TOWARDS GATT INTEGRATION: CIRCUMVENTING QUANTITATIVE RESTRICTIONS ON TEXTILES AND APPAREL TRADE UNDER THE MULTI-FIBER ARRANGEMENT

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1. INTRODUCTION

The history of textiles and apparel trade in the global system evidences the persistent institutionalization of protectionist policies, despite the principal purpose of the General Agreement on Tariffs and Trade ("GATT") of moving the global trading system towards liberalized trade. The textiles and apparel industry has stood as an exception to GATT principles, although currently, under the Agreement on Textiles and Clothing ("ATC") negotiated under the 1994 Uruguay Round, the Multi-Fiber Arrangement ("MFA"), the regime regulating this sector through unilateral and bilateral quantitative restrictions, is to be phased out by 2005.

But decisive steps toward liberalization are not apparent from the continued protectionism on the part of the developed importing countries of the European Union and the United States. Indeed, even as the 2005 deadline for phasing out quantitative restrictions approaches, Europe and the United States have not taken any positive steps toward dismantling the protectionist regime that has been in place since the 1960s. History shows that each agreement renewing the protectionist agenda since the 1960s had initially been purported to be "temporary." However, the past four decades of protectionism in the textiles and apparel trade cast into doubt the commitment of developed importing countries to integrate this sector under GATT's auspices.

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The textiles and apparel industry in the United States and in the European Union has received special treatment in the form of extensive and prolonged protectionist government policies and agreements among members of the international community to restrict textiles and apparel trade since the late 1950s. As one author notes, "[p]erhaps in no other sector of postwar trade, save agriculture, have such persistent cries for protection been raised." Although the Multi-Fiber Arrangement, the complex global regime of restrictions that has governed the textiles and apparel trade since 1961, is scheduled to be dismantled by 2005, textiles and apparel trade from exporting developed countries remains the most tightly regulated in any manufacturing sector.

A central criticism of the persistence of multilateral restraints on textiles and apparel trade has been that the policies governing it have been at odds with the central principles underlying GATT, whose "purpose has been to promote a free and orderly trading system." Specifically, the restrictions on the textile imports are in contradiction with the basic principles of GATT: nondiscrimination through Most-Favored Nation ("MFN") treatment and the

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1 Dr. Kitty G. Dickerson notes that the term "textiles" includes both textile products and apparel in trade terminology; in technical terminology, "textiles" is defined in the Standard International Trade Classification 65 ("SITC"), and includes "textile yarn, fabrics, made-up articles not elsewhere specified, and related products"; "apparel" is defined in SITC 84. See Kitty G. Dickerson, Textile Trade: The GATT Exception, 11 St. John's J. Legal Comment 393, 393 n.1 (1996); 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, 205 n.1 ("'apparel' is generally defined as clothing products and various clothing accessories.").


3 See Agreement on Textiles and Clothing, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, MULTILATERAL AGREEMENTS ON TRADE IN GOODS-RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS: THE LEGAL TEXTS 85, art. 2(8) [hereinafter ATC].


6 Landaw, supra note 1, at 206.

7 See GATT, supra note 5, art. 1, para. 1. Article I of the GATT provides:

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to
general proscription against quantitative restraints. Nevertheless, in the area of textiles and apparel trade, importing countries have legitimated the departure from GATT principles in the form of trade-restricting agreements on the assertion that the future of liberalized trade would be enhanced if "exceptions" to the GATT principles of non-discrimination and the general prohibition on quantitative restrictions were made in an "officially authorized and controlled manner." However, by prolonging the liberalization of trade, the importing countries have prevented exporting countries from fully realizing their comparative advantage in textiles and apparel trade.

Issues over the form and content of law governing the trade of apparel and textiles have held widely disparate implications for

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8 The general prohibition against quantitative restraints under GATT is stated as follows:

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

9 See generally William R. Cline, THE FUTURE OF WORLD TRADE IN TEXTILES AND APPAREL 138-43 (1987) (examining the evolving comparative advantage among developing countries and concluding that it is not clear that a regime of protected textiles and apparel trade is either the most equitable or the most efficient).
developing and industrialized nations, where developing countries are generally the primary exporters, and industrialized countries the importers. As the 1999 Seattle Ministerial meeting of the World Trade Organization ("WTO") illustrates, the focus of the industrialized countries, in particular the United States and the European Union,\textsuperscript{11} has been on targeting further areas of trade liberalization, whereas developing countries, such as India, have sought a "redressal of problems" that have grown out of the 1994 Uruguay Round.\textsuperscript{12} The demands on the part of developing countries, including India, Indonesia, Malaysia, Pakistan, Egypt, and Cuba, are for a "more meaningful liberalisation in products and markets of interest to them and for incorporating the requirements of development into the existing agreements."\textsuperscript{13} Specifically, these countries have argued that there is a disparity between the new obligations that the developing countries have had to take on at the WTO and the rights that they were promised.\textsuperscript{14}

\underline{11} This Comment discusses both the European and the United States roles in shaping textiles trade agreements with developing exporting countries, with a primary focus on the U.S. market. It is important to acknowledge that the European community continues to play a vital role in the parameters of trade policy in this sector. Alternatively, the interest of the United States in protecting its domestic industry has not been the sole basis for the restrictive trade agreements. The very nature of the debate over textiles and apparel trade mandates a full discussion of all interested countries, as the interdependence and diversionary effects of such trade agreements impact even those countries that are not party to the agreements. As will be discussed later in this Comment, the fact that a country is not a party to agreements restricting textile and apparel trade becomes a matter of utmost relevance to the debate: since investors in countries that are subject to such restrictions are able to relocate to a country where there are no such barriers to entry into an importing country, it is relevant to discuss countries that seemingly stand beyond any trade restriction.

\underline{12} Implementation Imbalances at WTO, HINDU, Nov. 17, 1999 at 25 [hereinafter Implementation Imbalances].

\underline{13} Id.

\underline{14} See id. (noting that in the agreement on the trade-related aspects of intellectual property rights (TRIPs), developing countries were to provide stricter protection to patents, but developed countries did not agree to transfer technology). Developing countries have raised the issue of the western countries pressing for negotiations about liberalizing trade in services, protecting intellectual property rights, and lowering barriers to direct investment, while not lifting restrictions on textile imports. See Multi-fibre Arrangement: Tit for GATT, ECONOMIST, July 26, 1986, at 60 [hereinafter Tit for GATT]. Even in 1986, at preliminary GATT negotiations on the new Round's agenda, developing countries had stressed that their consideration of these proposed negotiations by the United States and its western allies "depend on the easing of controls on textiles as a token of good faith." Id.
The developing countries argue that trade liberalization has not taken place in the sectors of importance to them, such as in textiles. Although the developed countries agreed in the Uruguay Round to remove existing barriers to textiles imports, developing countries, such as India, have asserted that the developed countries have fulfilled the agreement more in letter than in spirit, because most of the items that have been integrated into the GATT system had not been previously restricted anyway. From the perspective of the developing countries, imbalances in competition between developing and developed countries have only been reinforced, due to the developed countries' restrictive implementation of trade agreements in the textiles and apparel sector under the Uruguay Round, coupled with the extensive use of trade remedies.

On the other hand, countries in the Caribbean and in Latin America, as well as in Russia, do not face such restrictions on exports to the United States. Thus, manufacturers from exporting countries subject to these restrictions continue to relocate their production to unrestricted areas in order to circumvent importing countries' trade restrictions against them. As a result, the presence of U.S. quotas on textiles and apparel has not prevented exporters, such as Korean manufacturers, from finding alternative means of entry into the U.S. market, thus rendering the quotas less effective. Furthermore, these quotas, in direct contradiction with GATT principles, diminish the efficiency of not merely the global market, but the U.S. domestic market as well.

This Comment seeks to show how U.S. quotas meet neither the stated goal of moving cautiously towards integration of textiles and apparel under the liberal principles of GATT, nor satisfy the interest of the U.S. domestic industry in preventing competitive imports from entering its market. Section 2 provides a brief sketch of the U.S. textiles and apparel industry as a significant impetus for the U.S. policy of maintaining and even expanding trade protection.

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16 Ashish Gupta, India to Press for Expanded Textile List at Seattle, STATESMAN (India), Nov. 13, 1999.

17 See ASEAN Watch, supra note 15.

in this sector. Sections 3 and 4 provide the historical background behind U.S. protection of the textiles and apparel industry, and show how protectionism in this sector has developed into a debate along north-south lines. Section 5 explores the agreements governing trade in textiles and apparel, such as the Multi-Fiber Arrangement, as departures from the fundamental GATT principles of MFN treatment and the general prohibition against quantitative restrictions. It looks at the current regime under the Agreement on Textiles and Clothing and its adjudicatory institution, the Textiles Monitoring Body ("TMB"), and asks whether such a system is effective both in bringing textiles under the auspices of GATT and protecting less competitive countries, such as the United States, prior to the planned liberalization. Section 6 examines how U.S. quotas have impacted Japanese and Korean importers who have been able to circumvent the quotas by operating manufacturing facilities in regions that are not subject to such restrictions. Section 7 presents the argument that U.S. quotas are not necessarily effective in keeping imports out of the market, and that they are economically inefficient for U.S. industry.

2. THE LEGAL BASIS FOR U.S. PROTECTIONISM OF TEXTILE AND APPAREL TRADE: § 204 OF THE U.S. AGRICULTURAL ACT

In 1956, the United States formalized its protection against low-cost textile imports from developing countries by enacting § 204 of the Agricultural Act.19 The provision authorizes the President to negotiate agreements limiting textile imports into the United States "whenever he determines such action appropriate," in order to provide "relief" to domestic producers.20 It thereby gives significant latitude to the Executive Branch to pursue agreements restricting trade.

Significantly, the President's authority to negotiate textile restraint agreements has had its legal basis in an agricultural act since the 1950s,21 when the primary textile fiber in use was cotton.22 Thus, it was appropriate that in 1956 when the provision was enacted, it would be covered under an agricultural act. However, §

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20 Id.
21 See Dickerson, supra note 1, at 403.
22 See id. (noting that in the 1950s, "virtually all imported textile products made of cotton were considered a threat.").
204 was drafted to refer only to "textiles" or "textiles products," and thus covered all textiles, regardless of the fiber. Therefore, § 204 became a critical legal mechanism for permitting the United States to impose restraints on all textile imports and provided the legal basis for maintaining restrictions on textile imports of not only cotton, but also of other fibers that had not previously been restricted in any agreements with an importing country. The result has been the continued legal support for the expansion of restrictions on imports of fibers not previously covered as well as for the imposition of restrictions on non-GATT members.

3. DOMESTIC POLITICS SHAPING THE PARAMETERS OF U.S. APPAREL AND TEXTILES TRADE POLICY

Proponents of a liberalized textiles and apparel trade regime assert that the economic condition of the U.S. textiles and apparel industry does not satisfactorily justify its heightened and protracted protection. However, the U.S. textiles and apparel industry has argued for protection against imports from developing countries on the grounds that restricting imports from developing countries prevents labor displacement in the industry and that

23 Id.

24 See id. ("[S]ection 204 was retained as the legal basis for restricting imports, long after other fibers became equally important."). In the 1950s, the United States sought to protect domestic industry primarily from cotton imports. With new technology in synthetic fibers in the 1970s, however, the United States faced increased imports made from these fibers, a product group that was not covered under any agreement with an importing country. See discussion infra Section 5.2. Thus, the broad language of § 204 of the U.S. Agricultural Act provided a legal basis for later restricting imports of other fibers. See id.

A further significance of § 204 of the Agricultural Act is that it authorizes the President to restrict imports from countries that are not parties to a multilateral textile agreement that covers "a significant part of world trade in textiles." See U.S. Agricultural Act, supra note 19. Thus, by granting authority to the President to regulate imports from nonparticipating countries, § 204 has become a way to unilaterally impose quotas on products from countries, such as Taiwan, that are not signatories to GATT-sponsored textiles agreements. See Dickerson, supra note 1, at 403 n.67.

25 See Giesse & Lewin, supra note 4, at 81 (noting that most sectors of the textiles and apparel industry were outperforming the U.S. economy in general).

26 See Federal Bureaucracy Running from Reality with Respect to International Trade Issues: Hearings on H. 5321 Before House, 99th Cong. (1986) (statement of Rep. Gingrich) ("My understanding is, as has been reported by our very distinguished leader in the fight for the survival of American jobs in the textile industry, that our negotiators in Geneva once again caved in to pressure from foreign exporters and
the U.S. textile and apparel industry is of critical importance to national security.\textsuperscript{27} The basic thrust of the arguments put forth by the

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were apparently willing to continue sacrificing American jobs on the altar of free trade."); \textit{Current Conditions in the Textile and Apparel Industries: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means, 99th Cong. 100-104 (1985) [hereinafter \textit{Current Conditions}]} (statement of James H. Martin, Jr., Vice Chairman, Ti-Caro, Inc., Gastonia, North Carolina and President, American Textile Manufacturers Institute) (attributing adverse conditions in the textiles industry to textile imports); \textit{see also id.} (statement of Ernest D. Marinai, Chairman, Pyke Manufacturing Co.; Chairman, American Apparel Manufacturers Association) (attributing problems in the textiles industry to a "flood of imports"). \textit{But see Giese & Lewin, supra} note 4, at 58-62 (describing the arguments propounded by the U.S. textiles and apparel lobby, and rejecting them on the grounds that they are neither factually nor theoretically true).
\end{quote}

\textsuperscript{27} Sen. Thurmond stated:

\begin{quote}
We simply cannot allow ourselves to become dependent upon foreign nations for the basic defense requirements of our Armed Forces. While the production of military apparel may come to mind first, the contributions of our domestic textile/apparel industry toward defense go far beyond fulfilling the basic necessity of clothing our fighting men. In World War I, for example, the struggle to produce a manmade fiber, which we know today as rayon, resulted in the discovery of a lacquer coating that proved useful in the production of warplanes.... Previous testimony before the Senate established that textiles rank second only to steel from the standpoint of national defense.
\end{quote}

131 CONG. REC. S3077-06 (daily ed. Mar. 19, 1985) (statement of Sen. Thurmond). \textit{See also The Textile and Apparel Trade Enforcement Act of 1985: Hearings on H. 1256, 99th Cong. (1985) (statement of Rep. Edward Jenkins)} ("If import growth is not slowed, future investment in this industry is likely to be sharply curtailed leading to a loss in competitiveness and the continued liquidation of an industry which is a major element of U.S. manufacturing and is recognized as vital to our national security."). National security considerations do not necessarily warrant that an entire industry be protected. \textit{See PAUL SAMUELSON, ECONOMICS 652} (11th ed. 1980) ("[S]elfish economic interests often... try to justify uneconomic projects in terms of national defense.").

Furthermore, an economic evaluation of the relationship between protection and national security interests suggests that protection of the domestic textiles industry is not warranted:

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The industrial applications subsector of the U.S. textile-mill sector is the major supplier of textile products to the U.S. military. Import penetration levels in this subsector during the past few years have been only 4 percent per annum (citation omitted). Protecting the industrial-uses subsector, therefore, apparently does not enhance the national security of the United States. Only the U.S. apparel sector, which manufactures military uniforms, might arguably warrant protection for national security reasons. Yet, stockpiling measures appear to be a more efficient approach than the erection of additional trade barriers to ensure a continued and uninterrupted supply of military apparel (citation omitted).
\end{quote}
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Textiles and apparel lobby in favor of restricting imports is that the U.S. domestic textiles and apparel industry would be put out of business if trade barriers were lowered.²⁸

However, these arguments lack factual or theoretical basis. Although the proponents of import restrictions would assert that the MFA has failed in its original intent of protecting the U.S. industry,²⁹ others have argued that the MFA has in fact substantially achieved "one of its original objectives by enabling the U.S. textile and apparel industry to adjust gradually to changing patterns in textile and apparel trade."³⁰

Indeed, some scholars have noted that with technological advances and innovative product-sourcing and marketing strategies, the U.S. domestic industry as a whole has grown healthier and is in an advantageous position to compete effectively abroad.³¹ Thus, a critical, yet often overlooked, component of the debate over the desirability of continued U.S. protection of its textiles industry includes the "successful adjustment of the U.S. industry and its economic vitality."³² The foregoing evaluation of U.S. industrial performance under the MFA suggests that U.S. industries would no longer need protectionist barriers to trade in order to compete effectively in the world market and that the argument that liberalization would lead to the demise of the domestic textiles and apparel industry would thereby fail.

However, rather than economic rationales forming the basis for structuring trade policy, the political power of influential textiles and apparel manufacturers has been instrumental in shaping U.S.

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²⁸ See supra note 26 and accompanying text.
³⁰ Giesse & Lewin, supra note 4, at 62.
³¹ See id. (noting that analysts have observed that U.S. textile and apparel manufacturers were the "[b]est industry performers' in the United States during 1985..."
³² Id.
trade policy in the apparel and textiles industry.\(^3\) As U.S. Senator John C. Danforth described the favored relationship between the industry and the state, "[t]he textile and apparel boys have the street smarts in dealing with the government. Their method is to ignore the GATT, ignore existing law, ignore the [International Trade Commission]. They have used political muscle and have gone to Congress for help."\(^3\) The textile and apparel industry, unions, and associations form a politically powerful coalition that has influenced legislators and legislation in its favor since the late 1950s.\(^3\) The coalition's influence arises from several factors, including "economic strength, large work force, and the concentrated presence of textile and apparel plants in the United States."\(^3\)

First, the industry is vital to the U.S. economy and possesses significant economic clout. As of 1987, it provided for approximately $50 billion of the gross national product ("GNP"), which was estimated at $4.5 trillion.\(^3\) It also provides more manufacturing jobs than any other industrial sector of the economy and indirectly contributes to many other sectors (e.g., construction, retail, transportation, transactional services like finance, insurance, and business services), which benefit from the value that is added at different stages of textiles and apparel production.\(^3\)

Second, the textiles, fiber, and apparel industry comprises the largest manufacturing employer in the United States, employing

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\(^3\) See, e.g., Giesse & Lewin, supra note 4, at 61.

While these arguments may have a superficial attraction, each of them is either factually or theoretically false. Nonetheless, the U.S. textile and apparel lobby has been able to persuade a very receptive U.S. Congress, as well as the executive branch, to grant the textile and apparel industry the highest degree of protection . . . .

\(^3\) See Kittie Dickerson, Textiles and Apparel in the International Economy 170 (1991). Even in comparison to some of the other major U.S. industries, the textiles industry contributes significantly to the U.S. economy. For example, the auto-industry contributed $49.9 billion and primary metals $36.4 billion in 1987. See id.
approximately two million white- and blue-collar workers directly in forty-eight states, and approximately two million more workers in supporting industries, such as farming, which supplies the sector with cotton and wool.39 The industry, accounting for approximately ten percent of the U.S. industrial labor force, "employs more production employees than the U.S. automobile industry and U.S. steel sector combined."40 Significantly, "the industry crosses several hundred congressional districts," a fact that prevents legislators in these districts from being "totally indifferent to the political demands of this industry."41

Third, while textile and apparel industries' plants are located throughout the United States, they are heavily concentrated in the Southeastern and mid-Atlantic regions.42 In the mid-Atlantic region, Pennsylvania, New Jersey, and New York have the highest concentration of apparel facilities in the country, employing one-third of U.S. apparel workers; these apparel workers comprise one-third of the total industrial labor force in New York City and twenty-one percent in Philadelphia.43 The South is the largest apparel employer in the United States, with Alabama, Georgia, North Carolina, South Carolina, Tennessee, and Texas employing in excess of forty percent of the U.S. apparel industry.44

The heaviest concentration of textile and apparel industries' plants are located in the Southeast, where over seventy percent of U.S. employment in weaving, yarn, carpet, and thread mills, and where fifty-six percent of U.S. employment in knitting mills are located.45 The industry represents the "lifeblood" of such areas, and "its success or decline has a severe impact on those communities and regions."46 Furthermore, this regional concentration facilitates the mobility of resources necessary to organize politically47 and positively influences strong bipartisan support for trade restric-

39 See Giesse & Lewin, supra note 4, at 83.
40 Id.
41 Id.
42 See Landaw, supra note 1, at 219; see also Giesse & Lewin, supra note 4, at 85.
43 See id.
44 See id. at 85. In the Southeast, the highest degree of concentration is in lower-wage rural areas, "with North Carolina, South Carolina, and Georgia representing the heart of the industry." See id. at 84.
45 See Landaw, supra note 1, at 219.
46 DIckerON, supra note 37, at 173.
47 See Giesse & Lewin, supra note 4, at 85.
tions, where the "economic fortunes of a significant percentage of
the electorate... are intimately related to the health of the textiles
industry...."

Therefore, the industry's regional concentration
has a tremendous impact on its ability to mobilize its resources and
to garner political support to promote protectionist trade policies.

Historically, the textile and apparel industry has lobbied effec-
tively and exercised strong political influence, extending as far
back as 1816 when the cotton and wool lobbies successfully se-
cured Congressional protection against imports. Currently, "[t]he
textile and apparel coalition is perhaps the most politically effec-
tive organization in the manufacturing sector." Members of the
coalition, including the Fiber, Fabric & Apparel Coalition for Trade
(which includes sixteen associations and unions), lobby for tex-
tile-quota legislation "efficiently" by concentrating their lobbying
efforts on the decision-makers who are most likely to be responsive
to their needs. Thus, "the industries' management court Republi-
cans, labor representatives concentrate on Democrats, and the cot-
ton members head relations with the farm groups."

In contrast, groups that would be the primary source of coun-
tervailing pressures on protectionist policies and would support freer trade, such as retailers, importers, and consumers, tradition-
ally have had little political influence. Several factors could ac-

48 Landaw, supra note 1, at 219-20 & n.105 (citing Susan F. Rasky, Executives Expect a Legislative Shift on Trade, N.Y. TIMES, Nov. 6, 1986, at D1 (statement of Howard D. Cooley, President of Jockey International, Inc., an underwear and
sportswear manufacturing firm) ("Trade policy is a highly regional and philo-
sophical issue, not a particularly partisan one. Regionally speaking, Georgia is
still Georgia, no matter who the senator is. It would be political suicide to be from
Georgia, North Carolina, or South Carolina, and be a free-trader.").

49 See Giesse & Lewin, supra note 4, at 85-86.

50 Landaw, supra note 1, at 220. Among the most politically powerful textiles
organizations are the American Textile Manufacturers Institute, the American
Apparel Manufacturers Institute, and the Man-Made Fiber Producers Association.
See Giesse & Lewin, supra note 4, at 86. Also, the National Cotton Council is a
powerful lobby representing U.S. cotton farmers. See id. Labor organizations ex-
ercising strong political influence include the Amalgamated Clothing and Textile
Workers' Union and the International Ladies' Garment Workers' Union. See id.

51 See Landaw, supra note 1, at 220 n.102.

52 See id. at 220.

53 Id. at 220.

54 See Giesse & Lewin, supra note 4, at 88 (noting the "uneven balance" of po-
itical power between domestic textile interests, on the one hand, and importers,
retailers, and consumers, on the other); Landaw, supra note 1, at 220-21 (noting
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count for their relative inability to exercise political influence in favor of less stringent trade policies. First, "the political influence of exporting and importing concerns is limited to the large coastal cities in which they are based,"55 in contrast to the apparel and textiles industry, which is pervasive throughout entire regions and in forty-eight states. In addition, consumers are not informed as to how legislation restricting trade might impact their economic interests, and moreover, are generally too diffuse to organize as an effective political lobby.56 Third, those groups that would favor less protectionist trade policies utilize less capital and labor in their operations than do the manufacturing concerns, and thus, "while the interests supporting and opposing the legislation may be relatively equal, the outcome nevertheless is not."57

All of these elements combined explain the disparity of political influence between the textiles and apparel industry and groups representing countervailing interests, such as consumers and retailers. The differences in wealth, size, concentration, and mobility have permitted the textiles and apparel industry to successfully lobby Congress for increased restrictions on imports. Thus, it is important to regard these restrictive trade policies as a function of ongoing and historically rooted internal domestic politics, rather than as based on economic rationales, and thereby recognize that the prolonged protection of the textile and apparel industry is economically anachronistic.

4. HISTORICAL IMPETUS FOR U.S. PROTECTIONISM IN THE TEXTILES AND APPAREL INDUSTRY AND ITS ECONOMIC IMPLICATIONS

4.1. Generally

Scholars have suggested that because foreign imports of textiles and apparel have captured a significant portion of the U.S. mar-

55 Landaw, supra note 1, at 221.
56 See id. at 221 n.107 (noting the free-rider problem among consumers that prevents organizing politically) (quoting MANCUR OLSON, JR., THE LOGIC OF COLLECTIVE ACTION 59-60 (1965) ("In a large, latent group there will be no tendency for the group to organize to achieve its goals through the voluntary, rational action of the members of the group, even if there is perfect consensus.").
57 Id. at 221 & n.105.
domestic manufacturers have sought to protect the domestic market. Domestic industries continue to receive protection in the form of import restrictions, although at the outset, these restrictions were justified as temporary measures to "readjust market balance." Because of the nature of the textiles industry and the ability of developing countries to enter textiles manufacturing with little capital, textiles trade has become central to the economic development of poorer countries. However, due to the expansion of textiles exports on the part of developing countries and despite their enhanced comparative advantage in textiles trade vis-à-vis the United States and Europe, the United States and Europe sought to protect their own markets from foreign goods by implementing restrictive barriers to trade that continue in existence today. Thus, in analyzing protectionism in textiles and apparel trade, it is critical to examine the historical background as well as the economic implications of protectionism in this controversial sector of the global trading regime.

4.2. Historical Background of Protectionism in Textiles Trade

The particular nature of textiles trade regulation is an outgrowth of the nature of textile manufacturing itself. Textile manufacturing has traditionally been considered a "take-off" industry. As in Europe and the United States, where the growth of the textile industry marked the beginning of industrialization, the expansion of the textile sector in developing countries has similarly been a

58 In 1997, U.S. textile and apparel imports included $496 million from South Korea, $1.441 billion from China, $766 million from Hong Kong, and $561 million from Taiwan. See Paula L. Green, Industry Sees Measure as Stabilizing Force, J. Commerce, June 13, 1997, at 1A. However, it should be noted that, historically, these countries were not the largest exporters of textiles and clothing products in the world; for example, in 1990, the world's largest supplier was Germany at $13.3 billion and the second-largest supplier was Italy at $9.3 billion. See John Zarocostas, Problems Continue to Plague GATT Textile Talks, J. Commerce, Oct. 23, 1992, at 2A.

59 See, e.g., Perlow, supra note 2, at 94; Landaw, supra note 1, at 205.

60 Landaw, supra note 1, at 205. See also Giese & Lewin, supra note 4, at 52 (noting that textile and trade have been regulated outside of the GATT system since 1961, when a "temporary" exception to the GATT was made for cotton and textiles under the Short-Term Arrangement Regarding International Trade on Textiles). For further discussion of the Short-Term Arrangement Regarding International Trade on Textiles, see infra Section 5.1.1.

61 See Perlow, supra note 2, at 94.
"primary stepping stone" to industrial development. For developing countries, which are often relatively labor abundant, the textiles industry is "[u]niquely suited" to the early stages of industrial development since the industry is generally labor-intensive and requires limited capital and technology. For developing countries, the special treatment of trade in textiles is a matter of great concern to its economic well-being. Textiles trade is critical to the economic development of developing countries, where textiles exports account for approximately twenty-five percent of all industrial exports.

By the same token, developed countries have found "the transition to more competitive, capital-intensive activities, in keeping with the shifting of comparative economic advantage, a difficult task." Hence, as Japan rapidly industrialized, with its textiles becoming increasingly competitive in the world market in the 1950s and 1960s, Western countries, such as the United States and the United Kingdom, began to oppose the general post-war trend of trade liberalization in the area of textiles.

Japan, realizing that expansion of its exports to the United States was inciting protectionist sentiments among U.S. textiles concerns and recognizing the need to cooperate with the United States, instituted voluntary export restrictions on cotton textiles

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62 Dickerson, supra note 1, at 396.
63 Id.
64 See Tit for GATT, supra note 14, at 61.
65 Perlow, supra note 2, at 94.
66 See id. at 94 n.5 ("Textiles were in the forefront of a broad expansion of Japanese exports in the 1950's. Japan's industrial exports grew 600% between 1949 to 1959 from $533 million to $3,413 million." (citation omitted); see also Landaw, supra note 1, at 207 ("The Japanese manufacturers benefited at this time from a relatively low-cost labor force and access to inexpensive American cotton.").
67 GATT was established in 1947 by twenty-three countries as a multilateral approach to reducing tariffs and establishing rules for unrestricted trade. See GATT, supra note 5, at 1700. At first, textiles trade was integrated under GATT. See Dickerson, supra note 1, at 398-99.
68 See Perlow, supra note 2, at 94.
69 See Dickerson, supra note 1, at 400-01 (noting that Japan recognized that expanding its exports could potentially "antagoniz[e] [its] most important customer.").
70 Japan actually preferred voluntary export restraints ("VERs") over restraints under GATT Article XIX, which permits global nondiscriminatory trade restraints when domestic import-competing industries are seriously injured by fair import competition. See GATT, supra note 5, art. XIX. One advantage that VERs had over restraints under GATT XIX is "the additional measure of flexibility
and ten groups of manufactured goods between 1957 and 1961.\textsuperscript{71} However, the restriction on Japanese imports did not prevent the entry of imports from other countries into the U.S. market. Hong Kong was soon able to take advantage of the voluntary export restraints on Japanese imports into the United States and gained significant entry into the U.S. market, which now had less imports from Japan. As a result, "[i]mports from Hong Kong grew from nearly 70 million square yards in 1958 to almost 290 million square yards in 1960, making them the largest supplier to the U.S. market."\textsuperscript{72} In addition, U.S. efforts to negotiate a voluntary export restraint agreement with Hong Kong, like the one reached with Japan, failed.\textsuperscript{73} At the same time, increases in imports from other countries, including Portugal, Egypt, Pakistan, and India, penetrated the U.S. market.\textsuperscript{74} In response, the Kennedy Administration sought a formal trade agreement to counter increases in import growth.\textsuperscript{75}

5. AGREEMENTS INSTITUTIONALIZING TRADE PROTECTIONISM

5.1. Agreements Covering Cotton Textile Trade

Beginning with the Short-Term Arrangement on Cotton Textile Trade ("STA" or "Short Term Arrangement") in 1961, the United States and Europe expanded and continued their protectionist stance on textiles trade through agreements with developing exporting countries. Thus, while the Short Term Agreement, as its

\textsuperscript{71} See Perlow, \textit{supra} note 2, at 95 (noting that this resort to a VER was effectively a reintroduction of a protectionist instrument from the 1930s Depression era that was to be widely applied in ensuing decades to restrict a variety of imports from Japan and developing countries); Landaw, \textit{supra} note 1, at 207. Significantly, the VERs on Japanese exports to the United States "set the pattern of pressure by strong import-competing industries for action by their governments, which, in turn, pressure the exporting countries' governments (or even industries) into 'voluntarily' restraining imports." Perlow, \textit{supra} note 2, at 95 n.9. The term voluntary export restraint may be regarded as "something of a misnomer as the thinly veiled threat of harsher, unilateral action underlies most negotiations for such restraints." \textit{Id.}

\textsuperscript{72} Landaw, \textit{supra} note 1, at 207.

\textsuperscript{73} See Perlow, \textit{supra} note 2, at 95.

\textsuperscript{74} See Landaw, \textit{supra} note 1, at 207-08 & n.19 (citations omitted).

\textsuperscript{75} See \textit{id.} at 208.
name suggests, was meant to be a temporary exception to the GATT's primary principles of liberalized trade through nondiscrimination and the general prohibition against quantitative restrictions, it evolved in subsequent renewals to become even more protectionist and discriminatory than was originally intended.  

5.1.1. Short-Term Arrangement on Cotton Textile Trade

In 1961, the STA was negotiated between sixteen countries, including the United States, Hong Kong, Japan, the countries of the EEC, Pakistan, and India. It was designed to be a one-year program during which the parties could negotiate a more formal textiles and apparel agreement. The STA provided that in cases where a participating country believed that the exports were threatening to cause "market disruption," the participating country could request the exporting nation to restrain exports at a level not lower than the level prevailing for a twelve-month period ending June 30, 1961.

76 See Giesse & Lewin, supra note 4, at 53.


78 See id. at § A; Landaw, supra note 1, at 208; see also Rebecca Reese, International Trade in Textiles and Apparel: The Legal Regime, in THE COMMERCE DEPT. SPEAKS 1992: DEVELOPMENTS IN IMPORT ADMINISTRATION: EXPORT & INVESTMENT ABROAD, 381, 387 (PLI Corp. Law & Practice Course Handbook Series No. 789, 1992); Renee T. Legierski, 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 (1993) (noting that developed countries sought out a formal agreement to equalize competition in the textile and apparel sector).

79 See Landaw, supra note 1, at 208. "Market disruption" includes:

(i) a sharp and substantial increase of particular products from particular sources, where (ii) the products in question are offered at prices substantially below those prevailing for similar goods of comparable quality in the market of the importing country and (iii) there is 'serious injury' to domestic producers or threat thereof.

KEESING & WOLF, supra note 27, at 19; Dickerson, supra note 1, at 403-05 (noting that the concept of "market disruption" became a central issue in textile trade policies).
5.1.2. Long-Term Arrangement for Cotton Textile Trade

The STA was replaced in 1962 by the Long-Term Arrangement for Cotton Textile Trade ("LTA"), whose twenty-two signatory countries included the United States, Mexico, Hong Kong, Japan, the countries of the EEC, India, the Republic of Korea, and the Republic of China. Like the STA, the LTA was to impose quantitative restrictions on trade, specifying product-by-product and country-by-country import restrictions for a period of five years. As with the STA, the LTA was intended to be a temporary measure to protect manufacturing interests in importing countries, but in practice, the LTA was renewed several times during the course of twelve years, "until the unceasing pressure to widen its scope, in order to meet all the new forms of developing-country competition" eventually resulted in the creation of the MFA.

The LTA authorized the importing countries to restrict imports of cotton textiles from exporting countries, and the imports were subject to a five percent limit on the volume growth in quota rates on an annual basis. The United States was able to restrict textiles and apparel imports under Article III of the LTA, and had restricted imports of specific cotton textile and apparel products from seventeen major exporting countries by 1967. Significantly, within that year, these exporting countries accepted bilateral agreements with the United States, pursuant to Article IV of the LTA, which stated that "[n]othing . . . shall prevent the application...

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81 See id.
82 See Reese, supra note 78, at 388.
83 See Landaw, supra note 1, at 208.
84 KEESING & WOLF, supra note 27, at 22.
85 See DICKERSON, supra note 37, at 304.
86 Article III of the LTA provides that:

If imports from a participating country or countries into another participating country of certain cotton textile products not subject to import restrictions should cause or threaten to cause disruption in the market of the importing country, that country may request the participating country or countries . . . to consult with a view to removing or avoiding such disruption.

LTA, supra note 80, art. 3, para. 1.
87 See Landaw, supra note 1, at 208-09 (citation omitted).
of mutually acceptable arrangements on other terms not inconsistent with the basic objectives of this Arrangement."83 The United States justified the terms of the LTA on the grounds that it was the "lesser of two evils, . . . [that] without the multilateral arrangement, the importing countries would have continued to increase their unilateral restraints on textile imports from Japan and [the developing countries]."89 Furthermore, its proponents argued that a multilateral arrangement would provide "orderly growth."90 However, in light of the U.S. textiles and apparel trade deficit of only five percent and the European Commission's surplus at the time the LTA was promulgated, it is dubious that the choice to impose multilateral arrangements restricting trade was indeed the "lesser of two evils" and that it would generate "orderly growth."91

5.2. New Developments in the 1970s Textiles Market: Polyester and Nylon

In 1970, with the advent of new technology in synthetic fibers and in spite of the LTA, the United States was again faced with increasing textile and apparel imports that threatened domestic producers.92 U.S. imports of synthetic fibers increased more than tenfold during the eleven-year regime of the LTA.93 This import growth was predominantly in textiles and apparel made of synthetic fibers that were not covered under the existing agreements, which restricted the cotton textile trade.94 Thus, the expansion of exports of newly developed synthetic fibers, a product group un-

83 LTA, supra note 80, art. 4.
89 DICKERSON, supra note 37, at 304.
90 Id. at 305.
91 Id. at 304-05.
92 See CLINE, supra note 10, at 148.
93 See Landaw, supra note 1, at 209; cf. Perlow, supra note 2, at 100 & n.28 (noting that even though sales of synthetic yarns and fabrics by developing countries increased twentyfold between 1967 and 1973, they still only accounted for 6% of world trade in synthetic yarns and fabrics); see also CLINE, supra note 10, at 148 (discussing how U.S. imports of man-made textiles increased from 31 million pounds in 1960 to 329 million pounds in 1970).
94 See CLINE, supra note 10, at 148 (stating that between 1961 to 1972, U.S. textile imports increased from $1.02 billion to $2.4 billion, and apparel imports increased from $648 million to $3.5 billion (in 1982 prices), for an average annual growth rate of 11.5% for textile and apparel sectors combined.) The rise in imports was driven by synthetic fibers not covered under the cotton textile agreements, and from 1960 to 1970, U.S. imports of synthetic fiber textiles rose from 31 million pounds to 329 million pounds, nearly an 1100% increase. Id.
protected under the LTA, again engendered significant concern (and protectionist sentiment) to domestic manufacturers as Asian countries moved aggressively into this manufacturing sector. Ironically, Asian exporters quickly shifted production into synthetic fibers in part because of restrictions on their access to cotton textile markets under the LTA.95

To curtail the influx of imports, the Nixon Administration negotiated bilateral agreements with the “Big Four” exporting countries: Japan, Hong Kong, South Korea, and Taiwan; but these bilateral agreements, covering wool and synthetic fibers, conflicted with the provisions of the narrower scope of the LTA.96 As dissatisfaction with the inadequate scope of the LTA grew, a more general agreement that would broaden the scope of regulation to cover imports of new fibers, including synthetics and wool, became more desirable.97 The result was the MFA.98

5.3. The Multi-Fiber Arrangement as an Exception to Free Trade Under GATT

5.3.1. Generally

The MFA, or the Arrangement Regarding International Trade in Textiles, which was negotiated under GATT and went into effect on January 1, 1974, was a significant departure from GATT principles99 because it permitted the imposition of quantitative restrictions on textiles without Most Favored Nation (“MFN”) treatment.100 In contrast to the MFA, Article VIII of GATT requires that

95 See Perlow, supra note 2, at 100 (“Far Eastern producers moved aggressively into the new sector, in large measure because their access to cotton textile markets was restricted.”); Landaw, supra note 1, at 209 n.30.
96 See Landaw, supra note 1, at 209.
97 See id.
98 See Reese, supra note 78, at 389.
99 The restrictions on textiles and apparel imports are in direct contradiction to two basic principles of GATT, including nondiscrimination through Most-Favored Nation treatment (see GATT, supra note 5, art. I, para. 1), and the general proscription against quantitative restrictions (see GATT, supra note 5, art. XI, para. 1).
100 The MFA authorizes quantitative restrictions and allows countries to apply these restrictions on a country-by-country and product-by-product basis. See generally GATT, Arrangement Regarding International Trade in Textiles, Dec. 20, 1973, 25 U.S.T. 1001, T.I.A.S. No. 7840, art. 1, para. 2 [hereinafter MFA I] (provid-
any quantitative restriction be subject to MFN treatment. Under the MFA, textiles trade is subject to a complex system of unilateral and bilateral quotas, on a product-by-product and country-by-country basis. The stated objectives of the MFA are to achieve expansion and liberalization of world trade in textiles, while ensuring the orderly and equitable development of textiles trade and the avoidance of market disruption in importing countries and exporting countries. However, as one author noted, “The Multi-Fibre Arrangement was instituted... as a temporary measure to protect developed countries' industries from the floods of cheap imports...”

5.3.2. The MFA’s Tumultuous Passage

In the 1970s, manufacturers in developing countries began to shift production from cotton to synthetic fiber products that were not subject to the LTA restrictions. Thus, the LTA became increasingly obsolete as imports of synthetic fiber products into the United States grew. Essentially, “the developing countries succeeded in finding, during this period, more holes in the dike than

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101 See GATT, supra note 5, art. VIII, para. 1.

No prohibition or restriction shall be applied by any Contracting Party on the importation of any product of the territory of any other Contracting Party or on the exportation of any product destined for the territory of any other Contracting Party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

Id.

102 See MFA I, supra note 100, art. 3, para. 4.

103 See id. art. 1, para. 2.

The basic objectives shall be 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 avoidance of disruptive effects in individual markets and on individual lines of production in both importing and exporting countries.

Id.; see also Legierski, supra note 78, at 311 (explaining the goals of the MFA I).

104 Cecilia Quiambao, MFA’s Demise May Mean Early Pain, Later Gains for Asians, Economist Says, J. COMMERCE, June 6, 1995, at 5A.

105 See Dickerson, supra note 1, at 409-10; see also discussion, supra Section 5.2.
the developed [countries] found fingers with which to close them."^106

During the Nixon Administration, the Multi-Fiber Arrangement was passed with the intention of sealing those holes. In the United States, President Nixon tightened the pressure on a reluctant and increasingly prosperous and politically stronger Japan to forge a multilateral textile agreement whereby Japanese imports of synthetic fibers and wool would be restricted.

Nixon threatened to invoke the Trading with the Enemy Act,^107 which would impose unilateral restraints on Japan. On the day that the Trading with the Enemy Act was to enter into force, Japan succumbed to U.S. threats to unilaterally restrict Japanese imports and agreed to limit imports of wool and synthetic fibers. The United States thereafter reached similar bilateral agreements with Hong Kong, South Korea, and Taiwan.

U.S. restrictions on such imports had a significant impact on Europe as well, due to heightened trade diversion to Europe. By 1972, with bilateral agreements restricting exports to the United States from Japan and other Asian countries, shipments of Asian products were increasingly diverted to Europe, which thereby precipitated Europe to agree to a multilateral agreement covering synthetic fibers and wool. Once the Europeans were willing, a multi-fiber arrangement thus seemed inevitable.

5.3.3. Stages of the MFA I Through IV as a Progression Towards Further Trade Restrictions.

The MFA was negotiated under GATT and went into effect on January 1, 1974. Since its inception, it has governed most of the $248 billion a year trade in textiles and apparel. It was originally

^106 Keesing & Wolf, supra note 27, at 22.

^107 See Dickerson, supra note 1, at 410.

^108 See Trading With the Enemy Act, 50 U.S.C. § 5(b)(1)(B) (1988) ("During the time of war, the President may . . . regulate . . . any . . . importation or exportation of . . . any property in which any foreign country or a national thereof has any interest.").

^109 See Cline, supra note 10, at 149.

^110 See Dickerson, supra note 1, at 411.

^111 See Cline, supra note 10, at 149.

^112 See Dickerson, supra note 1, at 411.

^113 See John Zarocostas, EU Blocks Compromise on Textile-Quota Phaseout, J. Commerce, Jan. 12, 1995, at 1A.
meant to be a temporary arrangement governing the trade of textiles, but it has been renegotiated at the insistence of the developed importing countries and will therefore stay in place until 2005. The MFA does not establish import restrictions by itself. Instead, it provides a framework of rules and procedures under which member countries can impose quota restrictions. Quotas are usually negotiated bilaterally, but unilateral quotas are permitted if the import of a particular product from a specific country is disrupting, or might potentially disrupt, the domestic market. Since its original inception in 1974, the MFA has undergone numerous extensions, divided into four stages (I through IV), that have progressively increased the level of protection of the textiles and apparel industry. The four stages are briefly discussed below.

5.3.3.1. MFA I: 1974-1977

MFA I covered manufactured fibers and wool, in addition to cotton and the cotton blends that were covered in previous agreements. In its original conception, the MFA was to take into account the interests of both the exporting and the importing countries and to contribute to the economic growth of developing countries. Its stated 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.

In addition, the MFA was a general, multilateral agreement governing the bilateral agreements that could be reached between

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115 See MFA I, supra note 100, art. 3, para. 5.
116 See discussion infra Parts 5.3.3.1.-5.3.3.4.
117 See Dickerson, supra note 1, at 412.
118 MFA I, supra note 100, art. 3, para. 2.
participating countries. Under the MFA, a developed importing country was able to negotiate agreements with a developing exporting country and, through the safeguard mechanism, establish quota levels on textiles product categories that were deemed to cause, or could potentially cause, market disruption in the domestic importing market. This represented a “significant departure from GATT’s nondiscrimination rule” by permitting importing countries to “single out exporting countries considered to be a problem and negotiate varying agreements among textile trading countries.”

The differences between the MFA and the LTA are significant. First, the MFA established a multilateral surveillance institution, the Textiles Surveillance Body (“TSB”), to supervise the implementation of the MFA. Second, a committee was established to manage the MFA, and was comprised of all signatory members. Third, stricter rules for determining “market disruption” were established. Fourth, quota allowances were permitted to increase by no less than six percent per year, rather than the five percent minimum allowed under the LTA. Fifth, the implementation of new provisions, such as “swing,” “carry forward,” and “carryover” further enhanced quota flexibility under the MFA. Thus, while the MFA was an extension of the LTA, it represented the multilateral institutionalism of the textiles and apparel trading regime that ultimately led to a further divergence from the GATT

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119 See Dickerson, supra note 1, at 414 (stating that the forty-two participating countries included all the developed countries (with the EC as one participant) and all the major textile exporting countries, even if they were not GATT contracting parties).

120 See Dickerson, supra note 1, at 413.

121 Dickerson, supra note 1, at 413 (“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.”).

122 See MFA I, supra note 100, art. 11; Dickerson, supra note 1, at 413.

123 See MFA I, supra note 100, art. 10; Dickerson, supra note 1, at 413-14.

124 See MFA I, supra note 100, at Annex A; Dickerson, supra note 1, at 414.

125 See MFA I, supra note 100, at Annex B; Dickerson, supra note 1, at 414.

126 See MFA I, supra note 100; Dickerson, supra note 1, at 414. “Swing” permitted transfer from one category to another if there was an unused quota; “carry forward” permitted borrowing from the next year’s quota; and “carryover” permitted the exporting country to add unused quota from one year to the following year’s quota. Id.
principles of nondiscrimination and the general prohibition on quantitative restraints.

5.3.3.2. MFA II: 1977-1981

While the original MFA was to last only four years, from 1974 through 1977, the developed exporting countries pushed for extensions, arguing that they needed more time to “adjust.”127 Thus, subsequent renewals of the MFA, or “Protocols of Extension,” extended and added changes to the original MFA.128 Much of MFA II, which was in place from 1977 through 1981, was shaped by the European Community,129 which was concerned with the growth of imports into its markets, precipitated by the diversion of Asian products into Europe due to increased protectionism in the United States.130 In addition, with a serious recession in Europe, European

127 See Dickerson, supra note 1, at 414.
129 Numerous reasons could account for the relatively less aggressive stance taken by the United States in comparison to the European Community in the MFA II negotiations. First, the U.S. dollar depreciated between 1971 and 1973, thereby increasing the competitiveness of U.S. industry on the world market. Second, the United States already had protectionist agreements in place, as a result of the bilateral agreements prior to MFA I and the agreements that it quickly enforced when MFA I was effectuated. Third, the United States did not face a rapidly decreasing employment rate, unlike Europe, whose employment rate dropped one-sixth between 1973 and 1977. See Cline, supra note 10, at 151. Other scholars have suggested that the European Community took a more relaxed position on quota restrictions vis-à-vis importing countries because of its failure to anticipate to what extent diversion from more protected markets, such as that of the United States, would occur. The most important factors were most likely the inability of the European Community: to anticipate a downturn in their economy; measure the potential for import surges; and coordinate trade policy between the countries of the European Community. In addition, the European Community’s balance of trade in textiles and apparel was positive in 1974 and 1975, and it was not until 1976 that its trade deficit became substantial, which in turn aggravated the trend towards lower employment that was primarily caused by weak demand and higher labor productivity. See Keesing & Wolf, supra note 27, at 58. Another significant factor that contributed to the European Community taking on a more aggressive protectionist position was the increase in EC imports in intraregional trade; in Italy, the trade balance in all textiles grew from $1.7 million in 1973 to $2.7 million in 1976, with continuing expansion. In trade within the European Community, Italy’s positive trade balance nearly doubled from $1.1 billion to $2.0 billion from 1973 to 1976, in contrast to the rest of the Community, whose net trade deficit in textiles and clothing grew from $650 million to $3.2 billion during that same period. See id.
negotiators to the MFA were ready to take a tougher position against imports than they had taken in the negotiating original MFA.\textsuperscript{131} Significantly, the smaller developed countries (such as Australia and Canada) generally had difficulty in getting importing developing countries to negotiate and impose quotas, and therefore relied on the MFA safeguard mechanism or invoked Article XIX of GATT.\textsuperscript{132}

The European Community's specific concerns were the six percent growth rates authorized under MFA I and the need to prove "market disruption" in order to negotiate bilateral agreements with a growth rate of less than six percent; eventually, the European Community achieved its goal for "jointly agreed reasonable departures" from MFA I, including reduced quota levels, denials or reduction of the flexibility provisions, and growth rates reduced to under six percent.\textsuperscript{133}

Essentially, MFA II permitted even more restrictive bilateral agreements. Significantly, the European Community and the United States implemented "safety-net" provisions that would apply restraints on unrestricted exports if they reached a certain threshold.\textsuperscript{134} Thus, the MFA II was a substantial departure from the original MFA, and a further estrangement from the GATT prin-

\textsuperscript{130} See Dickerson, supra note 1, at 414-15. With the advent of MFA I, the United States immediately negotiated bilateral agreements restricting trade, whereas the EC did not enter into such restrictive agreements early on. It waited nearly two years to impose Community-wide MFA restrictions on major exporters, due to the length of time involved in coming to a mutual agreement among its member countries. Thus, during this period of less stringent restrictions into the European market, the extensive U.S. restrictions led to trade diversion of Asian products into the European market. See id.

\textsuperscript{131} See id. at 415.

\textsuperscript{132} Keesing & Wolf, supra note 27, at 58-59 (noting that the MFA and the TSB's authority was diminished as a result of Australia and Canada's invocation of GATT Article XIX and argument that these actions were not the proper authority of the TSB).

\textsuperscript{133} See Dickerson, supra note 1, at 415-16. Therefore, countries could individually depart from the original MFA that had been agreed upon by all the participating countries by making restrictive bilateral agreements that derogated from the provisions of the original MFA. See id. at 415.

\textsuperscript{134} See id. at 416. The provision was called the "basket extractor" in Europe, and in the United States, it was called the "call mechanism." Both had the same purpose of restraining unrestricted exports when the importing country believed there was a risk of market disruption. See id.
5.3.3.3. MFA III: 1981-1986

During the period of MFA III, the United States restricted even more sources and more products than before by applying new restrictions or by imposing unilateral measures. However, these heightened restrictions did not prevent U.S. imports from increasing rapidly.

The policy driving the third MFA was influenced heavily by the domestic politics of the European Community and United States and their response to a changing global trading order. During the period between 1977 and 1981, the number of exporting countries in the textiles and apparel industry increased dramatically. Between 1971 and 1979, the percentage market share of textile and apparel imports from Hong Kong, Taiwan, and South Korea increased from approximately thirty percent to forty-two percent. In addition, the U.S. apparel trade deficit increased due to the emphasis on apparel production by developing countries.

Hence, in the United States, industry leaders again demanded greater protection from exporting countries. In February 1979, President Carter introduced the "Administration Textile Program," commonly known as the Carter "White Paper." The White Paper’s purpose was to reduce the aggregate import growth and volume, and to expand measures to control the "import surges that cause market disruption." In addition, the White Paper sought

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135 See id. at 416.
136 See id. at 418.
137 See Landaw, supra note 1, at 212.
138 See Protocol Extending the Arrangement Regarding International Trade in Textiles, Dec. 22, 1981, T.I.A.S. No. 10,323 [hereinafter MFA III]. Forty-two countries were MFA III signatories, including China, which was not permitted to join GATT. For importing countries, Chinese participation in MFA was desirable so that the importing countries could legalize and formalize restraints on Chinese products, and for China, membership in the MFA (permitting bilateral agreements) was preferable to unilateral restraints on its products. See Dickerson, supra note 1, at 419-20.
139 Landaw, supra note 1, at 211.
140 See Dickerson, supra note 1, at 416-17.
141 See Background Material on the Multifiber Arrangement: Staff of House Subcomm. on Trade, 96th Cong. 3 (1979) [hereinafter Trade Subcommittee Report].
142 See id. at 5; see also Giesse & Lewin, supra note 4, at 117.
to link import growth in import-sensitive categories to increases in U.S. domestic consumption. The first countries to which the new policy applied were Hong Kong, Taiwan, and South Korea.

Complaints of sharing a disproportionate burden of per capita imports of low-cost textiles with the United States and Japan were once again raised by the European Community. Despite these complaints, however, if net trade were taken into account, the European Community’s net imports from developing countries, excluding those in southern Europe, would have been approximately equal to those of the United States, at $4 billion, in 1979. However, the European Community’s primary objectives in renegotiation were cutbacks in quotas by dominant exporters, such as Hong Kong, South Korea, and Taiwan, and the limitation of quota growth for other countries to below six percent per annum; in support of these objectives, the European Community argued that its domestic consumption was stagnant or was rising more slowly than it had been previously.

For developing countries, the primary objective of MFA III was to seek greater discipline and to eliminate the clause permitting “reasonable departures” from the norms on export restraints. While the developing exporting countries were ultimately able to have the “reasonable departures” clause removed from MFA III, other provisions, such as the “anti-surge mechanism” and a limitation on imports from major suppliers, were added.

The anti-surge mechanism provided for special restraints to be available to importing countries where there was a sharp increase of imports of products with previously underutilized quotas. Thus, “[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.” In other words, an importing country could take action

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143 See Trade Subcommittee Report, supra note 141, at 5; Giesse & Lewin, supra note 4, at 117-18.
144 See CLINE, supra note 10, at 154.
145 See id.
146 See id.
147 See MFA III, supra note 138, para. 10.
148 See id. para. 9.
149 See CLINE, supra note 10, at 154.
150 MFA III, supra note 138, para. 10.
in the form of import restraints if an underutilized quota were filled in a short period of time, and this surge of imports would result in "market disruption" in the importing country.\textsuperscript{151}

Therefore, just as the MFA II before it, the MFA III drifted further away from GATT principles and trade liberalization, and moved towards increased trade restrictions. As the GATT Secretariat stated, "[r]estraints under MFA III were not only more extensive but were in many cases more restrictive."\textsuperscript{152} Perhaps more significant and far-reaching than the newly enacted restrictive provisions themselves was the very fact that these provisions were permitted to extend the MFA even further than had previously been allowed, thereby expanding the possibilities for deviating further from GATT principles.\textsuperscript{153}


Despite the expansion of restrictions under MFA III, "[t]he [U.S.] government's program to slow import growth [was] just not ... effective," as Carlos Moore, executive vice president of the American Textile Manufacturer's Institute, noted.\textsuperscript{154} For example, by the late Eighties, more than seventy Korean textile companies had production facilities abroad, with an estimated investment of $56 million, and sought to expand further.\textsuperscript{155} Thus, MFA IV was negotiated, renewing the MFA for an additional five years through July 31, 1991.\textsuperscript{156} As with previous MFA renewals, the text of the MFA remained unchanged, but significant modifications were incorporated through the Protocol of Extension.\textsuperscript{157}

MFA IV had fifty-four signatories. While it had many provisions similar to the provisions of previous MFAs, a significant change was included: additional fibers were covered. This expa-
sion of covered fibers was made to the MFA in response to importing countries' concerns about developing exporting countries which had previously been able to avoid restrictions on imports by making their products with unrestricted fibers, such as linen, ramie, and silk, and blends thereof.\textsuperscript{158} MFA IV covered products in which these fibers exceeded fifty percent of the weight or value of the imported goods, while silk remained excluded.\textsuperscript{159} The expansion of fiber coverage was of particular concern to India and China, which traded significant amounts of ramie.\textsuperscript{160}

In addition, quotas were generally increased as a percentage based on the previous year, thereby providing little opportunity for quota expansion for the smaller or poorer exporting countries since the base on which the percentage increase was calculated would be small.\textsuperscript{161} Furthermore, no cutbacks or tightening of quotas were permitted; instead, exporting countries were mandated to accept lower rates of growth and flexibility.\textsuperscript{162} In addition, the importing countries "committed themselves to making improvements in the bilateral agreements for increased access."\textsuperscript{163}

Although the MFA was scheduled to expire in July 1991, the Uruguay Round negotiations stalled, and the one-year MFA extensions continued for three years, from 1991 to 1993.\textsuperscript{164} From the outset of the Uruguay Round, demanded the demise of the MFA, and pressed for the liberalization of textiles and apparel trade under GATT rules.\textsuperscript{165} In a noncommittal response, however, the ministers at the Uruguay talks referred only to the "eventual integration of this sector into GATT."\textsuperscript{166} Importing countries such as India and

\textsuperscript{158} See MFA IV, supra note 156, at para. 24(i); Landaw, supra note 1, at 213-14. For example, 1985 imports into the United States from China made from non-MFA fibers increased 346% over the previous year. See Dickerson, supra note 37, at 315.

\textsuperscript{159} See Dickerson, supra note 1, at 420. Although the United States did not produce any ramie, domestic producers argued that ramie products caused market disruption by replacing similar items of other fibers. See Dickerson, supra note 37, at 316.

\textsuperscript{160} See Dickerson, supra note 1, at 420.

\textsuperscript{161} See id.

\textsuperscript{162} See id.

\textsuperscript{163} Id.

\textsuperscript{164} See id. at 421.

\textsuperscript{165} See id. at 424.

TOWARDS GATT INTEGRATION

Pakistan took the position that exporting nations were putting textiles and clothing "on the back burner," while some Western officials pushed to extend the MFA until January 1994, "on the pretext that they need[ed] more time to amend all the necessary national legislation." 167

5.3.4. Phasing Out of the MFA and the Uruguay Round Agreement on Textiles and Clothing

During the Uruguay Round, which went into effect on January 1, 1995, members negotiated the Uruguay Round Agreement on Textiles and Clothing ("ATC"),168 which established rules governing the integration of textiles and apparel into GATT during the ten-year transition period.169 In addition, the ATC established a quasi-judicial body to supervise the implementation of the ATC and to adjudicate disputes among members during the MFA phase-out period, called the Textiles Monitoring Body ("TMB"), which has been criticized by both developed and developing countries.170

Under the ATC, two key mechanisms for the progressive integration of the textiles industry into GATT are: (1) the elimination of quotas on selected products in four stages over a ten-year period ending in 2005, and (2) the increase of quota growth rates on remaining products at each of the first three stages.171 Thus, if successfully implemented, the ATC will be a mechanism by which

168 See ATC, supra note 3.
170 See K. Kristine Dunn, Note, The Textiles Monitoring Body: Can it Bring Textile Trade into GATT?, 7 Minn. J. Global Trade 123, 124 (1988). The TMB has suffered harsh criticisms from both the exporting and importing countries in its adjudicatory role. Representatives of U.S. textile and apparel industries have asserted that the TMB is rigged against them, while exporting countries claim that the officials who are appointed by the importing countries are biased and lack credibility in resolving disputes. See id.
171 See ATC, supra note 3, art. 2. Under Article 2, the members have the discretion of selecting specific products for each stage of integration, but limits these selections to those incorporating products from each of four groups: tops; yarns; made-up textile products; and clothing. See Dunn, supra note 170, at 128-29; ATC, supra note 3, art. 2(6), 2(8).
members may eliminate quantitative restraints and thereby restore market principles for textiles and apparel trade.172

In addition, the ATC incorporates a transitional safeguard mechanism to be triggered if an importing country determines that imports of products that are not yet integrated into GATT and are not already subject to a quota are causing “serious damage” or pose an “actual threat” thereto.173 Pursuant to Article 6 of the ATC, which governs the transitional safeguard mechanism, before a quota is imposed, the importing member country is required to demonstrate that “a particular product is being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products.”174 In determining whether there has been serious damage or actual threat thereto, a country that avails itself of the safeguard mechanism must examine the effect of those imports on the state of a particular industry by looking at changes in “relevant economic variables.”175

Under Article 6 of the ATC, the TMB is responsible for determining whether an agreement between two countries regarding the transitional safeguard is justified with the provisions of the Article under the ATC.176 Disputes under the ATC are thus governed by a set of rules that are distinct from those under the GATT regime. However, the power of the TMB to enforce its determinations seems limited; while member countries must “endeavour to accept in full the recommendations of the TMB,”177 a country can reject the TMB’s recommendations and either country can have its

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172 See Dunn, supra note 170, at 129. The author posits that if the ATC were effectively implemented to liberalize trade in textiles and apparel, one third of the total anticipated economic gain from trade liberalization under the Uruguay Round will result from dismantling the old restrictions on trade in this sector. See id. at 124.

173 See ATC, supra note 3, art. 6(1), 6(2) & 6(4). See also Dunn, supra note 170, at 130.

174 Id., art. 6(2). See also Dunn, supra note 170, at 130.

175 Id., art. 6(3). These factors include: output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment. None of these variables, either alone or in combination with other factors, can necessarily give decisive guidance. Id.

176 Id., art. 6(9).

177 Id., art. 8(9).
claim heard before the WTO’s Dispute Settlement Body pursuant to provisions under GATT.178

It is significant that the members came to an agreement over the composition of the TMB only after much controversy. While electing the chairman and ten representatives making up the TMB,179 the importing and exporting countries both fiercely argued for majority representation.180 The result: half of the representatives are from importing countries and the other half from exporting countries.181 As one author noted, this controversy could indicate that representatives acknowledge the possibility that TMB members would make politically based decisions,182 even though the ATC provides that representatives must take a neutral position, rather than performing duties for their governments.183

Understandably, there has been concern on the part of developing countries in the Asia-Pacific region over the United States’ weak commitment to the ATC184 and alternatively, its strong ties to special interest groups in the textile and apparel industries.185 The American Textile Manufacturers Institute, which represents the U.S. textile industry, successfully lobbied Congress to specify that restrictions under the ATC on import-sensitive products would be the last targeted for integration into the GATT system.186 Thus, the

178 See ATC, supra note 3, art. 8(10); Dunn, supra note 170, at 132-33 (noting that a Member could bring the dispute before the Dispute Settlement Body under Article XXIII of GATT 1994).

179 See ATC, supra note 3, art. 8(1) (“The TMB shall consist of a Chairman and 10 members. Its membership will be balanced and broadly representative of the Members and shall provide for rotation of its members at appropriate intervals.”).

180 John Zarocostas, EU Blocks Compromise on Textile-Quota Phaseout, J. COMMERCE, Jan. 12, 1995, at 1A.

181 See Dunn, supra note 170, at 132 n.45; see also ATC, supra note 3, art. 8(1) (TMB membership shall be “balanced and broadly representative of the Members.”).

182 See Dunn, supra note 170, at 132.

183 See ATC, supra note 3, art. 8(1) (declaring that the members of the TMB shall discharge their function on an ad personam basis).

184 See Dunn supra note 170, at 134. Under the ATC, there was no less protectionist activity on the part of the United States than under the MFA, even though the ATC was intended to liberalize trade in this sector. In fact, the United States attempted to establish thirty new quotas (of which twenty-five were targeted at WTO members) within the first twenty months of the ATC; by the end of the first year of the ATC, the United States had more quotas than at the beginning of the year. See id. at 136-37.

185 See, e.g., id. at 134-36.

186 See id. at 134-35.
United States plans to maintain fully 89% of its quotas on clothing until 2005.187

In response to the U.S. textiles and apparel lobbies and its representatives in Congress, wholesalers and retailers argue that the U.S. textiles and apparel industry, by continuing to exert its influence to maintain trade restrictions, is foregoing potential benefits that could be reaped by the movement towards trade liberalization under the ATC,188 such as "the reduced costs of both domestic and imported clothing, broader selection of available apparel products, improved competitiveness both abroad and in the United States, and the elimination of the welfare costs associated with MFA quotas."189 Therefore, although the United States may have much to gain from a more consistent move towards liberalization, it has persisted in continuing its policy of trade restrictions, and, in some recent cases, increasing barriers to trade.

Foreign textile and apparel importers, however, are not likely to curtail their efforts at importation in response to U.S. trade limitations. Indeed, the very nature of the MFA and the ATC, which allows bilateral trade negotiations, as opposed to imposing one rule restricting trade that applies equally to all members, permits importers to relocate production to those areas that do not face such limitations, such as Latin America and Russia. Through these indirect means, the U.S. market remains open to the very competition it has attempted to eliminate from abroad.

6. CASE STUDIES: JAPAN AND KOREA

As a result of the discriminatory restrictive quotas on textiles and apparel imports under the MFA, exporting countries have developed investment strategies that permit them to relocate their manufacturing processes to regions that are not subject to restraints on U.S. market entry. Thus, Korean and Japanese investors have moved their manufacturing facilities from their respective countries to regions such as Russia, Central America, and the Caribbean Basin, which enjoy fewer restrictions on imports into the

187 See id. at 135; see also Gupta, supra note 16 ("While the existing ATC schedule holds that 51 percent of the total volume of import of listed textiles and clothing be integrated into the WTO by January 2002, India is going to ask [at the WTO Seattle Ministerial Meeting] for 83 percent integration within the same time frame.").

188 See Dunn, supra note 170, at 135-36.

189 Id. at 136.
U.S. market. Significantly, the mobility of such investors and their ability to circumvent the quantitative restraints under the MFA poses the question of whether the United States and other importing countries are indeed successful in maintaining the regime’s protectionist measures. It appears that the provisions of the MFA, which do not establish import restrictions themselves, but instead provide a framework of rules and procedures under which members can impose quota restrictions, permit importing countries to discriminate in their imposition of quotas on an exporter. Therefore, while the United States may negotiate bilateral agreements with Korea under the MFA in order to restrict Korean imports, if it does not impose similar or more stringent restrictions on other countries, Korean companies can relocate to these countries and export their otherwise restricted goods to the United States without sanction. The following case studies of Japanese and Korean investors illustrate the extent to which the application of import restraints under the MFA quotas by the United States has failed to prevent market entry in the aggregate.

6.1. Japanese Textiles Producers Abroad as a Case Study on How the MFA Impacts Exporters

Facing pressure from Europe and the United States to cut its trade surplus, Japanese companies are diverting their investments abroad where “they can take advantage of a combination of lower labour costs, lower transport costs to local customers and access to local markets that have import tariffs.” Foreign direct investment has increased in the global textiles and apparel industry since World War II, a trend that can be explained in part by the persistence of protectionist measures. In addition, Japanese companies are reducing domestic production or shutting it down altogether.

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190 This assumes that there is no barrier to entry of direct investment into these countries that are not subject to MFA restrictions.

191 Daniel Green, Hanging On by a Thread: Tariff Barriers and Low Foreign Labour Costs are Driving Japanese Textile Production Offshore, FIN. TIMES, July 6, 1993, at 19. See also JOHN SINGLETON, THE WORLD TEXTILE INDUSTRY 113 (1997) (“Japanese textile, synthetic fibre and clothing businesses were prominent in the race to establish factories overseas.”).

192 See SINGLETON, supra note 191, at 113.

193 See Green, supra note 191. An example of a Japanese textile company investing abroad is Toyobo, which established several cloth-manufacturing joint ventures in Malaysia, and, in 1993, cut Japanese output by 20% by suspending production at ten of its factories for between four and eight days. See id. In addi-
One study by the International Textile Manufacturers Institute found that in 1992, textile production in Japan fell by sixteen percent as a result of the shift from domestic production to investment abroad.\(^{194}\)

Japan's investment abroad seems long term. For example, the Japanese government donated more than $12 million to Honduras to improve highway and irrigation infrastructure.\(^{195}\) As one Japanese diplomat in Costa Rica stated, "[t]he labor is cheap, the region is close to the United States, and the region gets [Caribbean Basin Initiative] privileges. This makes the region an attractive area for continuing investment."\(^{196}\) Toray, Japan's biggest textile company, has factories in Brazil, Central America, Malaysia, Thailand, and Indonesia,\(^{197}\) as well as a joint venture in China.\(^{198}\)

Thus, with the ability of firms to relocate to areas in which they can receive preferential treatment, or at least not unfavorable treatment, it is less clear that the trade restrictions authorized under the MFA ultimately limit the entry of certain imports. Due to the discriminatory component of these trade restrictions, whereby Japan faces stringent restraints to the U.S. market and Central America does not, investors can "shop around" for those regions that will yield the highest return on their investment. Facing such constraints on their ability to export, Japanese firms have increased their foreign direct investment in regions that are not subject to U.S. import quotas, and are thereby circumventing U.S. trade barriers that were aimed at keeping their exports from reaching the U.S. market.

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\(^{194}\) See id.

\(^{195}\) See Far East Investment in Central America Increases, Spurred on by U.S. Incentives, 8 Int'l Trade Rep. (BNA), 1615 (Nov. 6, 1991) [hereinafter Far East Investment].

\(^{196}\) Id.

\(^{197}\) DENNIS L. McNAMARA, TEXTILES AND INDUSTRIAL TRANSITION IN JAPAN 69 (1995).

\(^{198}\) See Green, supra note 191, at 19.
6.2. Korean Textiles and Apparel Manufacturers as a Case Study on How the MFA Impacts Exporters

6.2.1. Generally

For decades, Korean companies have been limited by strict U.S. barriers to entry into textiles and apparel industry, and these restrictions have contributed to a diminution of Korea's textiles and apparel exports to the United States. For example, between 1989 and 1991 exports from Korea to the United States that were subject to MFA restrictions declined from 11% to 8.5%, a marked decline in Korea's exports to the United States.199 On the other hand, Korean investors have been able to take advantage of U.S. trade concessions to certain areas, such as Latin America, the Caribbean Basin, and Russia, by establishing export-oriented shops in those areas.200 For example, from 1986 to 1990, South Korean investors set up 140 industries in Central America and the Caribbean region from which they exported $150 million in goods a year to the United States.201 In 1991, at $20 million, South Korea was the second largest investor in Honduras behind the United States.202 Thus, the success of Korean manufacturers suggests that despite U.S. efforts to restrict and monitor imports, U.S. trade concessions in other regions permit otherwise restricted entry into the U.S. market. As one South Korean investor in Guatemala City stated, "The trade privileges offered [in] this area are much better than what I have at home."203

6.2.2. Korean Investment in the Caribbean Basin

A study of Korean investment in the Caribbean Basin provides further insight into the often discriminatory trade policies of the United States, and serves as an example of how such policies do not necessarily fulfill their goal of protecting the domestic market.204 The Caribbean Basin Initiative ("CBI") was originally im-

200 See Far East Investment, supra note 195, at 1614.
201 See id.
202 See id.
203 Id.
204 See id.
plemented in 1983 under the Caribbean Basin Economic Recovery Act.\textsuperscript{205} The CBI was a product of the United States' interest in ensuring the stability of a region that was in a period of economic crisis.\textsuperscript{206} Congress attributed the crisis to deeply rooted structural problems, a huge balance of payment deficit, high unemployment, and declining growth.\textsuperscript{207} Thus, the United States sought stabilization through the CBI, which would reduce tariffs on exports to the United States and increase investment in the Caribbean.\textsuperscript{208} Twenty-four Caribbean Basin countries are eligible for this special treatment.\textsuperscript{209}

Although the original intent of the CBI was to stabilize the Caribbean economies, the CBI has in practice provided greater benefits to Asian textile manufacturers than to those native to the Caribbean Basin.\textsuperscript{210} Korea, Japan, and Taiwan have increased their investment in Central America threefold since 1986.\textsuperscript{211} As one author notes, the increased investment may be a result of both rising wages in Asia and the impact of U.S. quotas on Pacific Rim products, coupled with duty-free or reduced-quota treatment granted to certain products exported to the United States from the Caribbean Basin under the Caribbean Basin Economic Recovery


\textsuperscript{206} The fact that the United States has an interest in the region demonstrates the strong influence that domestic textile and apparel interest groups have on U.S. trade policy, as well as U.S. willingness to engage in discriminatory practices. U.S. apparel groups have supported extending trade benefits to the Caribbean Basin, on the theory that freer trade of textiles and apparel would encourage U.S. apparel manufacturers to invest in the region, and thereby enhance their sourcing options. Currently, U.S. apparel manufacturers are looking to invest in areas closer to home where they can produce goods more cheaply, and thus be better equipped to compete with imports from developing, low-wage countries. As one representative of the American Apparel Manufacturers Association stated, "With the phaseout of the MFA by the year 2005, we need all the tools we can [get] to compete with China." Green, supra note 58, at 5A.

\textsuperscript{207} Legierski, supra note 78, at 307.

\textsuperscript{208} See id. at 308 (adding that the CBI has not been as advantageous to Caribbean Basin countries as was originally intended).

\textsuperscript{209} Far East Investment, supra note 195, at 1615.

\textsuperscript{210} See Legierski, supra note 78, at 307 n.13 (citing Far East Investment, supra note 195, at 1615).

\textsuperscript{211} See Legierski, supra note 78, at 307 n.13.
Thus, the disparate treatment by the United States of the two regions, as expressed through discriminatory trade policies, has created the opportunity for Asian exporting countries to relocate to areas that are subject to fewer restrictions.

6.2.3. Korean Investment in Russia

The number of Korean companies in Russia is growing as well. These companies produce clothes that are eventually exported to the United States and end up in stores like the Gap. Because Korean textile companies are subject to restrictions on imports to the United States, and Russian imports of textiles and apparel are not, Korean textile companies have seized upon the opportunity to export their products to an otherwise restricted U.S. market. As Charles Kernagen, director of the National Labor Committee, an industry watchdog group, stated, "Through other countries such as Russia you can enter the United States essentially through the back door." Moreover, it is not likely that the United States would object to such imports from Russia. One Commerce Department official stated that the practice is legal as long as there is "substantial transformation" of the clothing in Russia, and that the United States will not impose any serious quotas on Russia, as long as the imports do not harm U.S. industry.

Korean companies look abroad to find ways to circumvent import restrictions on their products. For example, Joo In Ha, the general director of Seoul-based Seishin Apparel Company, stated that the Company bought and remodeled a bankrupt Soviet-era clothing factory in the Russian town of Partizansk to expand sales to the United States. Where some countries do not face quantitative restrictions and others do, countries subject to such restrictions are able to relocate their manufacturing facilities to areas where they are not subject to the restrictions. Case studies of Korean and Japanese manufacturers in Latin America and the Carib-

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212 See id. (noting that increased Asian investment in the region, in addition to being driven by U.S. quotas on Pacific Rim products, is in part due to increased wages in Asian countries).
213 See Working, supra note 18, at C1.
214 See id.
215 Id.
216 Id.
217 See id. The Russian subsidiary, Koruss, sold $1.68 million worth of sweatshirts, dresses, and polo shirts to Gap in 1998. Id.
bean, and now of Korean manufacturers in Russia, demonstrate the ability of exporters to relocate in order to avoid trade limitations. Thus, if the aim of the U.S. quota system is to prevent the import of highly competitive goods, then it is working neither effectively nor efficiently.

7. U.S. QUOTAS ARE NOT NECESSARILY EFFECTIVE IN PREVENTING IMPORTS OF TEXTILES AND APPAREL

7.1. Generally

From the outset, the MFA was a controversial derogation of GATT principles. The original arrangement was fairly balanced, and textiles trade was liberalized when compared to the system of unilateral restraints that preceded it. However, each successive Protocol extension to the MFA added features to permit developed countries to increase restraints on the imports from the developing exporting countries. The costs of increasing levels of protectionism are high and impose harms on not only the global economy, but the domestic economy as well.

7.2. Costs of Protection on the Domestic Economy

Although proponents of protection would argue that trade restrictions are critical to the survival of the industry, trade restrictions ultimately cause the most harm to domestic consumers, who bear the cost of protectionism. The MFA utilizes quotas, or quantitative restrictions, which result in higher prices on domestic consumers than they would be paying on the world market. As one author notes, "[t]hese types of restrictions reduce incentives for industries to operate efficiently and to develop new products and technologies, thereby encouraging the concentration of resources in the United States' least competitive industries." According to Congressman Frenzel, in 1985, one estimate of the extra cost to American consumers due to the MFA quotas would amount to $4.4 billion per year. He cited another estimate by the

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218 See Dickerson, supra note 1, at 422.
219 See CLINE, supra note 10, at 188-93.
220 See Landaw, supra note 1, at 223 (stating further that, in 1984, "special protection (to all industries) cost U.S. consumers approximately $53 billion, including an efficiency loss to the economy of about $8 billion.").
Consumers for World Trade organization, which placed the total consumer cost of all textile protectionist laws and regulations at over $18 billion per year. Another estimate of the consumer and welfare costs of protection in the United States, based on 1986 wholesale values, is an annual cost of $20.3 billion, averaging $238 per household, or 0.72 of disposable income per household. A significant finding is that under MFA III, for example, the annual cost of such protection to consumers was $27 billion. Thus, as the United States maintains quantitative restrictions on imports of textiles and apparel, the cost of this protectionism is levied on its own consumers.

Similarly, in Europe, the MFA had an adverse impact on the efficiency of its markets. As some scholars have asserted, "[t]he bilateral quotas negotiated under the umbrella of the MFA arbitrarily divide markets and prevent them from operating normally to allocate resources efficiently among different activities and locations, and to distribute goods efficiently among consumers in different countries." Indeed, the inefficiencies arising from the misallocation of products among consumers are a result of price differentials in the segmented import markets, which arise from separate quota restrictions on each market under the MFA regime.

7.3. Cost of Protection to the Global Economy

The costs of protection of the textiles and apparel sector are numerous, and not always economic. Indeed, there are political costs that undermine the legitimacy of the ATC and MFA where their adjudicatory roles are seen merely as representing the interests of the developed countries.

First, the MFA has been criticized for harming developing countries' economic stake in trade. By removing an entire trade
First, the MFA has been criticized for harming developing countries’ economic stake in trade. By removing an entire trade sector from the general rules of GATT, the MFA departed from normal GATT rules in order to benefit a particular industry. Because of the heavy reliance of many developing countries on textiles trade for economic development, a great amount of their trade is impacted by textiles protectionism. For example, in 1992, “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.”

Second, critics point to the increasing discriminatory restraints on developing exporting countries in direct contradiction to the GATT principle of non-discrimination. While the original objective of the MFA was to liberalize imports from the developing countries, the MFA became increasingly restrictive on exports from these countries. In contrast to the U.S. treatment of developing countries, a “gentlemen’s agreement” existed between the European Community and the United States. Thus, 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 stated rationale for the

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228 See Dickerson, supra note 1, at 422.
230 See Dickerson, supra note 1, at 422-23.
231 Id. at 423; see Giesz & Lewin, supra note 4, at 53 (noting that imports from approximately forty countries, some of which are the poorest in the world, are subject to restrictive U.S. quantitative restrictions on imports. However, “[I]n sharp contrast, the United States grants imports from its West European suppliers unfettered access to its market, while the European Community extends the same favor to U.S. manufacturers.”). To illustrate the disparate treatment of developing countries and those of Western Europe by the United States, American imports of fibers covered under the MFA increased by eight percent in 1985, but nearly half of the increase was due to a twenty-seven percent jump in deliveries from Western Europe, while imports from developing countries increased by only three percent. See Tit for GATT, supra note 14.
232 Id. at 423.
Third, the MFA has also been criticized for permitting quotas, another departure from the general GATT principle of non-quantitative restrictions on goods.\textsuperscript{234}

Fourth, there has been criticism over the prolonged "temporary" protection, which has been in existence for over four decades.\textsuperscript{235} Although the original arrangement was intended to provide a temporary adjustment period for the textile and apparel industries in the developed importing nations, this "temporary" protection will have lasted more than forty years by the time the MFA quotas are due to be eliminated.\textsuperscript{236} The protracted duration of textile protectionism thus seems to belie its original intent.

Fifth, the "market disruption" provision, which has been used by the textiles and apparel industry to impose further quotas on imports since the STA in 1961, and has been a "cornerstone of textile and apparel protection thereafter," has not been applied by GATT to any other sectors.\textsuperscript{237} "Market disruption," which is defined as "instances of sharp increases associated with low import prices not attributable to dumping or foreign subsidies,"\textsuperscript{238} made significant changes that transcended the GATT Article XIX transitional safeguard mechanism.\textsuperscript{239} The "market disruption" concept permitted restrictions to be applied even in the absence of actual injury and discriminatorily against individual countries responsible for the import surge, rather than according them MFN treatment; in addition, "market disruption" permitted price differentials between imports and comparable domestic products as a basis

\begin{footnotes}
\textsuperscript{234} \textit{Id.}
\textsuperscript{235} See \textit{id.}
\textsuperscript{236} \textit{Id.}
\textsuperscript{237} CLINE, supra note 10, at 147.
\textsuperscript{238} MFA I, supra note 100, art. 3 (providing that the participating countries may introduce new restrictions on trade in textile products or intensify existing restrictions if the countries whose exports of such products are causing market disruption). A determination of a situation of "market disruption" is "based on the existence of serious damage to domestic producers or actual threat thereof." \textit{Id.} at Annex A(I). The factors causing market disruption include a "sharp and substantial increase or imminent increase of imports of particular products from particular sources . . ." and "these products are offered at prices substantially below those prevailing for similar goods of comparable quality in the market of the importing country." \textit{Id.} at Annex A(I). These prices are to be compared to the price of the similar domestic product and to the prices that normally prevail for such products under open market conditions by other exporting countries in the importing country. \textit{Id.} at Annex A(II).
\textsuperscript{239} See supra text accompanying notes 173-78.
\end{footnotes}
ble for the import surge, rather than according them MFN treatment; in addition, "market disruption" permitted price differentials between imports and comparable domestic products as a basis for establishing a need for protection, on the grounds that the cheaper import was "disrupting" the domestic market. 240 While other sectors could have adopted the "market disruption" concept to protect domestic markets, only the textiles and apparel sector has adopted it. 241

Finally, textile trade restraints have been criticized for engendering ill will among trading partners that extends beyond textiles trade issues. There has been retaliation in some cases, while others have caused representatives of developing countries to question the integrity of the developed countries. 242

Despite economic, and even diplomatic, reasons for easing restrictions however, it appears that due to the influence of powerful special interest groups that lobby for protection, the United States continues to protect the textiles and apparel industry at a loss to its consumers and the domestic and global economy.

8. CONCLUSION

The U.S. textiles and apparel industry has been protected for far longer than was originally planned, due to political pressures on the legislature from effective and well-organized lobbying groups. Similarly, in Europe, domestic pressures on governments have incited countries to pursue aggressively protectionist policies and prevented them from moving towards GATT integration. As a result, the MFA, which was intended to be only a temporary measure, has become increasingly protectionist over the past several decades, and neither the United States nor Europe has made positive steps toward liberalization and convergence with the GATT principles of MFN treatment and a general prohibition on quantitative restrictions.

Aside from not preserving the integrity of the agreements, however, is the more important concern that the United States and Europe are upholding protectionist policies even in light of evidence suggesting economic losses to importing countries, and an erosion of credibility from the perspective of developing exporting

240 See CLINE, supra note 10, at 147.
241 See Dickerson, supra note 1, at 423.
242 Id. at 424; see supra notes 12-16 and accompanying text.
countries that have heard too often that the agreements would be "temporary."

Furthermore, it seems that the discriminatory arrangements are themselves ill-equipped to prevent imports from entering U.S. and European markets. Case studies of South Korean and Japanese textiles and apparel exporters indicate that countries facing strict limitations on imports can relocate to countries without such restrictions, and thus circumvent the complex system of quotas. The studies also suggest that the current protection of the industry under the MFA and ATC is not only ineffectual, since manufacturers are able to relocate to countries where they can enjoy far fewer restrictions, but is harmful to both domestic market and global markets, where they create inefficiencies. Thus, the United States must take positive steps toward liberalization prior to 2005, when the MFA is scheduled to be dismantled, if it is to enhance its own competitiveness in the global trading system.