBI II legislation repealed the 1995 termination date of the 1983 CBERA and extended its operation indefinitely.<sup>44</sup> However, due to pressure from apparel unions and domestic producers, the legislation as passed failed to extend duty-free treatment to textile and apparel products, failed to codify the GAL program, and contained no short-supply provision. Although duty on textiles and apparel imported under Sections 807 and 807A is already low, the exemption of these products from duty would most likely have increased participation in the programs. A short-supply provision would have expanded the range of fabrics available for use in CBI operations.

One provision of CBI II as passed could increase investment in the Caribbean textile and apparel industry. Section 227 requires that the Puerto Rican government invest at least \$100,000,000 annually in new projects in CBI countries.<sup>45</sup> Since 1987, a "complementary plants" program created under Section 936 of the Internal Revenue code has provided low cost capital financing for the construction of new manufacturing operations in CBI beneficiary countries.<sup>46</sup> This program has led to increased investment in Section 807 operations in CBI countries.<sup>47</sup>

Although CBI II failed to expand duty-free access and failed to codify Section 807A, the Caribbean Basin is likely to continue to enjoy the trade advantages which have encouraged the growth of a prosperous and important apparel assembly industry, and to a lesser extent, a textile industry. Apparel exporters based in the region enjoy unlimited access to the United States with regard to products assembled from United States fabric under Section 807A, lower tariffs on Section 807 exports, and additional cost and access factors that enable the region to compete effectively in the world market. These advantages, in an international trade environment governed by restrictions on free trade under the MFA, have enabled the

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<sup>43</sup> *Id.* See also Jacobs, *supra* note 31, at 28-32.

<sup>44</sup> 19 U.S.C. § 2701-06 (Supp. 1991).

<sup>45</sup> Customs and Trade Act of 1990, 19 U.S.C. §§ 2701-2706 (Supp. 1991).

<sup>46</sup> I.R.C. § 936 (West 1987).

<sup>47</sup> STEELE, *supra* note 22, at 3.

Caribbean Basin apparel assembly and textile industries to become the region's primary exporters.

### 3. THE ENTERPRISE FOR THE AMERICAS INITIATIVE

#### 3.1. *A Vision of Free Trade*

The growth of the Caribbean Basin industry has largely been based on Section 807's preferential tariff treatment and Section 807A's guaranteed access levels. The operation of these programs has created the advantages that are now enjoyed by regional apparel operators and that continue to spur investment in the region.<sup>48</sup> Yet the dependence of the Caribbean apparel industry on preferential treatment and United States policy leaves the region exposed to risks if those policies change.

One source of that change may emerge from the "Enterprise for the Americas" initiative (the "ETA") announced by President Bush on June 27, 1990.<sup>49</sup> The ETA proposed a new economic partnership between the United States and the nations of the Western hemisphere to build upon "a rising tide of democracy" and recent free market economic reforms "never before witnessed in the history of this hemisphere."<sup>50</sup>

Calling for "trade—not aid,"<sup>51</sup> the ETA proposed three strategies to increase intra-hemispheric trade and promote economic development in Latin America and the Caribbean: (1) investment, (2) debt reduction and (3) trade.<sup>52</sup> In the area of

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<sup>48</sup> U.S.I.T.C. ANN. REP., *supra* note 1, at v. (Significant investment in apparel assembly operations in CBERA beneficiaries was reported in 1989.)

<sup>49</sup> OFFICE OF THE WHITE HOUSE PRESS SECRETARY, PRESS RELEASE, TEXT OF REMARKS BY THE PRESIDENT ON THE ENTERPRISE FOR THE AMERICAS ADDRESS (June 27, 1990).

<sup>50</sup> *Id.* at 1.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 2-3. The President also proposed a strengthening of environmental policies in the hemisphere, including debt-for-nature swaps and the creation of environmental trusts, which would hold debt interest payments in local currency and divert interest earned on those funds to environmental projects. *Id.*

The trade provisions of the ETA are of primary interest for the purpose of this Comment; however, the investment and debt provisions of the ETA are described briefly below. To increase investment, the United States would create new lending programs to benefit countries that make investment reforms and would streamline bureaucracies that reduce

trade, the ETA proposed a hemisphere-wide free trade zone "stretching from the port of Anchorage to Tierra del Fuego."<sup>53</sup> In addition, the ETA proposed closer cooperation with Latin American and Caribbean nations in the Uruguay Round negotiations on free trade, including added pressure for deeper tariff cuts on strategic products and stronger trade rules.<sup>54</sup> Products of special interest to the nation's hemispheric trade partners would be identified in order to cut tariffs on these products without waiting for countries to make formal requests.<sup>55</sup>

As a step toward the hemisphere-wide free trade zone, the President proposed the formation of free trade agreements with nations or regional trade associations in South America and the Caribbean. These agreements, to govern trade in goods, services, investments, and intellectual property, would establish new rules and mechanisms for dispute resolution.<sup>56</sup> In addition, the agreements would open discussion on the enhancement of free trade and the integration of Latin America and the Caribbean economies into the world economy

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barriers to foreign investment. In addition, an investment fund, funded by the United States, Japan and Europe, would make up to \$300 million yearly in grants to countries undertaking privatization and market reforms. These programs would be administered by the Inter-American Development Bank ("IDB"), in coordination with the World Bank.

The IDB would also play a role in efforts to reduce Latin American and Caribbean debt. The IDB, working with the World Bank and the International Monetary Fund, would support the reduction of commercial debt in countries embarking on economic reform. In addition, the Department of the Treasury would work on a case-by-case basis to reduce the \$12 billion in official debt owed by Latin American and Caribbean Basin nations to the United States. Department of the Treasury Statement by the Honorable David C. Mulford, Under Secretary of the Treasury for International Affairs, Before the Subcommittees on the Western Hemisphere, Human Rights and International Organizations, and International Economic Policy and Trade Committee on Foreign Affairs, U.S. House of Representatives, July 18, 1990, at 2.

<sup>53</sup> *Id.* at 2.

<sup>54</sup> *Id.* at 2.

<sup>55</sup> Department of the Treasury Statement by the Honorable David C. Mulford, Under Secretary of the Treasury for International Affairs, Before the Subcommittees on the Western Hemisphere, Human Rights and International Organizations, and International Economic Policy and Trade Committee on Foreign Affairs, U.S. House of Representatives, July 18, 1990, at 2.

<sup>56</sup> *Id.*

as part of a hemisphere-wide trading bloc as large as the European Community. These agreements would achieve, in the words of the President, "greater growth and a higher standard of living in Latin America—and right here at home, new markets for American products, and more jobs for American workers."<sup>57</sup>

A potential effect of the ETA on the Caribbean Basin's apparel assembly and textile industry could be the further liberalization of Caribbean Basin exporters' access to the United States and other regional markets through the elimination of remaining quotas and tariffs on regional exports.

However, the elimination of barriers for Caribbean exporters would occur along with the elimination of similar barriers for other exporters in the region and in South America. Caribbean sources could then be faced with increased competition in a new market without tariff or access preferences. A multilateral arrangement such as that contemplated by the ETA could eliminate the preferential treatment enjoyed by Caribbean apparel assemblers under current bilateral agreements.<sup>58</sup>

Although Caribbean Basin exporters have much to gain from increased liberalization of the terms of trade, they have much to lose if similar tariff decreases and quota increases are passed on to other nations. The advantages enjoyed by the Caribbean Basin in textile and apparel trade are the result of exceptions to the current structure of textile trade. The dismantling of that structure could potentially unsettle the Caribbean Basin's exporting industries and the advantages they currently enjoy over other international sources.

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<sup>57</sup> OFFICE OF THE WHITE HOUSE PRESS SECRETARY, PRESS RELEASE, TEXT OF REMARKS BY THE PRESIDENT ON THE ENTERPRISE FOR THE AMERICAS ADDRESS (June 27, 1990), at 2.

<sup>58</sup> The threat posed by multilateral agreements to preferential treatment afforded to developing countries under bilateral agreements is an important issue in current negotiations to integrate the MFA into GATT. Developing countries generally argue that preferences are required to keep them on an equal footing with more developed countries.

### 3.2. *The ETA's Accomplishments to Date*

In September 1990, President Bush proposed the Enterprise for the Americas Initiative Act of 1990 (the "Enterprise Act")<sup>59</sup> to Congress. This bill largely reiterated the investment, debt reduction and environmental programs announced by the President on June 27, 1990.

The bill contained six proposals for the implementation of the Enterprise for the Americas initiative: (1) contributions totalling \$500 million over five years to an investment fund managed by IDB, (2) an investment center lending program, (3) a facility in the Treasury Department to implement debt reduction, (4) the reduction of official and concessional debts owed by eligible countries, (5) the use of interest payments on official debt to support environmental programs and (6) the sale, reduction or cancellation of United States loans to facilitate debt-for-equity or debt-for-nature swaps.<sup>60</sup>

The bill also contained requirements for eligibility. Eligible countries must have: (1) an International Monetary Fund ("IMF") agreement, (2) World Bank loans, (3) major investment reforms in conjunction with an IDB loan or otherwise be implementing open investment regimes, and (4) where appropriate, a financing package with commercial banks governing debt and debt service.<sup>61</sup>

While the Senate version of the bill, S. 3064, replicates the President's proposal, the House version<sup>62</sup> contains several significant differences. The House bill would not appropriate \$500 million for the IDB investment fund, nor would it allow U.S. loans to be sold, reduced or canceled in debt-for-equity or debt-for nature swaps. The House bill also relaxes the strict eligibility requirements of the Senate and Administration versions, allowing participation by countries that make significant progress toward meeting the requirements.

As of September 26, 1990, most Caribbean Basin nations failed to meet the four eligibility criteria required under the

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<sup>59</sup> S. 3064, 101st Cong., 2nd Sess. (1990).

<sup>60</sup> OFFICE OF THE PRESS SECRETARY, THE WHITE HOUSE, PRESS RELEASE, THE ENTERPRISE FOR THE AMERICAS INITIATIVE ACT OF 1990 (1990). See also S. 3064, 101st Cong., 2nd Sess (1990).

<sup>61</sup> *Id.*

<sup>62</sup> H.R. 5855, 101st Cong., 2nd Sess. (1990).

bill.<sup>63</sup> The Bahamas, Barbados, Belize, the Dominican Republic, Haiti, Jamaica and Trinidad & Tobago each fail on at least one of the qualifying criteria.<sup>64</sup>

Although the Enterprise Act remains stalled in Congress, some progress on the trade aspects of the ETA has been made. The United States has had some success in meeting the Initiative's short-term goal of entering into bilateral trade agreements with its trading partners in Latin America and the Caribbean, most notably the ongoing discussions and negotiations concerning a free trade agreement with Mexico. Canada recently agreed to join in these negotiations.<sup>65</sup>

Bilateral discussions have been initiated with several countries in South America and the Caribbean. On July 23, 1990, the United States Trade Representative (the "USTR") announced agreements establishing a United States-Ecuador Council on Trade and Investment and Joint Commission on Trade and Investment with Colombia. On November 1, 1990, the United States and Honduras entered into a similar framework agreement establishing a United States-Honduran Council on Trade and Investment.<sup>66</sup> In addition, the United States and Bolivia have made trade agreements.<sup>67</sup> The agreements all create a framework to monitor trade, promote investment, identify opportunities for trade expansion and, ultimately, to negotiate market opening agreements.

### 3.3. *Prospects for the Future*

Despite the ETA's lofty goal of achieving a hemisphere-wide free trade zone, the proposal lacks specific recommendations to achieve this goal. Instead, the ETA is best understood as a message of good intent from the United States, as well as a tool to develop greater interest and participation by Caribbe-

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<sup>63</sup> Internal Memorandum Caribbean Central-American Action (Sept. 25, 1990).

<sup>64</sup> *Id.*

<sup>65</sup> Christopher Marquis, *U.S., Mexico, Canada Eye One Market*, PHILA. INQUIRER, Feb. 6, 1991, at 8-C.

<sup>66</sup> OFFICE OF THE U.S. TRADE REPRESENTATIVE, EXECUTIVE OFF. OF THE PRESIDENT, PRESS RELEASE, U.S. AND ECUADOR SIGN TRADE AND INVESTMENT AGREEMENT (Nov. 1, 1990).

<sup>67</sup> OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, PRESS RELEASE (July 23, 1990).

an and Latin American countries in the Uruguay Round negotiations.<sup>68</sup>

The testimony of David Mulford, Under Secretary of the Treasury for International Affairs, before Congressional hearings on the Enterprise Act, reveals the close link between the ETA and ongoing Uruguay Round negotiations: "The first pillar of the initiative aims to expand trade. The successful completion of the Uruguay Round remains the most effective way of promoting long-term trade growth in Latin America and the Caribbean . . . ."<sup>69</sup>

While the ETA is represented as a new trade initiative, in substance it merely continues past policies and negotiating strategies. For example, David Mulford's announcement that the United States would initiate tariff cuts without requests from trade partners<sup>70</sup> merely adds another bargaining chip to ongoing tariff negotiations. Although a list of products of special interest was prepared by the USTR and sent to all eligible countries, the inclusion of a product or classification on this list merely opens the possibility for additional tariff decreases during the normal negotiating process.<sup>71</sup>

With respect to the apparel and textile industries in the Caribbean Basin, the ETA is likely to have little immediate effect. In fact, it is unclear whether agreements negotiated under the ETA will supersede other existing MFA agreements in textile and apparel trade. The current ineligibility of many Caribbean Basin nations also suggests that short-term gains from the ETA may be small for the region.

However, free trade agreements with other countries have the potential to affect Caribbean Basin exports adversely. For example, a free trade agreement with Mexico could have an impact on established apparel assemblers in the Caribbean, such as Jamaica, that currently benefit under preferential access agreements. If quotas and tariffs on textile and apparel

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<sup>68</sup> Telephone Interview with Ralph Ives, Office of the United States Trade Representative (Nov. 23, 1990).

<sup>69</sup> Statement of the Honorable David C. Mulford, Under Secretary of the Treasury for Int'l Affairs, Before the Subcommittee on the W. Hemisphere, Hum. Rights and Int'l Organizations, and Int'l Econ. Pol'y and Trade Committee on Foreign Affairs, U.S. House of Representatives, at 3 (September 27, 1990).

<sup>70</sup> See *supra* note 55.

<sup>71</sup> Telephone Interview with Ralph Ives, *supra* note 68.



products were dropped on the United States-Mexico border, inexpensive Mexican labor combined with unlimited access and transportation linkages could draw investment away from the Caribbean. Although the Mexico free trade agreement has generated concern in Latin America and the Caribbean, its passage is far from guaranteed due to domestic political opposition.<sup>72</sup> However, Caribbean business and government officials remain concerned about Caribbean wage competitiveness and the ability of Caribbean products to compete with Mexican products in the United States market under the ETA.<sup>73</sup>

Despite its failure to add much substance to United States hemispheric trade policy, the Enterprise for the Americas Initiative may have a positive impact in the long run by promoting discussion of free trade and investment issues. With much of the world's attention focused on the pending unification of Europe, the rebuilding of the Eastern bloc and the Soviet Union, and crises in the Middle East, the Enterprise for the Americas Initiative may promote increased consideration of the problems of this hemisphere. Nine Latin American Presidents have announced that they are ready to speed up integration of their economies in response to Bush's free trade zone vision.<sup>74</sup>

In general, the future of the Caribbean region's apparel and textile industry depends on United States textile trade policy, which is not set solely on the basis of the "Enterprise for the Americas" Initiative. Indeed, the future of textile and apparel trade policy worldwide is intricately connected with the Multi-Fiber Arrangement. The future of the MFA remains unclear and depends ultimately on the outcome of current textile negotiations currently underway as part of the Uruguay Round. These negotiations and the changes proposed in the MFA are considered in detail in the next section of the Comment.

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<sup>72</sup> *Enterprise for Americas Plan Faces Challenge with Mexico*, Reuters, AM cycle, Sept. 28, 1990, available in LEXIS, Nexis Library, Reuter Library Report File.

<sup>73</sup> U.S.I.T.C. ANN. REP., *supra* note 1, at 4-5.

<sup>74</sup> *Latin American Leaders Set to Speed up Economic Integration*, Reuters, BC cycle, Oct. 9, 1990, available in LEXIS, Nexis Library, Reuter Library Report File.

#### 4. PHASING OUT THE MFA: URUGUAY ROUND DEVELOPMENTS

##### 4.1. Introduction

The textile negotiating committee for the Uruguay Round<sup>75</sup> of multilateral negotiations concerning GATT has set for itself an ambitious goal—the phaseout of the Arrangement Regarding International Trade in Textiles (the “Multi-Fiber Arrangement” or “MFA”).<sup>76</sup> Since 1974, the MFA has provided a framework for managing international trade in textiles and apparel, primarily through individually negotiated bilateral trade agreements and safeguard measures between trading partners. Actions taken pursuant to the MFA by negotiating parties have resulted in significant departures from GATT free trade principles by authorizing trade processes that are otherwise illegal under GATT.<sup>77</sup> Under the operation of the MFA, international trade in textiles and apparel, which constitutes a significant portion of world trade,<sup>78</sup> is entirely exempted from GATT coverage.

The MFA is the outgrowth of post World War II textile trade agreements: the Short Term Arrangement of 1961<sup>79</sup> and the Long Term Arrangement of 1962,<sup>80</sup> both of which re-

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<sup>75</sup> Revisions of GATT occur in “Rounds” which consist of multilateral negotiations between trading parties whose goal generally has included the reduction of tariffs and other trade barriers. The Uruguay Round is the eighth of these rounds, taking its name from the country in which talks were first initiated, in this case, at Punta del Este, Uruguay in 1987. See JOHN H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS* 53 (1989).

<sup>76</sup> MFA, *supra* note 8.

<sup>77</sup> HENRY R. ZHENG, *LEGAL STRUCTURE OF INTERNATIONAL TEXTILE TRADE* 12-13 (1988).

<sup>78</sup> Note, *United States Trade Policy in Textiles and Apparel: Does the Multifiber Arrangement Have a Future?*, 19 *GEO. WASH. J. INT'L L. & ECON.* 541, 541 (1985). See also Bhagirath L. Das, *The GATT Multi-Fibre Arrangement*, 17 *J. WORLD TRADE L.* 95, 95 (1983).

<sup>79</sup> Arrangement regarding International Trade in Cotton Textiles, July 21, 1961, 12 U.S.T. 1675; T.I.A.S. No. 4884. See also ZHENG, *supra* note 77, at 1-5.

<sup>80</sup> Long-Term Arrangement regarding International Trade in Cotton Textiles, Feb. 9, 1962, 13 U.S.T. 2673, T.I.A.S. No. 5240; extended by Protocol on May 1, 1967, 18 U.S.T. 1337, T.I.A.S. No. 6284 and on June 15, 1970, 21 U.S.T. 1971; T.I.A.S. No. 6940. See also ZHENG, *supra* note 77, at 1-5.

mained in effect through renewal until they were succeeded by the MFA in 1974. These agreements, covering only product of cotton fibers, allowed participating parties, in violation of GATT, to impose quantitative restrictions on textile imports that caused or threatened to cause market disruption in domestic markets. In exchange, exporting countries received assurances that quota levels would not be less than those of prior years, and that quota levels would be guaranteed at least a minimum annual increase.<sup>81</sup> This basic structure was continued with the MFA in 1974, which expanded coverage to include synthetic fibers.<sup>82</sup> The MFA has subsequently been extended with alterations three times,<sup>83</sup> and the most recent agreement (MFA IV) expired in June 1991.

Negotiations concerning the MFA and textile trade during the current Uruguay Round have focused on the creation of a satisfactory transition mechanism to phase out the MFA and integrate trade in textiles and apparel into GATT.<sup>84</sup> Unfortunately, negotiations were suspended in December 1990 due to disagreements between the United States and the European Community over agricultural policy<sup>85</sup> before any satisfactory

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<sup>81</sup> See ZHENG, *supra* note 77, at 1-5.

<sup>82</sup> The coverage of the MFA includes:

tops, yarns, piece-goods, made-up articles, garments, and other textile manufactured products (being products which derive their chief characteristics from their textile components) of cotton, wool, man-made fibers, or blends thereof, in which any or all of those fibers in combination represent either the chief value of the fibers or 50 percent or more by weight, (or 17 percent or more by weight of wool) of the product.

MFA, *supra* note 8, art. 12, para. 1. MFA IV expanded this coverage to include vegetable fiber blends and silk blend products. MFA IV, *supra* note 8, para. 24.

<sup>83</sup> See *supra* note 8. Textile and apparel trade is currently governed by the MFA and modifications to that agreement under MFA IV. A discussion of the changes and alterations negotiated since MFA I is beyond the scope of this Comment. Accordingly, all citations to the MFA, unless otherwise noted, refer to MFA I. For a detailed discussion of the evolution of the MFA, see ZHENG, *supra* note 77.

<sup>84</sup> See e.g. Statement by the United States Delegation at the Meeting of the Negotiating Group on Textiles and Clothing, 21 Sep. 1989, MTN.6N6/N64/W/26.

<sup>85</sup> Stuart Auerbach, *Trade Talks Again Stalled Over Subsidies; Hopes Seen Fading for Successful Outcome*, WASH. POST, Dec. 7, 1990, at C12. See also Maria L. LaGanga, *Breakdown of the Trade Talks; How U.S. Industries View the GATT Results*, L.A. TIMES, Dec. 8, 1990, at D1.

agreement could be reached.

Both the terms and timing of the MFA phaseout hold significant implications for the future of the Caribbean Basin apparel assembly industries. The transition to GATT has the potential to disrupt and alter the trade advantages that Caribbean apparel exporters currently enjoy over other international apparel sources.

The effects of a MFA phaseout, and the consequent elimination of preferential access levels, could have devastating effects on the Caribbean producers. Along with reduced tariffs available under Section 807, preferential access to the U.S. market has helped sustain growth of Section 807 apparel assembly operations in the Caribbean Basin. Although an MFA phaseout would not necessarily require the United States to abandon its Section 807 provision, the Section 807A quota advantages would be eliminated as countries were given equal access under the non-discrimination principles of GATT. Caribbean nations are therefore concerned that provisions for the continued operation of Sections 807 and 807A be made explicit in any MFA phaseout mechanism in order to preserve the outward processing trade of many Caribbean Basin nations.<sup>86</sup> Indeed, many Caribbean nations have taken the stance that growth in the apparel sector could not be sustained if bilateral quotas and the MFA system were abruptly dismantled.<sup>87</sup>

#### 4.2. *The MFA and GATT: Reconciling their Differences*

##### 4.2.1. *The Multi-Fiber Arrangement*

The operation of the MFA avoids the GATT prohibition on quantitative restrictions and discriminatory treatment by allowing the imposition of quotas based on individual negotiations and agreements with trading partners. The MFA reflects a compromise between the interests of importing and exporting countries in managing trade in textiles and apparel. Upon

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<sup>86</sup> See e.g. Transcript of Meeting between Ambassador Ron Sorini, U.S. Chief Textile Negotiator and C.B.I. Delegates (Apr. 24, 1990) (transcript available from the University of Pennsylvania Journal of International Business Law).

<sup>87</sup> *Discussions at a Meeting of CBI Apparel Group, SUMMARY REPORT*, (CBI Apparel Group, New York, N.Y.), June 23, 1990, at 2.

establishment of market disruption, "importing countries may deviate from the GATT norms by resorting to discriminatory quantitative restrictions on textile imports; in exchange, exporting countries are entitled to the orderly development of textile trade on a quantifiably defined basis."<sup>88</sup>

Annex A of the MFA outlines the factors that constitute a market disruption. To establish market disruption, an importing country must believe that certain imports from a particular exporting nation have caused, or threaten to cause, serious damage to the domestic industry. This belief must be based on evidence of actual damage to the domestic industry market share, profits or employment; a sharp and substantial increase or threatened, imminent increase of imports; and a price differential between imports and domestic products.<sup>89</sup> In general, MFA practice has done little to define the concept of market disruption, which has generally been loosely construed to justify additional restrictions.<sup>90</sup> The MFA's operation is primarily outlined in Articles 3 and 4 and Annexes A and B.

Article 3 of the MFA allows an importing country to impose unilaterally quantitative restrictions on particular imports if the country determines that a state of market disruption exists due to imports of a product from a particular nation. However, these restrictions may only be applied if, after a 60-day period of consultations, the exporting nation fails to remove the disruption.<sup>91</sup>

Article 3 contemplates limits on the use of quota restrictions both through voluntary restraint on the part of the importing nation and through consideration of the interests of the exporting country,<sup>92</sup> particularly if the exporter is a

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<sup>88</sup> ZHENG, *supra* note 77, at 5-6.

<sup>89</sup> *Id.*, Annex A. The United States has interpreted Annex A such that the importing country may determine which factors may be sufficient to prove market disruption, assigning weight to those factors as it chooses. ZHENG, *supra* note 77, at 18.

<sup>90</sup> ZHENG, *supra* note 77, at 22-23.

<sup>91</sup> MFA, *supra* note 8, art. 3. Under the MFA, a party which is subject to an Article 3 action implicitly waives rights to compensatory or retaliatory action that may be invoked in response to a GATT Article XIX action. Article 3 actions have a duration of one year, but may be renewed upon consultation and adjustment for growth rates.

<sup>92</sup> MFA, *supra* note 8, art. 3, para. 2.

developing country.<sup>93</sup> On a more quantifiable level, quotas may not be set below specific levels outlined in Annex B.<sup>94</sup> The floor levels outlined in Annex B provide some safeguards for exporting countries against whom Article 3 action is taken.

In addition to the measures outlined in Article 3, the MFA authorizes trading partners to enter into bilateral trade agreements governing textile and apparel trade. Article 4 of the MFA provides that participating parties may enter into bilateral agreements to "eliminate the real risks of market disruption . . . in importing countries and disruption to the textile trade of exporting countries, and . . . to insure the orderly development of trade in textiles."<sup>95</sup> Article 4 agreements are the most commonly used safeguard measures in international textile trade.<sup>96</sup> These agreements are contrary to the concept of nondiscrimination under GATT, which requires that trade terms must be the same for all trading partners with respect to a particular good.<sup>97</sup> Article 4 agreements offer some benefits to their exporting nation signatories. The agreements are subject to restrictions which specify minimum base levels,<sup>98</sup> growth rates,<sup>99</sup> and flexibility<sup>100</sup> that are designed to provide a measure of stability, predictabil-

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<sup>93</sup> *Id.* Other provisions of the MFA specifically address the concerns of less developed exporting countries, which include many Caribbean Basin nations. Article 6 encourages importing countries to refrain from imposing unnecessary restrictions on developing countries. Where restrictions are necessary, Article 6 recommends that importing countries allow higher growth rates and base levels for imports, and requires higher quotas and growth rates for products already the subject of restrictions. MFA, *supra* note 8, art. 6.

<sup>94</sup> *Id.* Annex B.

<sup>95</sup> MFA, *supra* note 8, art. 4, para. 2.

<sup>96</sup> Henry R. Zheng, *The Legal Structure of the International Textile Trade and the July 1986 MFA Renewal Negotiations*, 4 B.U. INT'L L.J. 285, 303 (1986).

<sup>97</sup> GATT, *supra* note 9, art. I.

<sup>98</sup> MFA, *supra* note 8, Annex B, para. 1(a). Base levels may not be below the actual volume level of imports during the previous twelve months. *Id.*

<sup>99</sup> *Id.* para. 2. Subject to certain exceptions, quota restrictions that remain in effect for longer than one year must be increased at a rate of at least six percent. *Id.*

<sup>100</sup> *Id.* para. 5. Where more than one product has been restricted, the agreed level for a product may be exceeded by 7 percent, or in exceptional circumstances, 5 percent provided that the overall aggregate quota limit is not exceeded. Underutilized quotas may also be carried forward. *Id.*

ity and ordered growth in trade. Products covered by Article 4 agreements may not be the subject of Article 3 unilateral restrictions by the importing party, although this advantage is somewhat diminished in practice. Disparate bargaining power between importing and exporting nations often leads to the inclusion of antisurge or consultation clauses which allow Article 3 type restrictions to be imposed by the importing party.<sup>101</sup>

Also covered by the MFA are the type of operations that have developed in the Caribbean under Sections 807 and 807A. Article 6 has two provisions that directly refer to Section 807-type outward processing operations. Paragraph 5 provides that:

Participating countries shall not, as far as possible, maintain restraints on trade in textile products originating in other participating countries which are imported under a system of temporary importation for re-export after processing, subject to a satisfactory system of control and certification.<sup>102</sup>

The operation of this paragraph would restrict an importer of goods for processing, such as Jamaica, acting under 807 operations, from imposing restraint levels on those imports. Paragraph 6 continues:

Consideration shall be given to special and differential treatment to re-imports into a participating country of textile products which that country has exported to another participating country for processing and subsequent re-importation, in the light of the special nature of such trade without prejudice to the provisions of Article 3.<sup>103</sup>

Worded in vaguer terminology than Paragraph 5, this paragraph applies to the reimporter, the United States involved in 807 operations. Whereas the importing processor shall try to limit quota restrictions, the exporter need only give consideration to the re-imported processed goods. The stronger recommendation for restraint is directed toward the weaker

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<sup>101</sup> ZHENG, *supra* note 77, at 34-37.

<sup>102</sup> MFA, *supra* note 8, para. 5.

<sup>103</sup> *Id.* para. 6.

party, the processor, who is more dependent on the trade, while the vaguer recommendation is directed toward the re-importer. Despite the explicit recommendations of Article 6, the United States still subjects Section 807 apparel made from non-United States fabric to quantitative restrictions under Section 807A and the GALs.

Articles 3, 4 and 6 of the MFA are the backdrop against which the Caribbean Basin apparel industry has developed. Although the United States has taken a step away from the MFA in eliminating quotas on Section 807 apparel imports made from U.S. material under Section 807A, the overall patterns and concepts of textile and apparel trade continue to be governed by the MFA. The MFA's operation, in general,

causes trade diversion and, insasmuch [sic] as it operates with bilateral quotas, works against the exporting developing countries. Economic inefficiency and sub-optimal resource allocation are built into the MFA, which reduces imports of textiles and clothing into the industrialized countries and indirectly reduces the number of job openings in the export industries of the latter.<sup>104</sup>

Exporters have often characterized the restriction placed on them as unfair, arbitrary and based on slim factual findings of injury.<sup>105</sup> Furthermore, these restrictions usually apply to the exports of less developed and developing countries who depend heavily on textile and apparel exports. The operation of the MFA, rather than stabilizing and balancing textile and apparel trade, has intensified existing trade restrictions and has destroyed multilateral discipline in the sector.<sup>106</sup>

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<sup>104</sup> Dilip K. Das, *Dismantling the Multifibre Arrangement?*, 19 J. WORLD TRADE L. 67, 68 (1985) (discussing a 1984 GATT report assessing the operation of the MFA and its impact on the trade prospects of developing countries).

<sup>105</sup> Note, *supra* note 78, at 543.

<sup>106</sup> ZHENG, *supra* note 77, at 1-2.



#### 4.2.2. *The MFA and GATT*

To understand the potential impact of the reintegration of the MFA into GATT for Caribbean Basin apparel exporters, a description of GATT and the differences between the MFA and GATT is helpful.

In its most simple form, the GATT<sup>107</sup> contemplates the elimination of all non-tariff barriers to trade, followed by intermittent rounds of negotiations where member nations attempt to reduce remaining tariff levels through reciprocal agreements.<sup>108</sup> The use of quantitative restrictions on imports or exports is generally prohibited under GATT Article 11, although quotas may be used by a nation to protect its balance of payments,<sup>109</sup> national security, public health or morals, and developing industries.<sup>110</sup>

In theory, all GATT contracting parties benefit from tariff reductions negotiated between any two parties due to application of the most-favored-nation principle ("MFN"). The most-favored-nation principle is embodied in GATT Article I.<sup>111</sup> Most-favored-nation practice establishes the principle of

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<sup>107</sup> The only legal basis for GATT in international trade is the Protocol of Provisional Application of the General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A2051, T.I.A.S. No. 1700, 55 U.N.T.S. 308, which adopts GATT Articles I, II, and III. Ninety-six nations, known as the "contracting parties" are currently signatories of the Protocol. Major areas of world trade not covered by GATT include the Middle East, where Iran, Iraq, Saudi Arabia, Jordan and Syria are not signatories, and the Pacific, where the People's Republic of China, Taiwan, Vietnam, Laos, Burma and the USSR are not signatories. Most of Eastern Europe is covered by the GATT, with the exception of Albania and Bulgaria.

<sup>108</sup> See JACKSON, *supra* note 75, at 115. Tariffs are preferred due to their transparency—they are highly visible and their effects are more easily quantifiable than less transparent trade restrictions such as quotas. *Id.* at 116.

<sup>109</sup> See General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187, arts. XII-XV.

<sup>110</sup> *Id.* arts. XX, XXI, and XVIII. In addition, customs procedures are brought under a reasonableness standard, while governments are allowed to retain freedom in their procurement decisions. *Id.* arts. VII-X. Governments also retain the freedom to subsidize domestic economic development. *Id.* art. XVIII.

<sup>111</sup> GATT, *supra* note 9, art. I. In practice, MFN clauses may be either conditional and unconditional, the difference lying in that conditional clauses provide that the granting of benefits to a trading partner of benefits negotiated with another partner may only occur if concessions are granted to "pay" for those additional benefits. JACKSON, *supra* note 108, at 136-8.

nondiscrimination, whereby each contracting party grants to every other the most favorable treatment that it grants to any country with respect to its imports and exports.<sup>112</sup> Nondiscrimination also creates an obligation for an importing nation to treat foreign goods equally to domestic goods after their importation.<sup>113</sup>

The nondiscrimination principle established by GATT contemplates a multilateral approach to international trade management. In contrast, the bilateral agreements between individual trading partners allowed under the MFA are a major departure from the most-favored-nation principles and multilateralism.

Several provisions in GATT address the concerns of developing countries and allow for the differential treatment of imports and exports from developing countries. Articles XVIII and the articles in part IV of GATT allow governments to aid infant industries and assist economic development, even by restricting trade. Developing countries may also take advantage of safeguard provisions and restrict trade due to balance of payments problems.<sup>114</sup> GATT does not otherwise distinguish between trade of developing and developed countries.<sup>115</sup>

Historically, the less developed countries ("LDCs") have argued that the operation of GATT disadvantages their trade.<sup>116</sup> Due to the lack of an effective enforcement measure under GATT, weaker countries have argued that they have little recourse or bargaining power in situations where stronger importing countries violate the letter or spirit of trade agreements.<sup>117</sup> Developing countries have also argued that the GATT does not afford them the protection they require to develop their "infant industries" to a level where they can compete on an equal footing in world trade.<sup>118</sup>

In fact, the most-favored-nation principle and the

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<sup>112</sup> JACKSON, *supra* note 75, at 133.

<sup>113</sup> *Id.*

<sup>114</sup> *See supra* notes 109-10.

<sup>115</sup> JACKSON, *supra* note 75, at 276.

<sup>116</sup> *See* D. TUSSIE, *THE LESS DEVELOPED COUNTRIES AND THE WORLD TRADING SYSTEM 2* (1987).

<sup>117</sup> *Id.* at 2-3. *See also* JACKSON, *supra* note 75, at 276-7.

<sup>118</sup> *See* TUSSIE, *supra* note 116, at 20.

multilateralization of tariff concessions under GATT, resulting in equal tariff treatment of all countries regardless of their competitive position, place LDCs at a disadvantage in world trade.<sup>119</sup> LDCs have attempted to reverse these perceived disadvantages by pressuring for greater discretion to protect domestic industries and for exemption from the tariff concession reciprocity requirements of GATT. On the export side, their efforts have been directed at gaining preferential tariff treatment for exports to the industrialized nations.<sup>120</sup>

The MFA departs from GATT principles in three significant areas. First, the MFA, unlike the GATT, legalizes quantitative restrictions on imports. Second, the MFA allows discriminatory treatment of imports on a nation-by-nation basis, displacing the most-favored-nation trading principle. Third, the MFA alters some of the rights of GATT signatories to impose trade restrictions and to retaliate against them.<sup>121</sup>

One of the primary differences between the MFA and GATT lies in the MFA's more liberal safeguard mechanisms. Articles 3 and 4 of the MFA outline a standard on when importing nations may withdraw tariff concessions or impose quantitative restrictions that is less rigorous than the standard outlined in GATT Article XIX.<sup>122</sup> Article 3 allows

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<sup>119</sup> *Id.* at 25. These concerns sector were a factor that led to the development of the MFA during the 1960s and 1970s. See STEELE, *supra* note 22, at 30-2.

<sup>120</sup> TUSSIE, *supra* note 116, at 4. Other proposals have included the elimination of illegal quotas on LDC exports and the elimination of internal taxes which have the effect of discriminating against LDC exports in importers' domestic markets. *Id.* at 27.

The success of the LDC's in this area is evident in the Generalized System of Preferences ("GSP"). The GSP framework allows importing nations to violate the nondiscrimination principle and the MFN clause of GATT by lowering tariff rates to benefit and increase trade from developing countries. The GSP was established in 1971 after a ten-year waiver from the GATT MFN clause was granted. GATT, B.I.S.D. 18 Supp. 24 (1972). Following its expiration in 1981, an official declaration at the Tokyo Round entitled "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries", GATT, B.I.S.D. 26 Supp. 203 (1980), became the "enabling clause" allowed for the GSP's continuation. See JACKSON, *supra* note 75, at 279.

Many of the exports of the Caribbean have benefitted under the GSP since its adoption by the United States. However, textiles and apparel are not covered by the GSP.

<sup>121</sup> See generally MFA, *supra* note 8, arts. 3 and 4.

<sup>122</sup> ZHENG, *supra* note 77, at 103.

unilateral action, following consultation, upon a showing of "market disruption" as opposed to the showing of "serious injury" required under GATT.

Although "market disruption" and "serious injury" remain somewhat vague and ill-defined, they differ in the factors which may be considered sufficient to establish their effects on an importer's markets. A potential or imminent increase is sufficient to establish market disruption, while an actual increase in imports may be used to establish both market disruption and serious injury.<sup>123</sup> Article 4 agreements, which may be based solely on risks of increases, have no counterpart under GATT.

The market disruption standard is also less stringent in that the increase in imports may be due to the usual course of economic development, including changes in fashion or consumer preferences. To establish serious injury under GATT, the increase must be the result of unforeseen developments.<sup>124</sup> Consideration of the price differentials between imports and domestics is also permitted to establish market disruption, but not serious injury.<sup>125</sup>

An exporter has different initial recourse from an Article 3 action than from a safeguard action under GATT Article XIX. Under the MFA, the exporting nation implicitly waives all rights to compensatory or retaliatory responses that would be allowed under GATT Article XIX.<sup>126</sup> Under GATT, a party subject to Article XIX restrictions may take "compensation" by suspending equivalent concessions or other GATT obligations. However, the MFA preserves a party's GATT rights to appeal to the TSB and the GATT Council under Article XXIII.<sup>127</sup>

The MFA safeguard provisions further differ from those available under GATT in that they allow bilateral agreements that conflict with the GATT principles of nondiscrimination and most-favored-nation type multilateralism. These agreements allow the negotiation of quotas and the establishment of base levels, growth rates and flexibility in their implementa-

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<sup>123</sup> *Id.* at 104.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> See *supra* text accompanying note 90.

<sup>127</sup> MFA, *supra* note 8, art. 11, paras. 9-10.

tion.<sup>128</sup> GATT allows the use of quotas only in limited circumstances: where there is serious injury under Article XIX, where necessary to maintain the balance of payments under Article XII, or to protect national security, public health and safety, or developing industries under Articles XX, XXI, and XVIII.

There are several important differences between MFA quotas and GATT quotas. Quotas implemented through GATT safeguards have no base level or growth rate requirements analogous to those required under the MFA. More significantly, GATT quotas are nondiscriminatory. For example, a quantitative restriction imposed under GATT Article XIX would set a cap on aggregate imports rather than on imports from one particular country. This is known as a global quota. MFA quotas restrict quantities of products on a country-by-country basis.

In theory, upon elimination of the GATT and reintegration of textile and apparel trade into the MFA, all barriers to trade, except tariffs, would be eliminated. Safeguard measures imposing quotas or increasing tariffs would be implemented under strengthened GATT disciplines, and there would be no market disruption. The flow of international textile trade would be shaped by the application of the nondiscrimination principle and the most-favored-nation clause instead of bilateral agreements. The prospect of these changes poses serious challenges to the present structure of Caribbean Basin apparel and textile trade and the future of the region's apparel assembly industry.

### *4.3. Phasing Out the MFA: Caribbean Interests and the Chairman's Text*

#### *4.3.1. The U.S. Proposals*

The differences between MFA quotas and global quotas have recently taken on heightened importance for Caribbean Basin textile exporters. The establishment of a global quota transition mechanism is one of several proposals that has been put forward during ongoing Uruguay Round negotiations to

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<sup>128</sup> See *supra* notes 98-100.

develop a phaseout mechanism for the MFA.<sup>129</sup> Such a phaseout would eliminate the differences outlined above between the MFA and GATT and bring trade in textile and apparel in line with GATT principles. The terms and timing of the transition mechanism ultimately adopted will have important effects on Caribbean Basin textile and apparel trade.

Eliminating the MFA and bringing textile and apparel trade under GATT would:

reduce production in the clothing industry in the industrialized countries, while in textiles both country groups would follow their comparative advantage more closely . . . . Among developing countries there would be a redistribution of clothing and textiles production, which would be determined more by the cost factors, and developing countries would be able to import more from the industrialized countries. Bringing trade under the liberal concepts of the GATT would mean that tariffs would be brought down and Article XIX observed to see that there is no excessive damage to the domestic industry of the importers. It would include trade liberalization with elimination of discrimination, and the most-favored nation clause would come into force again.<sup>130</sup>

There is evidence to suggest that the first of these effects, the reduction of production in the industrialized, importing nations, may be different in the textile sector than in the apparel sector. Capital intensive technology and automation in industrialized nations has increased productivity in the textiles sector so as to counter the low wage advantages in developing countries.<sup>131</sup> In apparel, developing countries are likely to have a more significant competitive advantage than in textiles, due to the low level of technology required for apparel assembly and the highly labor-intensive nature of production. Consequently, if quotas were removed and the MFA eliminated, the apparel assembly industries of Caribbean

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<sup>129</sup> See GATT Document MTN.GNG/NG4/W/37.

<sup>130</sup> 19 J. WORLD TRADE L. 67 (1989).

<sup>131</sup> *Id.* at 76.

exporters might post gains at the expense of importing nations' assembly industries, while the textile industries in developed countries are unlikely to experience significant damage or declines in employment. These changes would be felt not only in the United States, but also in other importing nations that have erected trade barriers to Caribbean exports.<sup>132</sup>

Although the MFA allows importers more freedom to restrict trade than GATT, one benefit of MFA Article 4 agreements and the Section 807A program for Caribbean exporters has been guaranteed access. In fact, this nation-by-nation approach to quotas has allowed Caribbean countries to gain privileged access to United States markets. Following a shift to a global-quota system under GATT, Caribbean exporters' access to the United States market would no longer be guaranteed.

The return of textile and apparel trade to a regime governed by nondiscrimination and the most-favored-nation principle would expose Caribbean suppliers to greater competition from other sources, such as the Far East and Asia. Although the demise of bilateral Article 4-type agreements could open up new markets for Caribbean exporters, Caribbean exporters could suffer from increased competition among themselves and with other sourcing regions.

The concern over heightened competition gives rise to a question of timing and duration of the MFA phaseout. The longer the transition period, the more time the Caribbean Basin textile industry will have to prepare for increased competition from other international textile suppliers. The type of transition mechanism is also important. A mechanism that allows adaptation without too much disruption would be ideal.

In communications to the Uruguay Round Negotiating Group on Textiles and Clothing, the United States put forth three general requirements, and several different proposals, for the successful integration of the MFA into GATT. The requirements include the following:

- (1) ensure that all relevant trade measures affecting

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<sup>132</sup> *Id.* at 80 (citing a U.S. Department of Labor study estimating minimal production and employment declines in the domestic textile industry following trade liberalization).

trade in textiles and clothing are integrated; (2) ensure that GATT rules and disciplines have been sufficiently strengthened to make integration viable . . . (3) provide for a process that will ensure an orderly transition from measures being applied following the end of the Uruguay Round to those which will be applicable when this sector is fully integrated into the GATT.<sup>133</sup>

To promote the achievement of these goals, the United States submitted the following proposals for transitional mechanisms:<sup>134</sup> (a) the continuation of the MFA structure with gradual phaseouts of quotas and tariffs; (b) the establishment of a global quota system; and (c) the establishment of a tariff-rate quota system.<sup>135</sup> The reintegration process would be completed over a period of ten years.

A focus on the global quota proposal is helpful for two reasons. First, the United States favored the global quota throughout the early stages of negotiations. Second, the Caribbean response to the perceived impact of a global quota is helpful to understanding their overall concerns regarding the MFA's reintegration with GATT.<sup>136</sup>

Under the global quota approach, textile trade would no longer be governed by the quotas negotiated under MFA bilateral agreements. Instead, global quotas would be established setting annual ceilings for total imports regardless of the country of origin. Present quotas would be a starting point for initial quota base levels, while nations without existing quotas would compete with others out of a global "basket." The transition to global quotas would be achieved over a period of ten years by annually reallocating 10 percent

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<sup>133</sup> Communication from the United States, March 2, 1990, at 2.

<sup>134</sup> See GATT Document MTN.GNG/NG4/W/37. See also William R. Cline Executive Summary, Textile and Apparel Negotiations in the Uruguay Round, Mar. 1990.

<sup>135</sup> A tariff-rate quota system would end absolute quantitative restrictions on imports, replacing them with duty surcharges that would effectively limit imports to a certain level. These surcharges are phased down over time, effectively reducing or eliminating the original quantitative restrictions.

<sup>136</sup> Under Article XIX safeguard actions, a global quota is established. Current import quotas under the MFA are established on a nation-by-nation basis. In theory, replacement of the MFA's discriminatory quotas with global quotas will eventually occur upon the MFA's reintegration into GATT.



of the country-specific quotas to the global basket until a general-source regime is established.<sup>137</sup>

The implementation of the global quota would be accompanied by the integration of all trade distorting measures not currently within GATT based on strengthened GATT rules and disciplines.<sup>138</sup> Product coverage under the transition proposal would attempt to consolidate or eliminate quota categories.

#### 4.3.2. *The Caribbean Response*

The reaction of large Caribbean apparel exporters to the United States' global quota proposal and to the absence of firm guarantees for Section 807 and 807A trade was negative. (The United States proposal originally indicated only that Section 807 and 807A trade could possibly be exempted from the transition mechanism.) The United States global quota proposal would have effectively eliminated the favorable access enjoyed by Caribbean Basin exporters under Section 807A.<sup>139</sup>

Unrestrained competition from low wage producers from the Far East could have a large, negative impact on Caribbean apparel exporters. An abrupt dismantling of the MFA could leave Caribbean Basin apparel assemblers exposed to a high degree of price competition from the Far East before any improvements in their ability to compete could be implemented. Caribbean nations argue that sufficient time is needed to allow for adaptation of the industry to the export market that would probably be a result of the MFA phaseout, which would be driven more by price factors than by access factors.<sup>140</sup>

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<sup>137</sup> See Communication from the United States, March 2, 1990. See also Cline, *supra* note 134, at 3-5.

<sup>138</sup> Statement by the United States Delegation at the Meeting of the Negotiating Group on Textiles and Clothing, 21 September 1989, GATT MTN.GNG/NG4/W/26, September 21, 1989. The development of more effectively enforced and strengthened measures is a significant concern of the developing countries with respect to post-MFA trade. Although GATT reflects a more demanding legal discipline of importers than the MFA, the practice of many developing countries which impose illegal trade barriers has promoted demands from LDC's for stronger discipline if the protection of the MFA is permanently eliminated. R. HUDEC, DEVELOPING COUNTRIES IN THE GATT LEGAL SYSTEM 134-5 (1987).

<sup>139</sup> Summary Report of Discussions at a Meeting of the CBI Apparel Group, June 25th 1990.

<sup>140</sup> *Id.*

On April 24, 1990, CBI delegates met with U.S. Chief Textile Negotiator, Ambassador Ron Sorini, at Kingston, Jamaica to outline their reaction to the United States' proposals.<sup>141</sup> Jamaican representatives noted that none of the United States' options would preserve or protect Jamaica's apparel export trade. The representatives felt that the phrasing of the 807A exemption was particularly vague, creating uncertainty both for the Jamaican private sector customers in the United States, and for 25,000 domestic 807A workers whose products constitute 23 percent of Jamaica's exports.<sup>142</sup>

Delegates also listed the vagueness of the ten percent per annum reallocation of country specific quotas as a source of concern.<sup>143</sup> The proposed reductions raised the possibility of increased competition from low-cost Asian producers such as the People's Republic of China and India before Caribbean Basin industries might become more competitive. The method of quota reallocation is considered extremely important by Jamaican negotiators. The auctioning of quota allocations to United States buyers, or a "first to the dock" system by which global quotas are filled on a first-come basis, were both felt to be unsatisfactory, leaving Caribbean Basin exporters at the whim of United States buyers and exposed to competitive domination from the Far East.<sup>144</sup>

During the April meeting, Ambassador Sorini clarified the United States' position of continued support for the Caribbean Basin apparel industry. The United States' negotiating position would be to exempt outward processing operations under Section 807A from the proposed global quotas. Such trade would also be exempt from the annual ten percent reduction.<sup>145</sup>

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<sup>141</sup> Representatives at the meeting included delegates from Costa Rica, Guatemala, Guyana, Haiti, Honduras, Jamaica, the Netherlands Antilles, and Trinidad and Tobago, the CARICOM Secretariat and several exporter lobby associations.

<sup>142</sup> Press Statement outlining the Discussion between U.S. Chief Textile Negotiator, Ambassador Ron Sorini and C.B.I. Delegates Meeting in Kingston on April 24, 1990.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> Press Statement, Apr. 24, 1990.

### 4.2.3. *The Chairman's Text*

Despite this shift in the official United States position, other negotiating parties have not yet assented to proposals to protect Section 807 and 807A trade. The ultimate effect on Caribbean textile and apparel exporters is uncertain at this time due to the lack of clarity of the most current draft of the MFA phaseout agreement ("the Chairman's Text" or the "Draft").<sup>146</sup> Furthermore, significant uncertainty remains in the specifics and timing of the transition mechanism.

The current draft of the MFA phaseout agreement reflects a rejection of the United States global quota approach. Instead, the transition will be based on the integration of the MFA into GATT through the gradual elimination of quantitative restrictions. Although the exact schedule and timing of the transition remains undecided, the agreement contemplates three stages during which quota restraint levels will increase on an annual basis to allow increased importation.<sup>147</sup> During the transition period, all flexibility provisions, such as swing, will continue as those in 1991 MFA bilateral agreements.<sup>148</sup>

The Chairman's Text consists of eleven articles and four annexes. A detailed discussion of each of these is beyond the scope of this Comment. In brief, Articles 1, 2 and 3 discuss the integration of MFA and non-MFA restrictions on textiles into GATT. Articles 4, 5 and 7 deal with the administration of the transition mechanisms and the prohibition of fraud or other circumventions of the arrangement. Article 9 contains provisions for monitoring, surveillance, review and dispute settlement. Articles 10 and 11 concern the currently unspecified time span and the proposed January 1, 1992 starting date for the implementation of the transition mechanism. The annexes list the product coverage of the agreement and specific

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<sup>146</sup> Negotiating Group on Textiles and Clothing, Chairman's Text, GATT MTN.GNG/NG4/W/68, Nov. 19, 1990.

<sup>147</sup> *Id.* at art. 2 para. 10. The current draft indicates that Stage 1 annual growth rates will increase at 16 percent, Stage 2 at 21 percent, and Stage 3 at 26 percent. However these numbers have not yet been agreed upon. *Id.* at parts i-iii.

<sup>148</sup> *Id.* at art. 2, para. 11. The draft also contains a proposal allowing the renegotiation of base levels, growth rates and flexibility which has not been approved. *Id.* at para. 12.

actions to be taken when the agreement enters into force.

Article 6 outlines the safeguard mechanism during the transitional period. Although the exact terminology used differs from GATT Article XIX, the safeguard mechanism is closer to GATT standards than to MFA standards. Although safeguard actions may still be invoked on a country-by-country basis, there are several important elements that create a transitional standard more restrictive than MFA "market disruption." Within the transitional framework, safeguard action may only be undertaken when a party determines and demonstrates that "a particular product is being imported into its territory in such increased quantities as to cause *serious damage*, or actual threat thereof, to the domestic industry producing like and/or directly competitive products." (Emphasis added).<sup>149</sup>

The serious damage standard narrows the existing MFA standard by requiring a sharp and substantial increase in imports. Safeguard action can still be imposed upon a showing of an imminent increase in imports, but in more defined and limited circumstances than under the MFA market disruption standard. The increase must be measurable and "shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries."<sup>150</sup> This stronger standard could help end perceived abuses practiced by importing countries at exporting countries' expense by requiring a higher threshold for the imposition of restrictive trade measures.

Provisions in the Draft specifically address the problems of less developed countries. Article 2 contains an uplift clause to provide "meaningful improvement in access" for small exporters to large markets by raising base levels or growth rates.<sup>151</sup> Less developed countries are to be accorded treatment significantly more favorable in the application of safeguard measures.<sup>152</sup> Growth and flexibility rates for new entrants must take account of the need to further their

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<sup>149</sup> Chairman's Text, *supra* note 146, art.6, para. 2.

<sup>150</sup> *Id.* at art. 6, para. 4, n. 2.

<sup>151</sup> *Id.* at art. 2, para. 14.

<sup>152</sup> *Id.* at art. 6, para. 6(a).

economic development.<sup>153</sup> Small exporters are also accorded some favorable treatment in setting quota levels, and potentially, growth rates and flexibility.<sup>154</sup> Additionally, all handloom products or traditional folklore handicraft textile products are to be integrated directly into GATT.<sup>155</sup>

The Chairman's Draft also contains proposals presented by the United States that specifically address 807-type outward processing trade. The current state of the draft indicates uncertainty surrounding the treatment of this type of trade under the transition agreement. Article 2, paragraph 5(f) discusses this area:

[More favourable treatment shall be accorded to] [Transitional safeguard shall not be applied to] reimports into a country of textile products which that party has exported to another party for processing and subsequent reimportation, as defined by the laws and practices of the importing parties, and subject to satisfactory control and certification procedures, when these products are imported from a party for which this type of trade represents a significant proportion of its total exports of textiles and clothing.]<sup>156</sup>

As the draft suggests, it is unclear whether 807 operations will be exempted or merely treated more favorably during the transition period.<sup>157</sup>

The Draft also contains a bracketed proposal for the complete elimination of United States quotas on the re-imports on 807 and 807A products. Annex III provides that practices to be immediately eliminated when the agreement takes force include:

Restrictions on re-imports into a party's territory of textile products which that party has exported to

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<sup>153</sup> *Id.* at para. 6(b).

<sup>154</sup> *Id.* at para. 6(c).

<sup>155</sup> *Id.* at annex III, § A, para. 2.

<sup>156</sup> *Id.* at art. 6, para. 5(f).

<sup>157</sup> Phrases which are bracketed in the Chairman's Draft have not yet been agreed upon by the negotiating parties. The provisions as presently described are likely to be changed, modified or excised from the agreement prior to its conclusion.

another party's territory for processing, including restrictions described as "special regime", "guaranteed access level", "outward processing trade" quotas, imports under TSUSA 807 and 807 A and other similar restrictions.<sup>158</sup>

The clause could immediately benefit Caribbean apparel exporters by eliminating restrictions on 807 as well as 807A import levels, but the bracketed status of the clause leaves its prospects for survival uncertain.

Despite the inclusion of these provisions which specifically address the interests of Caribbean nations, considerable uncertainty remains. The lack of detail concerning the exact manner of implementation of the transition mechanisms<sup>159</sup> and the safeguard mechanisms which will apply both during and after the transition to GATT make it difficult to assess and predict the outcome of the phaseout negotiations. One risk of adopting the MFA transitional approach is that the existing structure of textile trade will not be altered for a considerable time. Although the duration of the transition period remains undecided and the United States has proposed the phaseout of all restrictions by 2002, less developed countries have expressed concern over this scenario.<sup>160</sup> LDCs are concerned over Article 9 of the Draft, which provides for review of market access obligations and compliance with strengthened rules and disciplines before proceeding to the next transitional stage.<sup>161</sup> The LDCs fear that the review mechanism could be used to stall and delay the integration process indefinitely.<sup>162</sup>

However, under such a scenario, Caribbean apparel exporters could benefit due to the continuation of their current preferential access and tariff treatment, provided that the phaseout agreement provides for their continuation. Although it is unclear whether such provision will be made, it is unlikely that the United States will easily change the status of the

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<sup>158</sup> Chairman's Text, *supra* note 146, annex III, § C, para. 3.

<sup>159</sup> See *supra* note 156 and accompanying text.

<sup>160</sup> See, e.g., *Textile Chairman says Nov. 16 is Final Deadline for Reaching Draft Agreement*, INSIDE U.S. TRADE, Nov. 7, 1990.

<sup>161</sup> *Id.* at art. 9.

<sup>162</sup> *Id.*

Caribbean industries as suppliers of assembly and finishing services to domestic textile producers.<sup>163</sup>

The policies and mechanisms which result from the negotiations to integrate the MFA into GATT will shape the future of the Caribbean Basin textile industry. The extent to which 807 and 807A trade is excluded from the transition mechanism and excluded from import quota restrictions, the duration of the phaseout, and the scope of the safeguards available to importers will certainly affect the contours of the Caribbean Basin apparel industry's continued growth. But with the Uruguay Round stalled, the region's exporters can do little but press their agenda and wait.

## 5. CONCLUSION

Under the operation of Section 807, the Caribbean Basin Initiative and the Section 807A special access program, the apparel assembly industry has become the region's largest exporter. However, this industry remains highly dependent upon reduced tariffs and preferential access which give the industry a competitive edge over other world suppliers to the United States apparel market.

This dependency could harm Caribbean Basin apparel assemblers in the future. Free trade agreements and bilateral discussions underway with other United States trading partners could render the region's preferential access and duty reductions meaningless. Most notably, a free trade agreement with Mexico could draw future investment away from the Caribbean Basin unless Caribbean nations are included in the agreement or other action is taken to equalize their relative positions.

The greatest change in the Caribbean Basin textile and apparel industry is likely to result from the transition agreement for the reintegration of the MFA into GATT. The elimination of the MFA will ultimately reshape the current structure of the international textile trade, replacing bilateralism with the operation of the most-favored nation-clause and the nondiscrimination principle.

The present Chairman's Draft of the phaseout agreement reflects a state of disagreement among the negotiating parties

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<sup>163</sup> See STEELE, *supra* note 22, at 4.

concerning the future of Section 807 and 807A trade. Considerable uncertainty remains as to duration and exact mechanism of the transition agreement and the ultimate effect these will have on Caribbean Basin textile trade.

For the present, United States textile and apparel trade policy in the Caribbean will remain significantly unchanged. With the failure of CBI II's attempt to expand duty-free treatment, non-807 apparel and textile operations will not benefit from Section 807's narrowly tailored tariff reductions. Accordingly, the textile and apparel industries in the Caribbean Basin are likely to continue in the pattern of development established by Sections 807 and 807A, with continued emphasis on apparel assembly and the use of United States fabrics.

While in the long-run a transition to GATT and the abolition of quotas could benefit 807 operations using foreign fabrics which fall outside Section 807A, such a change likely will not occur in the short term. The failure of CBI II to enact a foreign fabric short supply provision and the United States' unwillingness to extend generous quota allowances beyond 807 operations that use United States fabric reflect a stalemate in future expansion of current programs which benefit Caribbean exporters. While the transition from the MFA to GATT could potentially eliminate remaining quotas on textile and apparel imports from the Caribbean, the timing and terms of the transition remain unclear.