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TEXTILE TRADE: THE GATT EXCEPTION

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Textiles¹ have played a unique role in the economic development of most regions of the world,² and, therefore, have been a ready target for restrictive trade practices.³ This paper examines the specific trade policies for textiles which evolved under the auspices of the General Agreement on Tariffs and Trade ("GATT"); in particular, the policies that contradicted the basic principles of the General Agreement.

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¹ In trade terminology, "textiles" includes both textile products and apparel. The plural form is typically used in this inclusive manner as if it were singular, often suggesting incorrect grammatical use. For example, trade specialists in this sector might say, "Textiles is a complex area of trade." In technical terms, "textiles" refers to Standard International Trade Classification ("SITC") 65, consisting of textile yarn, fabrics, made-up articles not elsewhere specified, and related products. Apparel is separately specified in SITC 84. The term "textile complex" includes the industry chain from fiber to fabric, through end use products including apparel, home furnishings, and industrial products.

² See MICHEL A. AMSALEM, *TECHNOLOGY CHOICE IN DEVELOPING COUNTRIES* 18-19 (1983) (noting textile industry is most widespread industry in developing countries); see also NEILS BLOKKER, *INTERNATIONAL REGULATION OF WORLD TRADE IN TEXTILES* 7 (1989) (indicating textile industry has played leading role in industrialization process of most developed market economies); BRIAN TOYNE ET AL., *THE GLOBAL TEXTILE INDUSTRY* 50 (1984) (noting textiles is one of first industries developed in any country and ranks as one of largest percentages of manufacturing output).

³ See Timothy A. Canova, *Monologue or Dialogue in Management Decisions: A Comparison of Mandatory Bargaining Duties in the United States and Sweden*, 12 *COMP. LAB. L.J.* 257, 294 (1991) (providing U.S. textile industry as example of industry covered by restrictive trade practices); see also Jared L. Landaw, Note, *Textile and Apparel Trade Liberalization: The Need for a Strategic Change in Free Trade Arguments*, 1989 *COLUM. BUS. L. REV.* 205, 217-22 (indicating textile industry was influential in formulating restrictive trade legislation).

Nations have protected their textile industries for two major reasons. First, most countries desire control of an industry that supplies basic needs to its people such as clothing and the furnishing of dwellings.⁴ Second, and more importantly, many countries have sought to protect domestic industries from external competition because of the vital role they play in economic contribution.⁵

Textile production has a long history, beginning in early Egyptian, Greek, Roman, and Chinese civilizations.⁶ In the 1960s, British laws were recorded that restricted fine cotton fabrics from India in an effort to stimulate the fledgling British cotton industry.⁷ The restrictive measures were successful, leading to a substantial increase in production by British industry.⁸ Additionally, the British are reported to have stimulated exports and reduced competition elsewhere by restricting products used in production, including sheep, wool, woolen yarn, worsted, and even fuller's earth used

⁴ See MYRON P. GUTMANN, *TOWARD THE MODERN ECONOMY - EARLY INDUSTRY IN EUROPE 1500-1800* 31-33 (1988) (discussing competition among European countries in textile industry and noting export duties placed on English wool weakened competitive markets).

⁵ See BLOKKER, *supra* note 2, at 4-5. The rise of the textile industry can be attributed to both the potential mass-consumption of clothing, a basic human necessity, and the low investment costs of beginning textile production. *Id.*; see also KANG CHAO, *THE DEVELOPMENT OF COTTON TEXTILE PRODUCTION IN CHINA* 1 (1977). An underlying premise on which the author relies is that textile production is an indispensable industrial activity because of its role in feeding and clothing people. *Id.*; TOYNE ET AL., *supra* note 2, at 49-50. The need for clothing and shelter are worldwide problems which have created many important industries, including the textile industry. *Id.* The textile industry has helped in solving these problems by providing goods for consumption and by creating jobs for a significant portion of the population. *Id.* at 50.

⁶ See BLOKKER, *supra* note 2, at 4. Blokker notes that clothing was being produced in early Egyptian, Greek, Roman, and Chinese civilizations. *Id.* In the Middle Ages, important advances took place revolutionizing the industry. *Id.* These advances included the substitution of the spinning wheel for the hand spindle, the replacement of the vertical loom by the horizontal loom, and the creation of the "fulling" process which removed natural grease in wool and made fibers "mat." *Id.*

⁷ See *id.* at 5-6. The dynamics of British textile trade with India reveal early efforts at trade regulation. *Id.* at 5. In the 1960s, India's textile industry was flourishing. *Id.* India's cotton goods were widely exported throughout Europe. *Id.* The British woollen industry was seriously affected by Indian imports. *Id.* Consequently, the woollen industry protested. *Id.* at 5-6. Britain responded by imposing heavy duties on Indian cotton products, effectively eliminating them from the market. *Id.* at n.24. Without this protection, the rise of the British cotton industry at the end of the eighteenth century would not have existed. *Id.* at 6.

⁸ See Maxine Berg, *Markets, Trade and European Manufacture*, in *MARKETS AND MANUFACTURE IN EARLY INDUSTRIAL EUROPE* 3, 18 (1991) (suggesting increase in British exports during eighteenth century was closely related to British trade policies); see also BLOKKER, *supra* note 2, at 6 (noting increase in British cotton industry was result of high duties placed on Indian cotton imports); P.T. ELLSWORTH & J. CLARK LEITH, *THE INTERNATIONAL ECONOMY* 37 (1984) (providing numerous citations regarding importance of early role of textiles in international economy).

to clean wool.⁹ These laws were enforced with severity: for the first offense the transgressor's left hand would be cut off; for the second offense the penalty would be death.¹⁰

The textile industry marked its importance in history by leading the Industrial Revolution, first in Great Britain and other parts of Europe and later in the United States.¹¹ Textile products were the first goods produced by machines rather than by hand. Similarly, textile products were the first goods manufactured in factories rather than in homes.¹² The development of the apparel industry followed, almost a century after the textile sector.¹³

I. THE SETTING: WHY TEXTILE TRADE IS SENSITIVE AND COMPLEX

The long history of the textile industry, which has been developing technically for hundreds of years,¹⁴ accounts for many of the complexities in current trade.¹⁵ Moreover, because many seg-

⁹ See generally ELLSWORTH & LEITH, *supra* note 8, at 8-27 (detailing early British textile production).

¹⁰ See *id.* at 21 (describing penalties for violations of British textile laws).

¹¹ See BLOKKER, *supra* note 2, at 4-7. Blokker states that the Industrial Revolution was "mainly the revolution of the cotton industry in Britain." *Id.* at 4. He further states that the textile industry played a leading role in the Industrial Revolution. *Id.* at 7. This is illustrated by statistics. *Id.* at 5. The output of cloth in Britain rose from 40 million yards in 1785 to 2,025 million yards in 1850. *Id.*; see also GUTMANN, *supra* note 4, at 31-37 (describing rise of English textile industry and offering rise of rural textile industry as one possible explanation for expansion of large-scale industry as rise of rural textile industry); K.B. SMELLIE, GREAT BRITAIN SINCE 1688 63-78 (1962) (explaining developments in Britain which led to modern industry); TOYNE ET AL., *supra* note 2, at 43 (recognizing English textile technologies of spinning and fabric farming spread first to Europe and then to United States). See generally DAVID J. JEREMY, TRANSATLANTIC INDUSTRIAL REVOLUTION: THE DIFFUSION OF TEXTILE TECHNOLOGIES BETWEEN BRITAIN AND AMERICA, 1790-1830's 76-104 (1981) (discussing diffusion of British textile innovations to America and noting its economic importance).

¹² See JOHN ADDY, THE TEXTILE REVOLUTION 24-38 (1976). Chapters three and four provide a summary of the development of the textile machines and factories in Great Britain. *Id.* Author's work is based on citations from original documents included in the appendix. *Id.*

¹³ See generally KITTY DICKERSON, TEXTILES AND APPAREL IN THE GLOBAL ECONOMY (1995) (summarizing development of textile industry).

¹⁴ See GUTMANN, *supra* note 4, at 1-12 (explaining development of early textile industry and importance in industrialization of Europe).

¹⁵ See VINOD K. AGGARWAL, LIBERAL PROTECTIONISM, THE INTERNATIONAL POLITICS OF ORGANIZED TEXTILE TRADE 9-10 (1985). The author explains that the textile trade was a source of conflict between countries dating back to the 1300s. *Id.* A statute, issued by King Edward III in 1337 banning the import of woolen cloth, is provided as an example. *Id.*; see also BLOKKER, *supra* note 2, at 5. The author notes long history of international trade in textiles. *Id.*

ments of the industry have limited barriers to entry, virtually every country in the world has textile production.¹⁶

At the heart of the textile trade dilemma is the industry's role in developing the economy of numerous nations.¹⁷ Just as the growth of the textile industry marked the onset of the industrial revolutions in Europe and the United States, it has played a similar role in virtually every other developing nation around the world.¹⁸ As these countries move from basic agrarian economics toward industrialization, the textile sector is typically the primary stepping stone for that advancement.¹⁹ Uniquely suited to these early stages of development, many segments of the industry are labor-intensive and require only limited capital and technology to begin.²⁰ Generally, developing countries have limited capital and technology, but have large unemployed populations, thus the textile industry is often a natural fit for aspiring nations with few resources.²¹

Reliance on the textile sector for economic development is a pattern that might well be considered a barometer for measuring the stages of a country's development. Early reliance on the textile sector is eventually replaced by other industries, as many countries move into sectors requiring increased levels of technology

¹⁶ See FREDERICK CLAIRMONTE & JOHN CAVANAGH, *THE WORLD IN THEIR WEB, DYNAMICS OF TEXTILE MULTINATIONALS* 165 (1981) (noting textile industry is one industry in global economy common to all nations); see also TOYNE ET AL., *supra* note 2, at 50 (stating "virtually every country has a textile industry").

¹⁷ See AGGARWAL, *supra* note 15, at 3-4. The author recognizes the importance of textile trade to less developed countries. *Id.* In particular, the author notes that growing protection in textiles impedes the developing countries' efforts to industrialize and to finance debt through exporting. *Id.* The result is often disputes between nations. *Id.*; see also BLOKKER, *supra* note 2, at 7. It is noted that the textile industry has played a leading role in the industrialization process of most developed market economies. *Id.*

¹⁸ See generally CLAIRMONTE & CAVANAGH, *supra* note 16, at 165-97 (detailing importance of textile industry in global economics).

¹⁹ See BLOKKER, *supra* note 2, at 7-8 (explaining importance of textile industry in moving toward industrialization); see also JAN DE VRIES, *THE ECONOMY OF EUROPE IN AN AGE OF CRISIS, 1600-1750* 91 (1976) (linking industrial stimulation to technological improvements in industries including textiles where there was a marked increase in labor productivity following mechanization).

²⁰ Production of natural fibers, such as wool, cotton, and linen, as well as the assembly of garments, require limited technology and capital. The production of manufactured fibers, however, previously known as "man-made fibers," is capital and technology intensive. Therefore, the production of manufactured fibers generally occurs in a country after advanced stages of development have been achieved. See generally AMSALEM, *supra* note 2, at 1-25 (describing textile industry as appropriate beginning industry for less developed countries).

²¹ See DICKERSON, *supra* note 13, at 126-44 (explaining typical patterns of textile industry in economic development).

and capital.²² For example, textiles was the major sector to undergird the early development of Japan's economy, but became less important as Japan moved into high technological industries such as electronics.²³ Similarly, the "Asian Tigers"²⁴ initially built their economies through early development of the textile sectors, but eventually decreased emphasis on this industry as capabilities in other sectors increased. This pattern of development is paralleled in less developed areas of Asia, Latin America, and Africa.²⁵

Consequently, virtually every country in the world now has a textile sector.²⁶ Nearly all the textile and apparel production in less developed countries is geared toward the export market.²⁷ The complexity of this situation is that most countries are producing for the same world market, which primarily consists of consumers in the more affluent industrialized nations.²⁸ This market, however, has not grown sufficiently to absorb the growing production capacity worldwide. In fact, during the 1980s and 1990s, demand in the major market countries has been sluggish, at the same time that a growing number of producers have emerged on the world stage.²⁹ Moreover, already established players have become increasingly proficient as a result of new technologies, thereby producing more products with increasing efficiency.³⁰

The global overcapacity for production, and the fact that the textile sector is an important contributor to essentially every national economy, accounts for the complex and sensitive nature of trade in this sector. As countries have developed the capabilities to pursue more advanced industries, the textiles complex remains a major industrial sector, and leading employer, in even the most industri-

²² See Thomas J. Schoenbaum, *Trade Friction with Japan and the American Policy Response*, 82 MICH. L. REV. 1647, 1657-58 (1984) (recognizing previously strong industries, including textiles, have been replaced by newer high technology industries including appliances and communications).

²³ *Id.* at 1658-59 (suggesting Japan's ability to adopt its products to global need by utilizing high technology advances).

²⁴ See CLAIRMONTE & CAVANAGH, *supra* note 16, at 180-82 (explaining emphasis on textile industry in Asian countries, including Hong Kong, Taiwan, Singapore, and South Korea, and economic competition between these countries in textile industry).

²⁵ See DICKERSON, *supra* note 13 (detailing global patterns of industry development).

²⁶ See CLAIRMONTE & CAVANAGH, *supra* note 16, at 165-97 (referring to textile industry as "the crucible in which the world's fibres are transformed" and noting its importance to all countries).

²⁷ See *id.* at 166, 173, 179, 180 (providing statistics on textile and apparel production).

²⁸ See *id.* at 166 (indicating market for less developed countries' products).

²⁹ See *id.* at 168 (noting overall production capacity exceeds demand). See generally GUTMANN, *supra* note 4, at 107-08 (noting historical effects of world textile demand).

³⁰ See TOYNE ET AL., *supra* note 2, at 172-90 (explaining challenges to textile industry).

alized countries.³¹ For example, the combined fiber, textile, and apparel industries are the leading manufacturing employers in both the European Union and the United States.

The political reality of this scenario is that these major industrialized nations have fought tenaciously to retain the textile industries in their own countries, protecting them from the competitive threats of producers in low-wage nations. Additionally, the large number of workers and the geographic dispersion in the textile complex, particularly in the apparel sector, represents a large voting bloc with the potential to pressure policy makers to develop and support trade policies that protect the domestic industry.

II. EARLY HISTORY: THE EXCEPTIONS TO GATT BEGIN

Although trade developed rapidly after World War II, protectionism also increased. Representatives of major trading countries initiated efforts to stabilize the global trading climate.³² First, the International Monetary Fund ("IMF") was established in 1944.³³ Second, in 1947, twenty-three countries established GATT to promote unrestricted trade.³⁴ GATT was to provide a comprehensive approach to reducing tariffs and to establish basic

³¹ See generally CLAIRMONTE & CAVANAGH, *supra* note 16, at 165-97 (explaining force of textile manufacturing and influence on world economy).

³² See JOHN H. JACKSON, *RESTRUCTURING THE GATT SYSTEM* 9-10 (1990) (suggesting economic policies were in part responsible for W.W.II and this realization led to establishment of GATT); see also Josh Schein, Comment, *Section 301 and U.S. Trade Law: The Limited Impact of the 1988 Omnibus Trade and Competitiveness Act on American Obligations Under GATT*, 1 PAC. RIM L. & POL'Y J. 105, 106 (1992) (special intramural issue) (explaining intent of GATT was to stabilize global trade in aftermath of W.W.II).

³³ See Dale E. Hathaway, *Reforming World Agricultural Policies in Multilateral Negotiations*, 1 TRANSNAT'L L. & CONTEMP. PROBS. 393, 396 (1991) (noting International Monetary Fund was established to stabilize currencies and balance of payment positions of participating countries in response to conditions preceding and leading up to W.W.II); see also G. Richard Shell, *Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization*, 44 DUKE L.J. 829, 840 (1995) (explaining origins of International Monetary Fund).

³⁴ See General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187 (effective on Jan. 1, 1948) [hereinafter "GATT"]. On October 30, 1947, 23 countries signed GATT. *Id.*; see also Julie Leones et al., *The Dacey Business of Agricultural Trade Policy: Where Does NAFTA Take Us?*, 28 TULSA L.J. 559, 580 (1993). Currently, the 107 contracting parties constitute 90% of global trade. *Id.*

ground rules for open trade among contracting parties.³⁵ Originally, textile trade was governed by this Agreement.³⁶

Many other significant aspects of GATT later became issues in textile trade. Contracting parties, for instance, were curtailed in their freedom to impose barriers on trade.³⁷ A cornerstone was the "most-favored-nation" provision which prohibited discrimination among contracting parties.³⁸ Also prohibited were quantitative restrictions.³⁹ Tariffs, however, remained the only restrictions open to negotiation.⁴⁰ Finally, certain provisions in the GATT permitted contracting parties to escape their obligations in certain circumstances without acting illegally.⁴¹ For example, Article XIX permitted importing parties to take "safeguard measures," such as tariffs or quotas, under certain conditions when domestic producers suffered serious injury from increased imports.⁴²

In the 1950s, textile trade restrictions were reduced, to an extent, pursuant to general liberalization efforts under the auspices of GATT.⁴³ Trade among the developed countries of North

³⁵ See R. MICHAEL GADBAW & TIMOTHY J. RICHARDS, INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS: GLOBAL CONSENSUS, GLOBAL CONFLICT? 29 (1988) (explaining GATT was established to oversee negotiation of international rules governing trade); see also Michael E. Roll, Comment, *Nissho Iwai Am. Corp. v. United States: Customs Appraisal and Middleman Pricing Under Section 402 of the Tariff Act of 1930*, 17 FORDHAM INT'L L.J. 190, 198 (1993) (recognizing goal of GATT is to promote equal international trade standards).

³⁶ See 19 U.S.C. § 2252 (1994) (mandating coordination of items included in 1974 Textiles Agreement subject to GATT 1994); see also David J. Weiler & Allyson L. Senie, *International Rules of the Textile and Apparel Trade Regime*, in THE COMMERCE DEP'T SPEAKS ON INT'L TRADE AND INVESTMENT 1994, at 505, 531 (PLI Corp. L. Practice Course Handbook Series No. 864) (noting WTO textile restrictions include 1947 GATT provisions); Janice Wingo, Comment, *Rules of Origin For Textiles: Implementing Legislation For GATT*, 4 PAC. RIM L. & POL'Y J. 543, 545-46 (1995) (noting Uruguay Round implications on textile industry).

³⁷ See Sherry M. Stephenson, *ASEAN and the Multilateral Trading System*, 25 LAW & POL'Y INT'L BUS. 439, 446 (1994) (discussing enforcement mechanisms to prevent trade barriers by contracting parties).

³⁸ See GATT, *supra* note 34, arts. I & III, 61 Stat. A12-A13, A18-A19 (describing and outlining "Most Favored Nation" treatment).

³⁹ See *id.* art. XI, 61 Stat. A32-A34 (outlining "General Elimination of Quantitative Restrictions").

⁴⁰ See *id.* art. XXVIII, 61 Stat. A71-A72 (discussing "Modification of Schedules").

⁴¹ See Wingo, *supra* note 36, at 547 (suggesting Art. XIX constitutes an "escape clause" from GATT restrictions). See generally Jorge F. Perez-Lopez, *GATT Safeguards: A Critical Review of Article XIX and Its Implementation in Selected Countries*, 23 CASE W. RES. J. INT'L L. 517, 517-18 (1991) (outlining Art. XIX as "escape clause" but suggesting only limited use).

⁴² See GATT, *supra* note 34, art. XIX, 61 Stat. A58-A60 (establishing "Emergency Action on Imports of Particular Products"); see also BLOKKER, *supra* note 2, at 54-55 (explaining relationship between "legalism" and "pragmatism" as it relates to GATT).

⁴³ See AGGARWAL, *supra* note 15, at 43 (stating in early 1950s most nations advocated free trade and supported textile producers); see also Loretta F. Smith, Comment, *The*

America and Western Europe benefitted from these liberalization steps.⁴⁴ In contrast, restrictions on imports from Japan, as well as from many Eastern European and developing countries, were not eased at all, but became increasingly restrictive during the decade that followed establishment of GATT.⁴⁵

After the war, the United States and British textile sectors quickly gained market share because that about three-fourths of Japan's textile industry was destroyed during the war.⁴⁶ Aggarwal⁴⁷ reported that United States manufacturers were so confident that they even went on a technical mission in 1948 to help Japan rebuild her industry.⁴⁸ In addition, the United States was a strong supporter of Japan's admission to GATT in 1955.⁴⁹

As Japan quickly rebuilt her textile sector, United States industry sources grew increasingly concerned.⁵⁰ The Japanese knew

GATT and International Trade, 39 BUFF. L. REV. 919, 933-34 (1991) (discussing liberal aspect of GATT philosophy).

⁴⁴ See Thomas M. Kerr, *What's Good for General Motors is Not Always Good for Developing Nations: Standardizing Environmental Assessment of Foreign-Investment Projects in Developing Countries*, 29 INT'L LAW. 153, 163 (1995) (contrasting impact of liberalized protections on developing and developed nations); see also Shell, *supra* note 33, at 927 n.354 (suggesting developing nations suffer under GATT liberalization policies); Smith, *supra* note 43, at 919 (surveying varying impact of GATT on developing countries and "major powers"); Note, *Developing Countries and Multilateral Trade Agreements: Law and the Promise of Development*, 108 HARV. L. REV. 1715, 1721 (1995) (noting benefit to developing countries resulting from Uruguay Round).

⁴⁵ See AGGARWAL, *supra* note 15, at 43-44 (noting that in mid-1950s United States imposed export restraints on Japan).

⁴⁶ *Id.* at 44-45. After W.W.II, the textile industry in the United States and in Britain remained unharmed. *Id.* Japan however, the leading producer throughout the 1920s and 1930s, had over 75% of its textile capacity destroyed. *Id.* Consequently, United States and British industries dominated the market while Japan attempted to rebuild. *Id.*; see also ENZO GRILLI & ENRICO SASSOON, *THE NEW PROTECTIONIST WAVE* 74-76 (1990). Japan was largely ignored by major industrial countries of Western Europe and North America. *Id.* The common perception was that due to its internal destruction it was to play a minor role in world affairs. *Id.*

⁴⁷ See AGGARWAL, *supra* note 15, at 44-45. As a result of the marked increase in textile production, the United States became "overconfident" in its position. *Id.* The United States failed to recognize its superiority in the textile industry as an aberration resulting from the post W.W.II destruction in many countries. *Id.* This overconfidence can be seen in the United States' efforts to assist the Japanese in rebuilding their textile industry. *Id.*

⁴⁸ See generally Alex Y. Seita & Jiro Tamura, *The Historical Background of Japan's Antimonopoly Law*, 1994 U. ILL. L. REV. 115, 117 (discussing American support of post-war Japan). But see Alan S. Gutterman, *Japan and Korea: Contrasts and Comparisons in Regulatory Policies of Cooperative Growth Economies*, 8 INT'L TAX & BUS. L. 267, 296 (1991) (suggesting Japan abandoned traditional industries to focus on more modern industries after W.W.II).

⁴⁹ See AGGARWAL, *supra* note 15, at 45-46 (indicating American support for Japanese admission to GATT); see also Brenda A. Jacobs, *The History of the Textile Program and How it Reveals the Future*, in *THE COMMERCE DEP'T SPEAKS* 1987, at 637, 640 (PLI Corp. Law Practice Course Handbook Series No. 571) (noting Japan's joining of GATT in 1955).

⁵⁰ See AGGARWAL, *supra* note 15, at 46-50 (explaining increasing concerns of U.S. industry as Japan became more efficient in industrialization); see also GRILLI & SASSOON, *supra*

that expanding exports to the United States had risks.⁵¹ Japanese leaders knew that protectionist sentiments were building among United States textile groups, and that expanding exports had the potential for antagonizing their most important customer.⁵² As a result, in December 1955, the Japanese unilaterally restrained their exports on select cotton textiles to "promote mutually beneficial relations."⁵³ The ink was barely dry on the first agreement when United States textile producers began to pressure for additional restrictions.⁵⁴ Because Japan could hardly ignore United States demands and retain access to the American market, the Japanese conceded and signed a second "voluntary" export restraint agreement on cotton textiles in December 1956.⁵⁵

It is important to consider the ironic combination of events occurring at this time. First of all, the United States played an essential role in the establishment of GATT, and as such, became an official proponent of GATT's aims to eliminate discrimination among trading partners and to avoid quantitative restrictions on trade.⁵⁶ During this same time, the United States supported Ja-

note 46, at 74-76 (detailing Japan's economic and industrial growth during 1960s); Leo Gross et al., *Power & Protectionism: Strategies of the Newly Industrializing Countries*, 79 AM. J. INT'L L. 498, 498 (noting U.S. support of Japanese trade restrictions resulted from attempt to "mollify its domestic textile industry"); Gutterman, *supra* note 48, at 296-97 (noting successful revival of Japanese trade and exports).

⁵¹ See AGGARWAL, *supra* note 15, at 48-50. Japan's textile industry was highly dependent on U.S. market. *Id.* In 1956, over 22% of its total textile and apparel products were exported to the United States. *Id.* Additionally, over 33% of Japan's total exports to the United States were textile and apparel products. *Id.* The Japanese realized the ramifications of this among U.S. industry leaders. *Id.*

⁵² *Id.* The Japanese desired to expand the country's exports to the United States, but realized a move in that direction would antagonize American industry. *Id.*; see also Pamela A. Bannon, *Trade Relief: A Benefit or Burden for the Textile and Apparel Industries?*, 19 N.Y.U. J. INT'L L. & POL'Y 701, 701 (1987) (suggesting continuation of protectionist sentiments).

⁵³ See AGGARWAL, *supra* note 15, at 48-50 (indicating Japanese responded to American concern by restraining its exports of cotton textile products); see also Jacobs, *supra* note 49, at 637 (noting Japan's voluntary limitation of cotton exports).

⁵⁴ See AGGARWAL, *supra* note 15, at 50-53 (detailing response of American textile producers to Japanese exports).

⁵⁵ *Id.* (explaining agreement between United States and Japan to appease American textile producers); see also Craig R. Giesse & Martin J. Lewin, *The Multifiber Arrangement: Temporary Protection Run Amuck*, 19 LAW & POL'Y INT'L BUS. 51, 170 n.217 (1987) (reviewing post-W.W.II status of Japan-United States textile trade).

⁵⁶ See Theresa A. Amato, Note, *Labor Rights Conditionality: United States Trade Legislation and the International Trade Order*, 65 N.Y.U. L. REV. 79, 85-86 (1990) (discussing significant U.S. role in developing nondiscriminatory trade approach and labor rights); see also C. O'Neal Taylor, *Fast Track, Trade Policy, and Free Trade Agreements: Why the NAFTA Turned Into A Battle*, 28 GEO. WASH. J. INT'L L. & ECON. 1, 22-24, 53-60 (1994) (comparing U.S. goals in NAFTA and GATT, and nondiscrimination within regional barriers); Wingo, *supra* note 36, at 543-47 (noting focus on textiles in trade policies). See gener-

pan's admission to GATT, despite resistance by Western Europe.⁵⁷ Yet, the United States government found itself under serious pressure from the domestic textile industry to restrict textile imports from Japan.⁵⁸ The dilemma: how could the United States uphold its official free trade public position, yet deal with pressure from an increasingly powerful industry to restrain imports from a specific country? The "voluntary" export restraint ("VER") agreement was the temporary answer.⁵⁹ Under this agreement, Japan could be pressured to "voluntarily" limit her exports, and the United States could retain its official free trade stance.

A. Section 204 of the United States Agricultural Act

The United States' domestic authority for establishing textile quotas against imports has its legal origins in the Agricultural Act of 1956.⁶⁰ Section 204 of the act provides "relief" for domestic producers by granting the President authority, "wherever he determines such action appropriate," to negotiate agreements limiting imports from other countries into the United States. The provision provides that, "[t]he President is authorized to issue regulations governing the entry or withdrawal from warehouses of any such commodity, product, textiles, or textile products to carry out any such agreement."⁶¹ This provision also authorizes the President to control imports of such articles from nonparticipating countries when such agreements account "for a significant part of

ally Robert Housman & Durwood Zaeke, *Trade, Environment, and Sustainable Development: A Primer*, 15 HASTINGS INT'L & COMP. L. REV. 535, 538-43 (1992) (outlining international trade policies).

⁵⁷ See *supra* notes 47-49 and accompanying text (noting that United States supported Japan's admission to GATT).

⁵⁸ See *supra* notes 50-52 and accompanying text (detailing pressure from textile producers on U.S. government to curb Japanese imports).

⁵⁹ See U.S. INT'L TRADE COMMISSION, *THE HISTORY AND CURRENT STATUS OF THE MULTIFIBER ARRANGEMENT 2* (1978). See generally DAVID B. YOFFIE, *POWER AND PROTECTIONISM: STRATEGIES OF THE NEWLY INDUSTRIALIZING COUNTRIES* 47-79 (1983). Professor Yoffie summarizes the background, negotiation and implementation of the VER's that have been erected against textiles. *Id.* He notes that the United States imposed the first significant VER against Japan in order to modify its domestic textile industry without departing from the nondiscriminatory purpose of GATT. *Id.*

⁶⁰ 7 U.S.C. § 1854 (1988) [hereinafter "Agricultural Act § 204"].

⁶¹ See Exec. Order No. 11,651, 37 Fed. Reg. 4,699 (1972). President Nixon's directive established administrative procedures for implementing Agricultural Act § 204. *Id.*; see also Exec. Order No. 11,539, 35 Fed. Reg. 10,733 (1970). The Secretary of State is authorized, pursuant to § 204, to negotiate bilateral agricultural trade agreements. *Id.*

world trade in the articles with respect to which the agreement was concluded."⁶²

At first glance, it may seem peculiar that a provision in an agriculture act provided the applicable legal basis under United States law for imposing quotas on textile imports.⁶³ History provides insight on this anomaly. In the 1950s, when section 204 was first enacted, cotton was the primary textile fiber in use—represented in nearly all textile trade.⁶⁴ Virtually all imported textile products made of cotton were considered a threat.⁶⁵ The language of section 204, however, was carefully drafted to cover all textiles, regardless of the fiber.⁶⁶ Because of the leverage this provision provides to domestic producers, section 204 was retained as the legal basis for restricting imports, long after other fibers became equally important.⁶⁷

B. Introduction of the "Market Disruption" Concept

The concept of "market disruption" was introduced into trade circles in 1959, becoming a central issue in the ensuing textile trade policies.⁶⁸ At the Contracting Parties⁶⁹ meeting in 1959, the

⁶² See Agricultural Act § 204, *supra* note 60.

⁶³ See Arthur Aronoff, *Recent Developments in Trade and Investment in Eastern Europe and the Newly Independent States of the Former Soviet Union*, in THE COMMERCE DEP'T SPEAKS ON INT'L TRADE & INVESTMENT 1994, at 259, 277 (PLI Corp. Law Practice Course Handbook Series No. 863) (noting § 204 as authority to negotiate textile trade restrictions with Soviet Union states that are not GATT members); Seventh Annual Judicial Conference of the United States Court of Appeals for the Federal Circuit, 128 F.R.D. 409, 515 (1989) (distinguishing § 204 from Tariff Act restrictions during International Trade Law Breakout Session on Country of Origin Rules).

⁶⁴ See Bannon, *supra* note 52, at n.45 (noting STA countries "accounted for over 90% of cotton textile trade in free world").

⁶⁵ See Rebecca M. Reese, *International Trade in Textiles and Apparel: The Legal Regime*, in THE COMMERCE DEP'T SPEAKS 1992: DEVELOPMENTS IN IMPORT ADMINISTRATION: EXPORT & INVESTMENT ABROAD, at 381, 383 (PLI Corp. Law & Practice Course Handbook Series No. 789) (noting competition from Japanese cotton imports).

⁶⁶ *Id.* (noting that Agricultural Act § 204 refers only to "textiles or textile products"); see also R. BRANDIS, THE MAKING OF TEXTILE TRADE POLICY, 1935-1981 23 (1982) (interpreting Agricultural Act).

⁶⁷ See Agricultural Act § 204, *supra* note 60. Section 204 became an important mechanism allowing the U.S. government to unilaterally impose import limits on textile products from non-GATT members, such as Taiwan, which could not be part of later GATT-sponsored textile agreements. *Id.*

⁶⁸ See BLOKKER, *supra* note 2, at 71-72. The author notes that the predominant issue at the GATT ministerial meeting of 1959 was "market disruption." *Id.* This issue had informally been discussed in addresses by E. Wyndham White, Executive-Secretary of GATT, earlier that year. *Id.*; see also Renee T. Legierski, Note, *Out In the Cold: The Combined Effects of NAFTA and the MFA On the Caribbean Basin Textile Industry*, 2 MINN. J. GLOBAL TRADE 305, 309-10 (1993) (explaining "market disruption" and effect on textiles).

⁶⁹ See Wingo, *supra* note 36, at 545 (describing "Contracting Parties" as term used to identify signatory countries of GATT).

United States delegate stated that sharp increases in textile imports over a brief period of time could have serious economic, political, and social repercussions in the importing countries. The United States representative officially proposed that GATT members study the problem posed by "the adverse effects of an abrupt invasion (by sharp increases in imports) of established markets."⁷⁰

A GATT Working Party⁷¹ examined the situation and concluded that a problem did exist; a problem the group labeled "market disruption." The report added that "there were political and psychological elements of the problem" which, in the absence of adequate safeguards, made it unlikely that the countries already imposing unilateral barriers would refrain from doing so.⁷² Countries were already taking individual measures that contravened the aims of GATT. Following the study, the Contracting Parties adopted, on November 19, 1960, a resolution entitled "Avoidance of Market Disruption."⁷³ The resolution sought to keep these trade issues under GATT, rather than having countries impose their own unilateral restrictions.⁷⁴ The definition of market disruption adopted by the Contracting Parties introduced three fundamental changes that had important implications relative to GATT's Article XIX safeguard clause.⁷⁵

The first significant change was that an allegedly injurious increase in imports need not have occurred—a potential increase in imports could be sufficient to justify additional restrictions. Second, imports of a product from particular sources, rather than im-

⁷⁰ GATT, *TEXTILES AND CLOTHING IN THE WORLD ECONOMY* 64 (1984) [hereinafter *TEXTILES AND CLOTHING*].

⁷¹ See BLOKKER, *supra* note 2, at 147-48. A "Working Party on Textiles" was established at a meeting of the GATT Council in May, 1972. *Id.* The purpose of the Working Party was to conduct a factual study "regarding the economic, technical, social, and commercial elements which influence world trade in textiles." *Id.*; see also Legierski, *supra* note 68, at 309-10 (noting goals and recommendations of 1959 Working Party); Henry R. Zheng, *Defining Relationships and Resolving Conflicts Between Interrelated Multinational Trade Agreements: The Experience of MFA and GATT*, 25 *STAN. J. INT'L L.* 45, 54-55 (1988) (noting Working Party suggested GATT recognize market disruption problems of textile trade and develop solutions to problems).

⁷² See Zheng, *supra* note 71, at 54-55 (noting Working Party skepticism concerning conformity with GATT).

⁷³ GATT, B.I.S.D. (14th Supp.) at 38 (1966) (memorializing Nov. 19, 1960 adoption of committee report).

⁷⁴ See *id.* para. 3, no. 41374; see also Reese, *supra* note 65, at 386 (documenting issuance of guidelines by Working Party Committee on Avoidance of Market Disruption).

⁷⁵ See Zheng, *supra* note 71, at 54-64 (indicating GATT Article XIX safeguard measures permit contracting party to modify or withdraw its concessions when domestic producers are seriously injured or threatened by imports).

ports of a product in general, could be singled out as the problem. This enabled application of additional restrictions on a country-specific basis, that is, discriminatory, rather than on an MFN basis.⁷⁶ Third, the existence of a price differential between particular imports and goods of comparable quality sold on the domestic market, could be used in determining the need for additional restrictions.

Blokker⁷⁷ notes that the decision on market disruption was the legal result of the developed countries' dissatisfaction, mainly in the field of textile trade, with the balance between GATT's basic goal of trade liberalization and the potential for safeguard action. The market disruption decision shifted the balance to permit the possibilities for increasing protectionist measures under GATT. This decision paved the way for selective safeguard restrictions against the lower-priced textile products from low-wage developing nations. Although not originally intended to apply solely to textiles and apparel, these are the only two industries to which the Contracting Parties applied the concept.⁷⁸

The combination of section 204 at the domestic level and the legitimization of the market disruption concept at the international level, provided two important provisions through which the United States established subsequent policies to restrain imported textile products.

III. THE 1960s COTTON AGREEMENTS

Beginning in the early 1960s, a set of textile trade rules emerged to cover the complex issues related to this sector.⁷⁹

⁷⁶ See Walter Kolligs, Note, *The United States Law of Countervailing Duties and Federal Agency Procurement After the Tokyo Round: Is It "GATT Legal?"*, 23 CORNELL INT'L L.J. 553, 561 (1990) (discussing effect of unconditional and conditional MFN clauses). See generally L. Jay Kuo, Comment, *Farewell to Jackson-Vanik: The Case For Unconditioned MFN Status For the People's Republic of China*, 1 ASIAN L.J. 85 (1994) (discussing targeting of China's trade status in context of human rights violations).

⁷⁷ See BLOKKER, *supra* note 2, at 87 (discussing tension between trade liberalization and safeguard action); see also Ernesto M. Hizon, *The Safeguard Measure/VER Dilemma: The Jekyll and Hyde of Trade Protection*, 15 NW. J. INT'L L. & BUS. 105, 112-13 (1994) (suggesting developed countries initiated voluntary export restraints to protect competitive advantage).

⁷⁸ See Uruguay Round Agreements Act, 19 U.S.C. §§ 3511 & 3591 (1994). "Secretary of Commerce shall publish, in federal register, a list of products as set out in the agreement on textiles and clothing referred to in § 3511(d)(4)." *Id.* at § 3591.

⁷⁹ See Bannon, *supra* note 52, at n.33-39 (discussing mechanisms designed to control cotton trade); see also Giesse & Lewin, *supra* note 55, at 94-95 (noting role of textiles in 1960 presidential election and goals of Cotton Textiles Committee).

Although textile products had already become a sensitive area of trade, and special restrictive measures had been used, they were applied in a piecemeal fashion. The significance of the textile policies that developed in the 1960s and that continued for four decades into the present,⁸⁰ is that a special regime was created to "manage" textile trade alongside the rules of the General Agreement for all other trade.

By 1960, United States government leaders experienced increased pressure from the domestic textile industry to provide additional protection against imports. Politicians, beginning with John F. Kennedy, learned to exploit these concerns in exchange for the support of the large number of voters represented in the industry.⁸¹ After his election, President Kennedy proposed a program to assist the United States textile complex, including the development of an international agreement to govern textile trade.⁸² The President directed the Department of State "to arrange for calling an early conference of the principal textile exporting and importing countries . . . [to] seek an international understanding which will provide a basis for trade that will avoid the undue disruption of established industries."⁸³

A. *The Short-Term Arrangement Regarding International Trade in Cotton Textiles ("STA")*

The conference to discuss a multilateral textile agreement was held under the sponsorship of GATT, but oddly enough, only about

⁸⁰ See generally Zheng, *supra* note 71, 302-07 (providing overview of multilateral textile policies).

⁸¹ See Giesse & Lewin, *supra* note 55, at 94. The United States textile lobby used its political influence to a strike deal with Massachusetts Senator John Kennedy, exchanging political support for multilateral import restrictions. *Id.*

It is important to keep in mind that textiles was one of only a very limited number of trade-impacted industries at the time. Others included steel and shoes. Therefore, the setting was different from the present time when many more U.S. industries can be considered trade-impacted.

⁸² See BRANDIS, *supra* note 66, at 18-19 (discussing proposed plan to assist United States textile industry); see also Giesse & Lewin, *supra* note 55, at 94. During the first months of his administration, President Kennedy announced seven-point textile program calling for an international conference between textile importing and exporting countries which led to the Short Term Arrangement. *Id.*

⁸³ See Giesse & Lewin, *supra* note 55, at 94 (noting then Senator Kennedy's pledge to develop a "Comprehensive Industry-Wide Remedy"); see also Jacobs, *supra* note 49, at 637 (noting importance of developing international understanding to protect established industries).

half the Contracting Parties participated. As Blokker⁸⁴ noted, given the subject of the meeting, which represented a challenge to the fundamental aims of GATT, it would have been more appropriate to have held the discussion in the General Assembly rather than on the fringes of GATT.

The meeting resulted in promulgation of the STA.⁸⁵ The STA was intended to be a stop-gap measure until a more permanent mechanism could be developed.⁸⁶ The STA, which was effective from October 1961 to September 1962, authorized one-year restrictions on sixty-four categories of cotton textiles to avoid market disruption.⁸⁷

United States government and industry sources believed they had discovered the "near-perfect" answer to textile trade problems. According to an article in a leading textile trade paper, *Daily News Record*, the "cotton textile pact is to be cited as an ideal example of how the United States can liberalize its trade policies while still protecting specialized industries from market disruption."⁸⁸ Other GATT members, however, resented the United States negotiators' subtle threat to close off their markets unless the multilateral agreement materialized.

The STA represented a significant occurrence in GATT history. Textiles and apparel were the only products to be formally exempted from the provisions of GATT and given a special set of rules, or regime, of their own.

Two criteria were used as justification for identifying textiles and apparel as a "special case." First, the "challenge presented by 'low cost' imports was, with only minor exceptions, unique to textiles (and later clothing)." Second, was the "importance of employ-

⁸⁴ See BLOKKER, *supra* note 2, at 100 (noting meeting challenging fundamental aims of GATT would have more properly been conducted by General Assembly, consisting of all member states); see also JACOBS, *supra* note 49 (indicating only United States and seven importing countries attended informal meetings).

⁸⁵ See REESE, *supra* note 65, at 387 (suggesting STA resulted from 1961 meeting held by working party regarding market disruption).

⁸⁶ See JACOBS, *supra* note 49, at 640-45 (discussing origin and recommendations of STA).

⁸⁷ See *id.* (discussing cotton restrictions).

⁸⁸ AGGARWAL, *supra* note 15, at 79 (quoting *Daily News Record*, Oct. 26, 1961); see also LANDAW, *supra* note 3, at 226 (noting effectiveness of Short Term Arrangement on cotton textile trade at ensuring protection of domestic producers).

ment and production of those industries to the country's overall economic activity."⁸⁹

The STA, and the Long Term Agreement which followed, represented the formal beginning of a new set of trade rules, coexisting with the rules of GATT, for a specific sector. An important part of world trade was formally exempted from GATT rules. Particularly, textiles were immune from the nondiscrimination rule and the general prohibition of quantitative restrictions. In other words, quotas were legitimized under the STA.⁹⁰

B. *The Long-Term Arrangement Regarding Trade in Cotton Textiles ("LTA")*

In February 1962, nineteen major trading nations agreed to the LTA which, like the STA, permitted importing countries to employ restrictive measures if they claimed market disruption or the threat of market disruption from textile and apparel imports. Countries were permitted to either negotiate bilateral agreements with exporting countries, or impose unilateral restraints if the two trading nations were unable to reach an agreement. These unilateral restraints differed from those which existed prior to the STA and LTA. These two agreements provided a special mechanism, outside the normal GATT rules, which legitimized the bilateral agreements, containing quotas, and conditional unilateral restraints.

The LTA limited the volume growth of imports to five percent per year for most cotton products. Cline,⁹¹ as well as Keesing and Wolf,⁹² noted that the five percent growth rate seemed ironic since the United States textile and apparel trade deficit was only 4.9

⁸⁹ TEXTILES AND CLOTHING, *supra* note 70, at 10; *see also* Giesse & Lewin, *supra* note 55, at 81 (noting belief that textiles is "special case" which has become "institutionalized" and hence its ability to secure protection).

⁹⁰ *See* DICKERSON, *supra* note 13, at 330 (discussing STA's legitimization of quotas); *see also* Jacobs, *supra* note 49 (citing MFA's "official condonation" of extra-GATT measures including unilateral restraint); Reese, *supra* note 65, at 381 (noting MFA's sanctioning of intricate system of bilateral and unilateral quotas in international trade on textiles outside GATT trading system).

⁹¹ *See generally* WILLIAM CLINE, THE FUTURE OF WORLD TRADE IN TEXTILES AND APPAREL 147 (1990) (regarding political reality of appeasing large and increasingly powerful domestic industry).

⁹² *See* DONALD KEESING & MARTIN WOLF, TEXTILE QUOTAS AGAINST DEVELOPING COUNTRIES 17-18 (1980) (questioning five percent growth quota on cotton imports); *see also* Giesse & Lewin, *supra* note 55, at 100 (indicating one of basic objectives of MFA has been limiting increases in aggregate import volume).

percent of value added at the time, and the European Economic Community⁹³ had a surplus. The LTA was renewed in 1967 and again in 1970.

The LTA served as a political buffer on the United States front for President Kennedy, who aspired to launch a major global round of trade negotiations to reduce trade barriers, particularly tariffs, across all sectors. President Kennedy knew that he would be unable to launch his "Kennedy Round" unless the powerful textile and apparel industries, employing seventeen percent of all manufacturing workers in the industrialized countries at the time, were appeased. Hence, the completion of the 1962 LTA and the protection it afforded the United States textile industry served to permit the President to advance the Kennedy Round, reducing trade restrictions without opposition from the textile sector. The Kennedy Round reduced tariffs on textile and apparel products less than any other category. The textile sectors were able to impose quota limits, as well as retain the highest levels of tariffs on imports of any United States trade category. In short, at the same time that President Kennedy sought reduced trade barriers among all trading partners and across all categories of trade, the textile sector was singled out as an exception for multiple forms of protection.

IV. THE MULTIFIBER ARRANGEMENT ("MFA")

The STA and the LTA imposed restrictions only on cotton products. By the early 1970s, technological progress permitted manufacturers in Japan and a few other countries to export a growing volume of products made from manufactured fibers.⁹⁴ Because cotton products were under restrictions, producers in other countries shifted increasingly to manufactured fiber products, which were

⁹³ See, e.g., Jonas M. Grant, *"Jurassic" Trade Dispute: The Exclusion of the Audio Visual Sector From the GATT*, 70 *IND. L.J.* 1333, 1335 n.26 (1995). Currently, the 15 members of the EU are the United Kingdom, Germany, Italy, Belgium, the Netherlands, Luxembourg, Denmark, Ireland, Spain, Portugal, Greece, Austria, Finland, Sweden, and France. *Id.*

The six member European Economic Community ("EEC") has evolved to become the 15 member European Union ("EU"). The West European countries of the EEC or EU have had positions on textile trade similar to those of the United States. Together, Western Europe and the United States have constituted the major markets for textile products from the less developed countries. These two major world powers have frequently cooperated in securing common textile trade restraints.

⁹⁴ These are fibers made from chemicals or others such as rayon from regenerated cellulose, also known as manmade fibers.

not under restraint at the time. Although eighty-two nations were signatories to the LTA, the cotton arrangements became increasingly obsolete and textile/apparel imports grew substantially. Keesing and Wolf noted, "the developing countries succeeded in finding, during this period, more holes in the dike than the developed [countries] found fingers with which to close them."⁹⁵

Having witnessed President Kennedy's election success after pandering to the textile and apparel sectors, all three 1968 presidential candidates⁹⁶ sought the industry's support by promising to extend import restraints to products made of manufactured fibers and wool. After his election, President Nixon proceeded to follow through on his campaign promises, hoping to retain the industry's support for his re-election. He appointed Secretary of Commerce Maurice Stans to proceed with efforts to develop an arrangement to cover all fibers. However, other major trading partners were cool to the proposal. The Europeans were already controlling their non-cotton imports through bilateral and unilateral measures. The Europeans also feared that additional measures might limit their own shipments to the United States markets. Rejected in his initial overtures, Secretary Stans believed he could eventually entice the Europeans to join his plan by concluding such restrictive United States bilateral agreements with the Asians, thus permitting diversion of products from those countries to European markets. He reasoned that this would encourage the Europeans to join a multilateral accord, his ultimate goal.⁹⁷

The Japanese were equally unenthusiastic toward the United States proposal. Having become stronger economically and politically than in the 1950s VER era, the Japanese were unwilling to consider a multilateral textile agreement that included wool and manufactured fiber products. Destler reported that "[t]o most

⁹⁵ See KEESING & WOLF, *supra* note 92, at 22; see also Pamela A. Bannon, *Trade Relief: A Benefit Or Burden For the Textile and Apparel Industries?*, 19 N.Y.U. J. INT'L L. & POL. 701, 708 (1987) (noting that since LTA only covered cotton textiles, exporting countries shifted to trade in manmade fibers to make end-run around LTA restrictions).

⁹⁶ Those three candidates were Richard Nixon, Hubert Humphrey, and George Wallace. See John Greenwald & Scott Hoing, *The United States and the MFA IV: Opportunities Lost*, 19 LAW & POL'Y INT'L BUS. 171, 181 n.34 (1987) (noting both former Vice President Nixon and Vice President Humphrey made textile trade important issue in their 1968 campaigns for president).

⁹⁷ See AGGARWAL, *supra* note 15, at 118-21 (detailing Secretary of Commerce Stans' efforts to obtain multilateral agreements with Europe and Far East); see also Giesse & Lewin, *supra* note 55, at 96 (noting within one-half year after taking office, Nixon administration began negotiating VER's with Japan, Hong Kong, Taiwan, and Korea).

Americans, the Stans mission was a debacle: those who wanted textile quotas got nothing; those who cared most about United States-Japanese relations had seen perhaps the worst public confrontation on a substantive policy issue since the Occupation.⁹⁸ Intense negotiations between the United States and Japan over textile trade followed from 1969 to 1971, at times occurring at the highest levels between President Nixon and Japanese Prime Minister Eisaku Sato. Efforts included two summit conferences, two cabinet-level ministerial conferences, and at least nine other major negotiations. Textile trade difficulties dominated relations between the two countries for about three years, straining relationships far beyond the textile issue. President Nixon feared an agreement might not be reached before the election and, in response thereto, he tightened the pressure on the Japanese, going so far as to threaten to invoke the "Trading with the Enemy Act"⁹⁹ to impose unilateral restraints. On the day the Trading with the Enemy provision was to take effect, the Japanese agreed to limit shipments of wool and manufactured fibers.

Following the Japanese agreement, the United States reached similar bilateral agreements with Hong Kong, South Korea, and Taiwan to limit textile products in the additional fiber categories. Soon afterward, Stans' earlier prediction that bilaterals with major Far Eastern suppliers would encourage the Europeans to change their minds proved correct. Once the United States had more restrictive agreements with the Asians on products of all fibers, shipments were diverted increasingly to European markets.¹⁰⁰ A multifiber arrangement seemed inevitable, once the Europeans willingly participated.

⁹⁸ See generally I.M. DESTLER ET AL., *THE TEXTILE WRANGLE: CONFLICT IN JAPANESE-AMERICAN RELATIONS, 1969-1971* 275-314 (1979) (providing detailed account of crisis that began when United States demanded that Japan restrict her exports of manufactured fiber and wool textile products).

⁹⁹ See Trading With Enemy Act, 50 U.S.C. §§ 1-31 (1988). This Act was the equivalent of "bringing in the tanks" to pressure Japan. The Act was originally signed in 1917, when the enemy was Germany, and amended 11 days after the Pearl Harbor attack to provide: "During the time of war or during any period of national emergency declared by the President, the President may . . . regulate . . . any . . . importation or exportation of . . . any property in which any foreign country or a national thereof has any interest. *Id.*; see also DESTLER ET AL., *supra* note 98, at 96 (indicating after two years of stalled negotiations President Nixon threatened East Asian importers with invoking Trading with Enemy Act, unless they entered into bilateral agreements with United States).

¹⁰⁰ See AGGARWAL, *supra* note 15, at 123 (noting diversion of imports to European markets following United States agreements with Asian countries); see also Giesse & Lewin, *supra* note 55, at 80 n.174 (noting European recession lasted until 1985-86).

A GATT Working Party began a study of world textile trade in 1972, with the charge of seeking alternative multilateral solutions to the world textile trade problem. Negotiations ensued under GATT sponsorship, leading to a new multilateral framework known as the Arrangement Regarding International Trade in Textiles. This agreement, more commonly known as the Multifiber Arrangement ("MFA"), was concluded at the end of 1973 and became effective in January 1974, for a four-year period.

A. MFA I: 1974-1977

The MFA was an extension of the LTA in most respects; however, it was considered a more balanced arrangement that took into account the interests of both the exporting and importing countries. Article 1.2 stated that the objective was:

to achieve the expansion of trade, the reduction of barriers to such trade and the progressive liberalization of world trade in textile products, while at the same time ensuring the orderly and equitable development of this trade and the avoidance of disruptive effects in individual markets and on individual lines of production in both importing and exporting countries.¹⁰¹

As the authors of GATT's *Textiles and Clothing in the World Economy*¹⁰² noted, a principal aim was the economic growth of the developing countries and a substantial increase in their earnings from trade in textiles and apparel. The agreement was idealistic, perhaps unrealistically so, in its intent to help both the developed and undeveloped countries. In general, the four years under the initial agreement was a time of relative trade liberalization for textiles.

The Arrangement provided a safeguard mechanism for importing countries to employ when market disruption occurred, but it was to be used under certain defined circumstances. Importing

¹⁰¹ See GATT, ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES 6 (1974); see also Zheng, *supra* note 71 (indicating MFA sought to balance exporting countries' need to expand trade with importing countries' desire to protect textile industry).

¹⁰² TEXTILES AND CLOTHING, *supra* note 70, at 74; see also Greenwald & Hoing, *supra* note 96, at 182 (discussing MFA objective to achieve progressive liberalization of world trade in textiles).

countries were expected to simultaneously pursue steps to make their domestic industries more competitive with global imports.¹⁰³

As its name implies, the MFA extended fiber coverage to include manufactured fibers and wool, as well as cotton and cotton blends. Certain handloom fabrics and cottage industry products were excluded, as were properly certified traditional ethnic handicraft products.

The MFA was actually quite general. Through the bilateral agreements negotiated by participating countries, the MFA was designed to "ensure the orderly and equitable development" of textile trade.¹⁰⁴ The MFA served as an umbrella agreement, under which bilateral agreements were structured. Although any country might have negotiated a bilateral agreement, a predictable pattern emerged where the industrialized countries negotiated bilateral agreements¹⁰⁵ with less developed exporting countries that desired to ship to the developed countries' markets. Through the bilateral agreements, quota levels were established on textile product categories that were perceived to cause, or to have the potential of causing, market disruption in the importing markets. This significant departure from GATT's nondiscrimination rule permitted importing countries to single out exporting countries considered to be a problem and negotiate varying agreements among textile trading countries. For example, the United States' quota levels might vary significantly from Hong Kong to South Korea to Taiwan, depending almost entirely on the extent to which a country's products were considered threats.

Several new provisions were included in the MFA that had not been present in the LTA. First, a multilateral surveillance institution, the Textiles Surveillance Body ("TSB"), was established to supervise the implementation of the MFA. Second, a Textiles

¹⁰³ See Greenwald & Hoing, *supra* note 96, at 182 nn.37-38 (noting MFA seeks to ensure development of textile trade in participating countries and to require detailed reports, to Textile Surveillance Body, explaining why import restrictions are required).

¹⁰⁴ General Agreement on Tariffs and Trade, 1974 Geneva, *Arrangement Regarding International Trade in Textiles*, Art.1, Item 2, at 6. In Article 1, Item 2, parties to the Arrangement spelled out the objectives which took into account the needs of both importing and exporting countries. *Id.*

¹⁰⁵ This consisted of the countries of Western Europe, Canada, and the United States. Australia was a signatory in the first MFA but did not participate in later renewals. *E.g.*, Agreement on Trade Relations, Jan. 23, 1991, U.S.-Mong., 30 I.L.M. 515; New Textile Agreement, Feb. 13, 1988, U.S.-Mex., 27 I.L.M. 451; Agreements on Civil Air Transport, Textiles, Maritime Transport, and Consumer Affairs, Sept. 17, 1980, U.S.-P.R.C., 19 I.L.M. 1105.

Committee was formed as the management body, composed of representatives of all the signatory member nations. Third, stricter rules for determining market disruption were established to discourage unwarranted claims of disruption. Fourth, quota allowances were permitted to grow by six percent annually rather than five percent under the LTA. Finally, new provisions for quota flexibility were introduced. The new provisions were: "swing" (which permitted transfer from one category to another to take advantage of unused quota), "carry forward" (which permitted borrowing from the next year's quota), and "carryover" (which allowed the exporting country to add unused quota from one year, to the following year's quota).

Paul Wurth, the first TSB Chairman,¹⁰⁶ noted that the "Arrangement is in effect a multilateral contract, freely entered by those countries wishing to participate in it." All the developed countries and all the major textile exporting nations, including those which were not GATT Contracting parties, joined for a total of forty-two participants, counting the European Community as one participant.¹⁰⁷

B. MFA II: 1977-1981

As noted, the MFA was originally a four-year agreement. However, the major industrialized countries pressed for subsequent extensions to allow for additional "time to adjust." The renewals of the MFA that followed were "Protocols of Extension," that is, extensions of the original MFA to which changes were appended.

By the 1977 renewal, much of the altruism present in the original agreement had disappeared, particularly on the part of the Western European countries. Once the original 1973 pact was signed, the United States promptly negotiated bilateral agreements with the leading textile exporting nations, slowing the trade flow in the direction of the United States market. In con-

¹⁰⁶ PAUL WURTH, *THE ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES* 57-59 (1981); see Sam Laird, *Latin American Trade Liberalization*, 4 MINN. J. GLOBAL TRADE 195, 206 (1995) (indicating Latin American countries have not employed MFA against trading partners). *But see* Zheng, *supra* note 71, at 86-88 (suggesting MFA restrictions are imposed on countries not participating in agreement).

¹⁰⁷ GATT, *supra* note 34, at 77; see Wingo, *supra* note 36, at 548-49 (noting that approximately 80% of United States textile and apparel imports from developing countries are covered by MFA quotas).

trast, the European Community¹⁰⁸ was much slower in concluding bilaterals because of the additional time required to develop a common position among its member nations.¹⁰⁹ The prompt United States agreements not only protected the United States market from imports, but also diverted trade toward the European Community markets. Consequently, during the first four years, imports grew far more in the European Community than in United States markets. Textile import growth in the European Community, when added to the effects of a serious recession in Europe, resulted in European negotiators coming to the MFA renewal talks in a far tougher mood than that of four years earlier.¹¹⁰ Negotiators were, of course, also being pressured by European textile industry groups.

Although the United States had been the force behind the original MFA, the Europeans dictated the terms of the 1977 extension. The Europeans were particularly concerned about the six percent growth rate permitted under the MFA and the difficulty of having to prove market disruption as a prerequisite to negotiate bilateral agreements with a growth rate of less than six percent. Both European Community and United States industry sources pressed to have quota growth rates tied to domestic market growth, arguing that it was unfair for import quotas to grow six percent annually when the domestic market was growing only one percent per year.

The European Community achieved its goal for "jointly agreed reasonable departures" from the terms of the original MFA. This provision meant that participating countries could negotiate bilateral agreements that no longer complied with the provisions of the original MFA that had been agreed upon by all members.¹¹¹ The developing exporting members opposed this controversial clause because the "departures" worked to their detriment. The departure included reduced quota levels, denials or reduction of the flex-

¹⁰⁸ See, e.g., *The Ten's Textile Tangle*, *ECONOMIST*, Nov. 14, 1981, at 71. The European Community ("EC") was originally known as the European Economic Community ("EEC") and consisted of six members. *Id.* At the time of MFA II, the EC had grown to 10 members. *Id.*

¹⁰⁹ See *id.* (noting failure of EC members to agree on proposed MFA on four separate occasions).

¹¹⁰ See KEESING & WOLF, *supra* note 92, at 52-70 (providing additional details related to 1977 MFA renewal); see also AGGARWAL, *supra* note 15, at 143-66 (providing further details regarding 1977 MFA renewal).

¹¹¹ See TEXTILES AND CLOTHING, *supra* note 70, at 80-81 (indicating participating countries could reasonably depart from MFA terms through bilateral agreements).

ibility provisions, and growth rates reduced below six percent. The renewed agreement gave the developed countries wide latitude to negotiate highly restrictive bilateral agreements.¹¹² Some quota growth rates were reduced to zero. Moreover, the "reasonable departures" clause weakened the effectiveness of the TSB. The TSB could no longer oversee the implementation of the MFA if the MFA was not being followed as originally agreed.

During this time, both the European Community and the United States developed safety-net provisions to apply restraints on unrestricted exports where shipments reached a certain threshold. In Europe this was known as the "basket extractor" mechanism and the United States version was termed the "call mechanism." Under each mechanism, where an exporting nation's shipments reached a certain level, consultations between the two governments resulted. These mechanisms were intended to apply restraints to previously unrestrained exports when the importing nation believed a risk of market disruption was present.

The provisions of MFA II changed fundamentally the original Arrangement, resulting in extremely protectionist bilateral agreements that violated the purpose of the original Arrangement. Keesing and Wolf referred to the "reasonable departures" clause as a sharp deviation from the norms of the MFA.¹¹³ They concluded that this clause provided a "departure from a departure—a way of waiving the provisions of an agreement which was itself a derogation from GATT principles."¹¹⁴

C. MFA III: 1981-1986

Despite the restrictive nature of MFA II, textile and apparel imports continued to grow dramatically in both European Community and United States markets.¹¹⁵ At least two major trends surfaced between 1977 and 1981. First, the number of exporting nations producing in this sector increased sharply.¹¹⁶ Second, the

¹¹² See Landaw, *supra* note 3, at 211 (noting that MFA II was negotiated in response to EC's desire for "more restrictive regulations regime"). See generally Steven Jones, *Bargaining Set for July on New Accord for Global Trade in Garments, Textiles*, WALL ST. J., May 29, 1990, at A3 (discussing flexibility of bilateral agreements).

¹¹³ TEXTILES AND CLOTHING, *supra* note 70, at 70.

¹¹⁴ *Id.*

¹¹⁵ See Landaw, *supra* note 3, at 211 (documenting continued growth of imports in U.S. markets despite tightening of quota restrictions under MFA II).

¹¹⁶ See *id.* (noting increase in number textile producing nations).

apparel trade deficits were becoming more pronounced because a growing portion of shipments from the less developed countries were emphasizing production in the apparel area.¹¹⁷

Domestic trade politics in both the European Community and the United States played an increasingly strong role in shaping negotiations for this MFA extension. Industry sources demanded greater protection; United States industry leaders argued that the price differential between imported products and comparable domestic goods provided justification for added protection from imports. By 1985, the United States industry leaders became so demanding and dissatisfied with the protection afforded under the MFA that a textile bill was introduced in the United States Congress to set additional limits on textile and apparel products.¹¹⁸

The developing exporting countries succeeded in having the "reasonable departures" clause removed in this extension. However, another provision, referred to as the "anti-surge mechanism,"¹¹⁹ provided that "[w]here such significant difficulties stem from consistently under-utilized larger restraint levels and cause or threaten serious and palpable damage to domestic industry, an exporting participant may agree to mutually satisfactory solutions or arrangements. Such solutions or arrangements shall provide

¹¹⁷ See DICKERSON, *supra* note 13, at chs. 5-6 (noting increase in apparel trade deficit during MFA II as result of emphasis in apparel production by less developed countries); see also TOYNE ET AL., *supra* note 2, at ch.2. Certain patterns are relatively predictable as countries go through the early stages of development. *Id.* For example, the most underdeveloped countries may be able to perform simple assembly operations of garments whose components have come from elsewhere. *Id.* At later stages, countries with greater capital and technological capabilities are able to produce more advanced textiles and other components. *Id.*

¹¹⁸ H.R. 1562, 99th Cong., 1st Sess. (1985). In March 1985, Representative Edward Jenkins (D, GA) introduced H.R. 1562, the Textile and Apparel Trade Enforcement Act of 1985, the "Jenkins bill." *Id.* This bill would have replaced the bilateral agreement system with a unilateral restraint system, negating more than 30 U.S. bilateral agreements negotiated in good faith with trading partners. *Id.* Major Asian suppliers would have experienced reductions of approximately 30 percent in shipment levels. *Id.* Both the House and the Senate (S. 680) passed the bill; President Reagan vetoed it; and the House lacked only eight votes to override the veto. *Id.* Some industry sources later admitted that the Jenkins bill was a way of applying pressure on the U.S. Congress to send a message to textile negotiators to secure a tougher MFA in Geneva. *Id.*; see Suh Sang Mok, *Asia: Economic Reform and a "New Korea,"* WALL ST. J., Oct. 6, 1986 (discussing Reagan's veto of Jenkin's bill); see also John Yang, *House Narrowly Upholds Reagan's Veto of Bill to Curb Textile Shoe Imports,* WALL ST. J., Aug. 17, 1986 (noting President Reagan's veto of bill to roll back imports of textiles and shoes).

¹¹⁹ See Stuart Anerbach, *S. Korea Agrees to Curb On Exports,* WASH. POST, Aug. 5, 1986 (stating MFA will help prevent import surges).

for equitable and quantifiable compensation to the exporting participant."¹²⁰

The GATT Secretariat characterized this iteration of the arrangement by stating that, "[r]estrictions under MFA III were not only more extensive but were in many cases more restrictive."¹²¹ The TSB observed in its review of the operation that:

while some progress may have been made during the life of MFA III with respect to the orderly development of world trade in textiles and to the increase in export earnings of developing countries, little or no headway has been made in the objectives of achieving the reduction of barriers and the progress of liberalization of world trade.¹²²

Choi, Chung, and Marian noted that this extension of the MFA strengthened the possibilities for deviations from GATT even further.¹²³

During MFA III, the United States applied the system of restrictions to more sources and to many more products than previously. More than one hundred consultation calls were made each year between 1983 and 1985, and in nearly all cases, new restrictions were agreed upon or unilateral measures were taken.¹²⁴

Forty-two countries were signatories to MFA III.¹²⁵ China, an important textile trading nation by this point, became a participant in the MFA,¹²⁶ despite its inability to join the GATT. China's

¹²⁰ See *Protocol Extending the Arrangement Regarding International Trade in Textiles*, GATT/1304, Geneva, Dec. 22, 1981, at 5. Essentially the anti-surge clause permitted action to be taken where an underutilized quota was filled in a short time period. *Id.* The unexpected surge of imports in those product categories created by rapid quota fulfillment resulted in a form of market disruption in the importing country. *Id.*

¹²¹ GATT, *Updating the 1984 Secretariat Study "Textiles and Clothing in the World Economy"*, Nov. 30, 1987, at 48.

¹²² *Id.* at para. 7.12.

¹²³ See YING-PIK CHOI ET AL., *THE MULTI-FIBER ARRANGEMENT IN THEORY AND PRACTICE* 55 (1985). This study was carried out under the aegis of the Programme of Cooperation Among Developing Countries, Exporters of Textiles and Clothing, an inter-governmental body comprised of 28 countries which fought protectionism against developing country exports of textiles and clothing. *Id.* Balian Zutshi, who provided leadership for the group, later served as India's Trade Ambassador. *Id.* Nicholas Marian was previously a senior economist at GATT, working on behalf of the developing exporting countries after his retirement from GATT. *Id.* This coalition of textile exporting countries later formed the International Textiles and Clothing Bureau, located in Geneva, whose primary goal has been to reduce protectionist restraints on textile/apparel trade. *Id.*

¹²⁴ See *TEXTILES AND CLOTHING*, *supra* note 70, at 48 (noting new restrictions in MFA III).

¹²⁵ See Anthony Moreton, *Uncertain Future for a Bleary-Eyed Pact: The MFA Agreement*, *FIN. TIMES*, Aug. 6, 1986, at 11 (discussing signatories to MFA).

¹²⁶ See *id.* at 47 (noting China's entry into MFA).

centrally-controlled economy prevented her from being a member of GATT at that point, however most parties preferred to have her in the MFA.¹²⁷ For the importing countries, it provided an opportunity to formalize and legalize restraints on China's products.¹²⁸ For China, bilateral agreements were preferable to unilateral restraints.¹²⁹

D. MFA IV: 1986-1991

During the MFA III years, United States market conditions continued to worsen.¹³⁰ In addition to a serious recessionary period in the early 1980s that altered the way in which the entire softgoods industry functioned,¹³¹ textile and apparel imports grew at an unprecedented rate. Imports almost doubled in just over two years.¹³² By the time of the negotiations for the 1986 extension, business conditions had improved more in the United States than in the European Community.¹³³

In July 1986, fifty-four textile trading nations concluded negotiations for another Protocol of Extension which renewed the MFA for an additional five years.¹³⁴ The Protocol contained many features similar to those of previous extensions.¹³⁵ The most significant change was that additional fibers were covered under the 1986 Protocol.¹³⁶ The growing restrictions on cotton, manufactured fiber, and wool imports, caused a number of developing exporting countries to avoid restrictions on their products by simply making the products of other fibers, such as flax, ramie, and silk,

¹²⁷ See, e.g., Peter Grier, *U.S. and Growing China Trade*, CHRISTIAN SCIENCE MONITOR, Aug. 28, 1981, at 14 (discussing China's possible signing of MFA).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ See, e.g., Sol. C. Chaikin, *Lets Control Imports Better*, FIN. WORLD PARTNERS, Apr. 1, 1986, at 1 (discussing textile market conditions in United States).

¹³¹ During the early 1980s recession, both manufacturers and retailers of apparel were left with excessive inventories representing large losses. As a result, manufacturers and retailers began to keep smaller inventories, using various just-in-time and quick-response approaches that permitted faster replenishment of finished goods and components throughout the softgoods chain.

¹³² See Robin Anson & Paul Simpson, *World Textile Trade and Production Trends*, THE ECONOMIST INTELLIGENCE UNIT 119.

¹³³ *But see* Chaikin, *supra* note 130 (noting EEC has used MFA to conserve its textile industry and workers' jobs, and to reduce textile imports).

¹³⁴ See Jacobs, *supra* note 49, at 646-51 (noting MFA has been reviewed three times by protocols of extension) (1987).

¹³⁵ See Moreton, *supra* note 125, at 11 (discussing MFA IV provisions).

¹³⁶ See *id.* (discussing additional covered fibers of 1986 MFA agreement).

along with blends of these fibers.¹³⁷ In the United States, imports from China of non-MFA fiber products increased 346 percent in 1985 over 1984.¹³⁸ The 1986 Protocol covered products in which the now-controlled fibers exceeded fifty percent of the weight or value of the imported goods; pure silk was excluded. The additional fiber coverage was particularly distressing to India and China, both of which had developed significant trade in ramie.¹³⁹

MFA IV also made special concessions for the least developed countries.¹⁴⁰ Quotas were typically increased as a percentage based on the previous year.¹⁴¹ For many of the smaller or poorer developing countries, this provided little room for growth because the base on which the percentage was calculated was very small.¹⁴² Therefore, in this extension, the least developed nations were given significantly more favorable treatment than the exporting countries that had achieved greater overall economic development.¹⁴³

MFA IV did not allow cutbacks or tightening of quotas; that is, growth could not be "negative." Instead, exporting countries were required to accept lower rates of growth and flexibility.¹⁴⁴ The importing countries also committed themselves to making improvements in the bilateral agreements for increased access.¹⁴⁵

¹³⁷ See Chaikin, *supra* note 130 (discussing cotton restrictions).

¹³⁸ See generally Herbert Blueweiss, *A Statistical Look at Imports; Textile-Apparel Imports*, DAILY NEWS REC., May 6, 1986, at 16 (noting large increase in imports from China).

¹³⁹ See Eduardo Lachica, *China Accepts Curb of 3%-a-year Rise in Textile Sales*, WALL ST. J., Dec. 21, 1987 (noting China's agreement to restraints on silk, ramie, and other fibers); see also Moreton, *supra* note 125, at 11 (discussing China's export of ramie).

The proliferation of ramie sweaters in the United States market was an example of how trade policy affected fashion. Ramie was a previously unfamiliar fiber to United States consumers until China and India began to use it extensively as a means of avoiding quota restrictions.

¹⁴⁰ See Moreton, *supra* note 125, at 11 (discussing special concessions drafted on behalf of least developed countries).

¹⁴¹ See generally *Despite Failure of Legislation, Retailers Fear Import Restrictions From Negotiations*, 3 (BNA) No.4, 128, 128 (noting that despite veto of legislation restricting textile and apparel imports, retailers are experiencing difficulty obtaining products from abroad).

¹⁴² See *Last Minute Agreement Reached on Extension of MFA to New Imports*, 3 BNA No.32, 995 (Aug. 6, 1986) (noting MFA amendment limited Third World textile imports).

¹⁴³ *Id.* (arguing latest MFA benefits Third World exporters at expense of United States textile industry).

¹⁴⁴ See, e.g., Lachica, *supra* note 139 (discussing bilateral agreement between United States and China curbing latter's exports).

¹⁴⁵ See TEXTILES AND CLOTHING, *supra* note 70, at 50 (discussing how bilateral agreements supplemented terms of MFA IV); see also, Carla Hills, Remarks to the Inst. for Int'l Econ. Conf. on GATT (June 25, 1990) (transcript available from Fed. Info. Sys. Corp.) (commenting on increased use of bilateral agreements to open U.S. markets to developing nations).

E. Extensions of MFA IV: 1991-1993

By the time the MFA was scheduled to expire in July 1991, the Uruguay Round had been in progress for nearly five years.¹⁴⁶ As part of the Uruguay Round, the developing textile-exporting Contracting Parties demanded that the MFA come to an end, and that textile trade return to the provisions of the General Agreement.¹⁴⁷ Hence, the successive MFA renewals were for only one year at a time.¹⁴⁸ As the Uruguay Round talks stalled time and again, particularly over agriculture trade problems, the one-year MFA extensions continued for a total of three years.¹⁴⁹

Throughout this period, the exporting members pressed to have more liberal bilateral agreements to allow them to increase textile shipments to the developed countries.¹⁵⁰ The requests were not honored, but the Protocols did include clauses to suggest the trading situations would be improved for the exporting countries.¹⁵¹

At the insistence of the developed importing countries, particularly the United States, another significant provision, which dealt with the problems of circumvention, was added to the 1992 Protocol.¹⁵² Circumvention refers to activities that bypass quota limits on shipments, in particular the transshipment of products through a third country with unused quota.¹⁵³ The insistence that this provision be included indicates the extent to which circumvention was seen as a problem at the time.

¹⁴⁶ See, e.g., William Brock, Remarks on U.S.-European Trade Relations After 1992 (Nov. 2, 1988) (transcript available from Fed. Info. Sys. Corp.) (commenting on Uruguay Round inception).

¹⁴⁷ See Hills, *supra* note 145 (noting call by developing textile countries to return to provisions of GATT).

¹⁴⁸ See, e.g., *GATT—Obstacles and Progress*, REUTERS, LTD., Dec. 9, 1993 (discussing one-year extension).

¹⁴⁹ See Hills, *supra* note 145 (discussing frequent stalls in Uruguay Round negotiations).

¹⁵⁰ See *International Trade, Disputes on Intellectual Property, Textiles Continue Unresolved at GATT*, 66 (BNA) Der. No. A-20 (Apr. 7, 1989) (discussing possible increase in imports by United States).

¹⁵¹ Interviews with Marcelo Raffaelli, Chairman of the Textiles Surveillance Body, and with Tripti Jenkins, Counselor and Assistant to the Textiles Surveillance Body in Geneva, in 1994.

¹⁵² *Id.*

¹⁵³ Transshipment is the only form of circumvention recognized by GATT. In common usage, however, other forms include inaccurate item counts or mislabeling of fiber content/product category to take advantage of unused quota. See, e.g., J. Weiller & Allyson L. Senie, *International Rules of the Textile and Apparel Trade Regime*, at 505, 513 (PLI Corp. L. & Practice Course Handbook Series No. 864, 1994). The authors define "transshipment" as the "rerouting of products through a country other than where produced, to take advantage of that country's unused quota." *Id.* In order to curb the flow of transshipment, the United States has included tough anti-circumvention language in bilateral textile agreements. *Id.*

V. CONTROVERSIAL ASPECTS OF THE MFA

From its inception, the MFA was a controversial derogation of GATT.¹⁵⁴ The original arrangement was fairly balanced, and textile trade was liberalized when compared to the system of unilateral restraints that preceded it. However, each successive Protocol extension added features to permit the developed countries to increase restraints on the imports from the developing exporting countries.¹⁵⁵

Critics of the MFA have identified many of its shortcomings. The MFA has been criticized for removing an entire trade sector from the general rules of GATT. The unique feature of the MFA was that it involved a multilaterally and formally agreed upon departure from normal GATT rules for the benefit of a particular industry. This was not an inconsequential amount of trade, particularly for the developing countries. In 1992 for instance, textiles and apparel accounted for twenty to thirty percent of many less developed countries' total merchandise exports. Of total exports, textiles/apparel exports represented sixty-seven percent, sixty-nine percent, and fifty-five percent in Bangladesh, Pakistan, and Sri Lanka, respectively.¹⁵⁶

Others have noted that the arrangement violated a basic tenet of GATT—the non-discrimination rule based on the most-favored-nation (“MFN”) principle. The MFA permits import controls that discriminate against specific countries on a country-by-country basis, primarily through negotiation of bilateral agreements.¹⁵⁷

There is also debate as to the increasing discriminatory restraints on the developing exporting countries. Originally, a pri-

¹⁵⁴ See David M. Trubek, *Protectionism and Development: Time For a New Dialogue*, 25 N.Y.U. J. INT'L L. & POL. 345, 355 (1988) (stating MFA negotiations were outside of GATT and arguably in derogation of GATT's principles); see also John S. McPhee, *Agriculture and Textiles: The Fare and Fabric of Current GATT Negotiations*, 3 IND. INT'L & COMP. L. REV. 155, 162 (1992) (stating MFA arrangements went against GATT principles).

¹⁵⁵ See Giesse & Lewin, *supra* note 55, at 53. “Although one of the primary objectives of the Multifiber Arrangement is to liberalize textile and apparel trade from the Lesser Developed Countries (“LDCs”), this arrangement has become more protectionist and discriminatory with each subsequent renewal.” *Id.* By the mid-1980s, instead of attempting to phase out the MFA to return governance of the textile and apparel trade to GATT, MFA IV expanded its coverage to include products manufactured from “silk blends and vegetable fibers, such as ramie, linen, and jute.” *Id.* at 56-57.

¹⁵⁶ Author's personal communication with GATT economist, 1994.

¹⁵⁷ See Kevin C. Kennedy, *Reforming U.S. Trade Policy to Protect the Global Environment: A Multilateral Approach*, 18 HARV. ENVTL. L. REV. 185, 190 (1994) (describing non-discriminatory nature as “pillar” of GATT); see also Wingo, *supra* note 36 (stating that GATT was based on non-discriminatory treatment, which was undercut by MFA).

mary objective of the MFA was to liberalize trade from the lesser developed nations. However, the Arrangement became increasingly restrictive on imports from these countries, many of whom depended heavily on the textile/apparel sector for economic development.

A "gentlemen's agreement" had existed between the European Community and the United States.¹⁵⁸ Although the MFA permitted the imposition of quotas on products from the developing countries, the United States and European Community textile negotiators agreed in 1977 to refrain from imposing such restraints on each other's products. The rationale was based on similar labor and other production costs in the two regions.¹⁵⁹

The MFA has also been criticized for permitting quotas. The purpose of the textile quota system was to specify quantitative limits on imported products, despite GATT's specific prohibition of such limits.¹⁶⁰ Another shortcoming is that importing countries are not required to compensate the countries whose products are placed under trade restrictions.

Commentators have further criticized the prolonged "temporary" protection, which became a way of life. The original arrangement was signed with the understanding that it would provide a temporary adjustment period for the textile/apparel industries in the developed importing nations. Counting the STA, the LTA, and the MFA, this "temporary" protection will have lasted more than forty years by the time the last quotas are eliminated.¹⁶¹

Still other analysts point out the introduction of the "market disruption" concept.¹⁶² Other sectors could have adopted this concept to protect domestic markets, however only the textile/apparel sector has used it.

¹⁵⁸ Based on author's conversations with numerous trade delegates in Geneva during various visits from 1984 to 1994.

¹⁵⁹ *Id.*

¹⁶⁰ See John S. McPhee, *Agriculture and Textiles: The Fare and Fabric of Current GATT Negotiations*, 3 *IND. INT'L & COMP. L. REV.* 155, 161-62 (1992) (discussing purpose of textile quota system).

¹⁶¹ See Giesse & Lewin, *supra* note 55, at 51-170 (1987) (providing an excellent, but non-objective discussion of temporary quota protection). Lack of objectivity may be attributed to the fact that authors are affiliated with a Washington, DC, law firm known for its work with U.S. importers and the governments of textile-exporting nations.

¹⁶² See CLINE, *supra* note 91, at 147 (discussing market disruption concept).

Furthermore, the MFA had its own institutionalized structures, at both the GATT level¹⁶³ and within each participating nation, to implement the complex system associated with the textile-specific trade rules. Other trade sectors, except for perhaps agriculture, have had no similar structures to handle trade matters either in Geneva or in Washington.

Finally, textile trade restraints have been criticized for creating ill will among trading partners. The strong positions taken on textile trade by the United States and the European Community have taken a toll on international relationships beyond textile trade matters. Some cases have involved retaliation, while others have caused representatives of the lesser developed countries to question the integrity of their more powerful trading partners. A notable example was President Nixon's strategy to force Japan to agree to added fiber restraints.

VI. THE URUGUAY ROUND: GRADUAL DEMISE OF THE MFA

Textile trade was an issue from the earliest discussions regarding the GATT round of trade talks, later known as the Uruguay Round.¹⁶⁴ The less developed countries made it clear they would not participate in the talks unless the United States and other countries honored commitments under the MFA.¹⁶⁵ From the outset, developing exporting countries pressed to have textile trade return to the original GATT rules. The ministers at the Uruguay talks made indefinite reference to "eventual integration of this sector into GATT."¹⁶⁶

As the Uruguay Round talks ensued, most trading nations had agreed by 1989 to bring textile trade back under mainstream GATT regulations. Successive deadlines passed, however, with no completion of the Round in sight, due mostly to agricultural trade

¹⁶³ The textile staff usually functioned quite independently of others at GATT, based on information from a non-textile staffer in the GATT Secretariat.

¹⁶⁴ See Jeffrey E. Garten, *American Trade Law in a Changing World Economy*, 29 INT'L LAW. 15, 18 (1995) (stating Uruguay Round addressed new issues such as textiles, intellectual property, and agriculture).

¹⁶⁵ See J. Calcott, *GATT Meeting Split on Textile Protectionism*, DAILY NEWS REC., Nov. 27, 1984, at 3, 8 (noting desire by less developed countries to ensure that United States honored its commitments under MFA).

¹⁶⁶ *Ministerial Declaration on the Uruguay Round of Sept. 20, 1986*, Sept. 20, 1986 GATT, B.I.S.D. (33d Supp.) at 19, 25 (1985-86).

issues.¹⁶⁷ United States and European Community textile industry leaders were relieved by each stalemate, hoping an agreement would never materialize.

The GATT Negotiating Group on Textiles and Clothing made progress but reached an impasse on issues related to phasing out the MFA. These issues included the degree of quota growth to allow during a phase-out period. Arthur Dunkel, Director General of GATT at that time, released his proposal that came to be known as the "Dunkel Draft," or "Dunkel Plan," which set forth a proposed "Agreement on Textiles and Clothing." Dunkel recommended a staged phasing out of MFA import quotas, with certain percentages of textile trade to be removed in stages from the quota system over a 10-year period, as well as increases in growth rates on quotas.¹⁶⁸

The Dunkel Plan encountered hostile response from nearly all affected industry sectors, including textiles, labor, and retailers/importers, in both the United States and the European Community.¹⁶⁹ The congressional textile leaders threatened to modify the Uruguay Round agreement if an MFA phase-out was proposed. This threat was stifled by President Bush's success in acquiring fast track authority, permitting approval or disapproval, but not modification, of the GATT agreement when it reached Congress.

Despite the external protests to the Dunkel Plan for textiles, the final agreement closely resembled what Dunkel had proposed over two years before the Uruguay Round was completed. Individuals involved in the textile negotiations reported that although some participants were dissatisfied with various aspects of the proposal, they were willing to accept the overall plan. Participants reported a general feeling that if they had begun to "tinker" with the proposal, it would have unraveled entirely.¹⁷⁰

On December 15, 1993, the landmark GATT accord met with agreement after seven long years of negotiations—a prolonged

¹⁶⁷ See Al J. Daniel, Jr., *Agricultural Reform: The European Community, the Uruguay Round, and International Dispute Resolution*, 46 *ARK. L. REV.* 873, 874-75 (1994) (discussing ongoing Uruguay Round negotiations which missed deadlines largely because of changes in agricultural policy).

¹⁶⁸ See GATT, *Textiles and Clothing*, GATT Activities 1991, Geneva, 1992; see also L. HUREWITZ, *THE GATT URUGUAY ROUND: A NEGOTIATING HISTORY (1986-1992): TEXTILES* (1993) (providing detailed account of textile negotiations, including Dunkel Plan).

¹⁶⁹ Jim Ostroff, *Textile, Apparel Makers Blast GATT Plan on MFA*, *WOMEN'S WEAR DAILY*, Jan. 8, 1992, at 20 (noting industry dissatisfaction with Dunkel Plan).

¹⁷⁰ Author's discussions with trade officials, Geneva, 1994.

time that led some critics to refer to the GATT as the "General Agreement to Talk and Talk." The Uruguay Round agreement called for a ten year phase-out¹⁷¹ of the MFA quotas, to occur in three stages (based on each country's 1990 import volume), with each importing country permitted to identify the categories on which the quotas are "surrendered" at each stage.

When the Uruguay Round agreement went into effect on January 1, 1995, the World Trade Organization (WTO) replaced GATT. At the same time, the Uruguay Round Agreement on textiles and Clothing (ATC) superseded the MFA and all textile and apparel trade matters among WTO members came under this new multilateral agreement.

Under stage one of the ATC, which began in 1995, quotas chosen for surrender must have accounted for at least sixteen percent of the country's total textile and apparel imports in 1990. Remaining quotas would be allowed to grow at higher rates than the typical six percent quota growth rates that generally existed under the MFA. This added quota growth is known as the "growth on growth" provision. During this stage, remaining quotas must grow in each of the three years at rates no less than sixteen percent higher than the twelve months preceding the effective date of the World Trade Organization ("WTO").¹⁷²

Stage two, beginning in 1998, requires the importing country to choose for integration product categories whose imports account for at least seventeen percent of the country's 1990 import volume. Furthermore, remaining quotas will be permitted to grow in each of the four years at rates which are at least twenty-five percent higher than under stage one.¹⁷³

Under stage three, which begins in 2002, the importing country again chooses the categories to surrender to integration. These categories must account for at least eighteen percent of the country's 1990 import volume. Remaining quotas will be allowed to

¹⁷¹ See Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, General Agreement on Textiles & Clothing, *opened for signature* Apr. 15, 1994, *reprinted in* 33 I.L.M. 1125, 1125-272 (1994). United States textile leaders demanded a 15-year phase-out and had expected it because President Clinton had promised he would seek the longer phase-out in exchange for the industry's support on the North American Free Trade Agreement. *Id.*

¹⁷² See *id.* at 1179; Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, art. 2 (discussing limits on quota growth).

¹⁷³ See *id.* (discussing remaining quotas).

grow in each of the three years at rates which are at least twenty-seven percent higher than under stage two.

Thus, by 2005, special protection for textiles and apparel will no longer exist. Textile and apparel trade will be integrated fully into trade rules for all other sectors.¹⁷⁴

In addition to quota phase-outs, tariffs will be reduced on an annual basis. After 2005, only tariffs will remain. The textile and apparel agreement included a safeguard mechanism to be used during the phase-out period if an importing country determines that imports are causing injury or threat of injury.¹⁷⁵ Based on past experience, representatives of the less developed exporting countries fear this mechanism may be abused.¹⁷⁶ Within the importing countries, fascinating political drama has accompanied the selection of categories to be integrated and determination of who is entitled to make those choices. In the United States, for example, many textile products that were never under the quota restraints were "surrendered" in the first round. By employing strategies such as these, domestic industries are postponing the "day of reckoning" in a manner that will create a more dramatic influx of imports in later stages.

VII. REFLECTIONS ON TEXTILE TRADE POLICIES UNDER GATT

Except for the first few years of GATT's existence, textile trade has presented special difficulties. Textile problems challenged the integrity of the General Agreement for most of its existence. Textiles, for a host of reasons, became a "special case" in world trade that sometimes jeopardized broader international relationships. The sector was considered adequately "special" to have its own set of trade policies which co-existed with the policies for all other sectors, and to have its own institutionalized bodies to enforce the special agreements.

¹⁷⁴ See, e.g., Sri Ram Khanna, *The New GATT Agreement: Implications for the World's Textile and Clothing Industries*, TEXTILE OUTLOOK INT'L, Mar. 1994, at 10-37 (discussing phase out of textile quotas).

¹⁷⁵ See Ernesto M. Hizon, *The Safeguard Measure / VER Dilemma: The Jekyll & Hyde of Trade Protection*, 15 J. INT'L L. BUS. 105, 131-32 (1994) (stating need to "clarify and reinforce" safeguard mechanism in GATT framework in order to bring all emergencies and nuances under GATT umbrella); see also Marian Nash, *U.S. Practice: Contemporary Practice of the United States Relating to International Law*, 88 AM. J. INT'L L. 312, 321 (1994) (discussing slow transition for textile industry into GATT and necessary safeguard mechanisms).

¹⁷⁶ Conversations with trade officials, Geneva, 1994.

A number of observations may be useful in analyzing textile trade policies. A common thread among these observations has been the political aspect of trade for the textile/apparel sector, in which policymakers have often succumbed to special interest group pressure.

Goldstein¹⁷⁷ observed that political ideology has dictated United States commercial policy in a way that may not be in the best long-term interests of the nation. She argued that our system's limited power for economic intervention and the demands of pleasing voters make it "impossible for central decision-makers to use rational decision-making criteria to create policy." In the absence of a national umbrella policy for trade, Goldstein concluded that "certain industries for anomalous and different reasons have been excepted from liberal policy, and certain industries who are in decline but who employ large numbers of workers may get more aid than would be expected."

Similarly, Hufbauer and Rosen¹⁷⁸ noted that special protection is inequitable among industries. Large industries with political clout, such as textiles and apparel, "are able to shake the United States political system for massive benefits."¹⁷⁹ In contrast, smaller industries or those with only regional influence, such as footwear, get far less protection.

Aggarwal offered the view that the United States fragmentation of power among the legislative, executive, and judicial branches has provided the state with limited opportunities to influence policymaking.¹⁸⁰ He suggested that the state is no match for the strong and previously cohesive¹⁸¹ political organization of the textile and apparel industry. According to Aggarwal, the United States has been too organizationally fragmented to establish a national policy or to resist industry and labor demands.

¹⁷⁷ J. Goldstein, *A Re-Examination of American Trade Policy: An Inquiry into the Causes of Protectionism* 427 (1983) (unpublished Ph.D. dissertation, U.C.L.A.).

¹⁷⁸ See G. HUFBAUER & H. ROSEN, *TRADE POLICY FOR TROUBLED INDUSTRIES* 27 (1986) (discussing great power of textile industry).

¹⁷⁹ *Id.*

¹⁸⁰ See AGGARWAL, *supra* note 15, at ch. 2 (discussing effect of separation of powers on United States policymaking).

¹⁸¹ Until 1989, the United States textile and apparel industry groups worked together in a closely knit anti-import coalition. Because of the growing use of offshore sourcing by large United States apparel firms, however, the American Apparel Manufacturers Association backed away from this coalition.

CONCLUSION

It may safely be concluded that world textile and apparel trade has been regulated extensively through means other than simple market forces. In short, textile and apparel trade has posed a long-term and persistent challenge to policymakers. GATT authors concluded:

More so than in most other industries, trade in textiles and clothing—and thus the pattern of production and employment in those industries around the globe—has been influenced by government intervention. This holds whether we view it in terms of the *length of time* that restrictions have been widely used . . . , or in terms of the *level of restrictions* in force at any point in time, or in terms of the *number of different policies* simultaneously influencing the level of imports [emphasis added].

Giesse and Lewin echoed a similar sentiment, asserting that “[t]his specialized regulatory scheme—together with its separate bureaucracy, a multitude of bilateral textile agreements, and numerous unilaterally imposed quotas—has protected the United States textile and apparel sector more extensively and for a longer period than the protection afforded to any other United States manufacturing industry.”¹⁸²

The phase-out of the MFA quota system under the WTO closes a chapter of one of the most unique trade policies of the Twentieth Century. Global trade for the textile sector will surely change radically as the three stages of quota integration occur, however, textiles will continue to be a sensitive and complex area of global trade. Too many nations have too much at stake.

¹⁸² See Giesse & Lewin, *supra* note 55, at 53-54 (stressing extensive protection received by U.S. textile industry exceeded that of any other American industry).

