Out in the Cold: The Combined Effects of NAFTA and the MFA on the Caribbean Basin Textile Industry

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INTRODUCTION

In 1986, when the Caribbean Basin's fate was of paramount importance to the United States, U.S. officials vowed that such concern would remain intact well into the 1990s.[1] In 1992, however, the United States finalized the North American Free Trade Agreement (NAFTA)[2] which has the potential to undermine the efforts of both the Caribbean Basin countries and the United States in the economic and social development of the Caribbean region.[3] Aspects of the Uruguay Round of GATT[4] negotiations portend a similar threat to Caribbean Basin

1. In 1986, a top U.S. official stated that the Caribbean Basin Initiative as well as the fate of the Caribbean nations involved were important parts of U.S. foreign policy, and that the United States would remain concerned throughout the twelve year duration of the CBI. *See* Elliot Abrams, *CBI and the U.S. National Interest*, DEP'T ST. BULL., Apr. 1986, at 9. The statement was made before the Subcommittee on Oversight of the House Ways and Means committee on February 25, 1986 when Mr. Abrams was the Assistant Secretary for Inter-American Affairs. *Id.* Mr. Abrams stated that this commitment would be sustained "because it reflects the fundamental interests of this nation." *Id.* One must question this "commitment," however, if the U.S. administration, through NAFTA, dramatically undermines its entire effort in the Caribbean Region. The same official who spoke of that "commitment" also stated that "overbureaucratization is the death knell of initiative, investment, and growth." *Id.* at 14.

2. The North American Free Trade Agreement, the parties to which are the United States, Mexico, and Canada, was completed on September 6, 1992 and was signed on December 17, 1992 by then U.S. President Bush, Canadian Prime Minister Mulroney, and Mexican President Salinas. The agreement has not yet been adopted. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Mexico-Canada, (Draft of Sept. 6, 1992) [hereinafter NAFTA].

3. As early as March 1992, a GATT study cautioned that a North American free trade agreement, such as the one that has been finalized, would have a "far-reaching" adverse impact on other countries, and that the countries in the Caribbean Basin would be the hardest hit. Peter Morton, *GATT Slams Trade Pact as Dangerous: North American Menace?*, FIN. POST, Mar. 13, 1992, § 1, at 7. The study predicted that NAFTA would divert trade from Caribbean nations through its improvement in trading conditions for Mexico. *Id.*

4. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. pts 5,6, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT].

countries.[5]

The textile and apparel manufacturing industries are very important to the Caribbean Basin, despite their exclusion from regional trade agreements.[6] These industries now face a double threat. Under NAFTA, Mexican textile producers will ultimately be free to import their goods into the U.S. market without the burden of tariff or non-tariff trade barriers.[7] In addition, the Uruguay Round agreement will likely dismantle the Multi-Fiber Arrangement (MFA)[8] and will further magnify the disadvantage to Caribbean Basin producers.[9] The MFA system of quotas has protected the Caribbean Basin textile industries in the past, and its dismantling, combined with exclusion from NAFTA, could spell the end of the textile industry in that region.

This Note argues that in addition to creating a policy conflict in the Caribbean Basin, NAFTA continues a long tradition of protectionism in the textile industry.[10] This Note examines

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5. *Caribbean Industry Fearful U.S. Proposal for Global Quotas Will Undermine Progress*, 7 Int'l Trade Rep. (BNA) 793 (June 6, 1990).

6. *Impact of CBI on U.S. Economy Is Minimal, ITC Says*, 8 Int'l Trade Rep. (BNA) 1533 (Oct. 23, 1991) [hereinafter *Impact of CBI Act*].

7. *See* NAFTA, *supra* note 2, at Annex 300-B.

8. Arrangement Regarding International Trade in Textiles, BISD 21st Supp. 3 (1974), *extended by* Protocols of 1977, 1981 and 1986, BISD 24th Supp. 5 (1976-77), BISD 28th Supp. 3 (1980-81), BISD 33d Supp. 7 (1985-86) [hereinafter MFA].

9. *Caribbean Industries Fearful U.S. Proposal for Global Quotas Will Undermine Progress*, *supra* note 5.

10. In addition to the impact predicted for Caribbean economies, implementation of NAFTA has created a rash of protectionist sentiment in Asia, evidenced by the creation of the Asian Free Trade Area. *See An Asian Free Trade Area and the NAFTA May Complement Each Other, Zoellick Says*, 9 Int'l Trade Rep. (BNA) 1288 (July 29, 1992) [hereinafter *An Asian Free Trade Area and NAFTA*].

Asian countries responded to fears of protectionism by launching the Asian Free Trade Area (AFTA) in September 1992. *Id.* AFTA's goal is to reduce tariffs on goods traded among member countries to a maximum of five percent. Members expect to complete implementation within the next 15 years. *Id.* Thai Prime Minister Anand Panyarachun initiated the idea of the AFTA and urged a possible association between AFTA and NAFTA within the framework of the Asia-Pacific Economic Caucus (APEC). *Id.*

A similar suggestion had been advanced by a top U.S. State Department official in July 1992. Nothing further has developed, however. *Id.*

A proposal has also been sponsored by Malaysia for a similar free trade grouping that would exclude North America, the East Asian Economic Caucus (EAEC). Leah Makabenta, *Trade: NAFTA Casts Pall over Asia-Pacific Grouping*, Inter Press Service, Sept. 10, 1992, *available in* LEXIS, Nexis Library, Omni File. While initially countries such as Japan were not receptive to such an idea for fear of antagonizing the United States, Japanese government, after the possible effects of NAFTA's textile provisions on the Caribbean Basin textile industry under the existing provisions of the MFA, and also considers what may happen if and when the MFA is dismantled. Part I provides a brief background of the Caribbean Basin countries and their economies. Part II discusses the protectionist history of the textile industry leading to the creation of the MFA, as well as subsequent amendments to the MFA and its current status. Part III explores the objectives and textile provisions of NAFTA. Part IV analyzes the effects of NAFTA on textiles, with and without the MFA, and the controversies to be faced in either event. Part V examines possible solutions to the problems trade displacement and policy conflict in the Caribbean Basin if NAFTA is ratified, and concludes that the only realistic solution is to allow Caribbean Basin countries into the NAFTA.

I. THE CARIBBEAN BASIN

The Caribbean Basin Initiative (CBI) was originally implemented in 1983 under the Caribbean Basin Economic Recovery Act.[11] At that time, the Caribbean Basin was in an economic crisis.[12] U.S. interest in the stability of the region provided the impetus for the Initiative;[13] Congress cited deeply rooted struc-

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NAFTA, appeared to be warming to the idea, and Britain stated it had no objections to such an arrangement. *Id.* The United States may want to give more serious consideration to committing to some kind of trade alliance with Asian nations to avoid being effectively shut out of the region.

11. BUREAU OF PUBLIC AFFAIRS, DEP'T OF STATE, CARIBBEAN BASIN INITIATIVE 1 (Harriet Culley ed., Mar. 1987).

Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983) (codified as amended at 19 U.S.C. §§ 2701-06 (Supp. II 1990)).

12. H.R. REP. NO. 266, 98th Cong., 2d Sess. 3 (1983).

13. *See* Abrams, *supra* note 1, at 9.

Although the CBI was established to help Caribbean countries, it has actually provided a greater advantage to Asian textile manufacturers than to those in the Caribbean Basin. *See Far East Investment in Central America Increases, Spurred on by U.S. Incentives,* 8 Int'l Trade Rep. (BNA) 1615 (Nov. 6, 1991). Asian countries such as Korea, Japan, and Taiwan have increased their investment in Central America threefold since 1986. *Id.* The increased investment is said to be driven by increased wages in Asian countries and U.S. quotas on Pacific Rim products, in addition to duty-free or reduced-quota treatment given to certain products coming into the United States from the Caribbean Basin under the Caribbean Basin Economic Recovery Act. *Id.* For example, South Korea increased investment in Central America to the tune of 140 industries and the exportation of $150 million in goods a year to the United States. *Id.* As of 1991, South Korea was the second-largest investor in Honduras, with more than 30 textile plants and plans to increase investment more than $10 million, up to $30 million per year, in 1992. *Id.* Business leaders from Pacific Rim countries anticipate similar benefits from the NAFTA. *Id.*

tural problems, huge balance of payment deficits, high unemployment, and declining growth as some of the causes of this economic crisis.[14] The United States sought the initiative to stabilize the political, social and economic sectors through a program which would reduce tariffs on goods exported to the United States and increase investment in Caribbean countries.[15] Since its implementation, however, it has become clear that the CBI has not been as advantageous to Caribbean Basin countries as was originally intended.[16] The CBI allows certain products to enter the United States on a tariff-free basis from Caribbean Basin countries.[17] One of the reasons for the CBI's lack of success, however, is that many products are excepted from U.S. duty-free treatment.[18] Although textiles and apparel are among the goods excluded from the CBI,[19] these industries are exceedingly important to the CBI countries. Nearly fifty percent of total U.S. imports from CBI countries are textiles, clothing, footwear and leather goods.[20]

II. THE TEXTILE INDUSTRY

A. HISTORICAL BACKGROUND

Historically, domestic textile industries in developed countries have continually received protection from producers in developing countries.[21] The developing countries' success in the textile industry because of their ability to manufacture textiles

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14. *Id.*

15. *See id.*

16. *See* U.S. INT'L TRADE COMM. PUB. NO. 2326, *Review of Trade and Investment Liberalization Measures by Mexico and Prospects for Future United States-Mexican Relations, Phase II: Summary of Views on Prospects for Future United States-Mexican Relations,* (Oct. 1990), *reprinted in* 3 WORLD TRADE MATERIALS, 43, 81 (Mar. 1991) [hereinafter *USITC, Prospects for Future*]. Factors inhibiting CBI success were listed as transportation difficulties, lack of economies of scale, and infrastructure inadequacies. *Id.*

Even though total customs inspection rates are high, only two percent of all goods entering the United States from CBI countries are inspected by customs officials. *Customs Cannot Ensure Item 807A Compliance Despite High Rate of Inspection, GAO Finds,* 6 Int'l Trade Rep. (BNA) 452 (Apr. 12, 1989). The total rate of customs inspections of all imported goods is eighteen percent.

17. *New 50 Percent Value Rule of Origin Urged to Clarify, Stabilize CBI Program Benefits,* 8 Int'l Trade Rep. (BNA) 109 (Jan. 23, 1991).

18. *USITC, Prospects for Future, supra* note 16.

19. *See Impact of CBI Act, supra* note 6, at 1533.

20. *NAFTA Impacts on CBI,* LATIN AM. REGIONAL REP.: Caribbean (Latin Am. Newsletter, Ltd.,) June 18, 1992, at 7.

21. *See generally* DONALD B. KEESING & MARTIN WOLF, TEXTILE QUOTAS AGAINST DEVELOPING COUNTRIES (1980).

less expensively than developed countries resulted in the latter's need for such protection.[22] The textile industry has been particularly successful in Asian and other third world countries for two reasons. First, the industry is labor intensive, particularly with respect to apparel manufacturing.[23] Developing countries have had large numbers of workers willing to work long hours at low wages.[24] Second, in countries which traditionally have not had excess capital to invest, the industry has been relatively easy to launch.[25]

In the 1950s and 1960s, developing countries became more economically efficient than industrialized countries in the textile and apparel industries.[26] As a result, industrialized countries applied greater political pressure to restrain imports in these industries.[27] This pressure first led to voluntary bilateral restraints by the lesser developed exporting countries.[28] When this system proved unsatisfactory in equalizing competition in the textile and apparel sectors, the developed countries sought a more formal arrangement.[29]

B. THE SHORT TERM ARRANGEMENT

In 1959, a GATT working party was formed to study "market disruption," an occurrence brought about within the economies of industrialized countries by surges of large numbers of lower-priced cotton textiles.[30] The working party recommended

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22. *Id.* at 10.
23. *Id.* at 10, 163.
24. *Id.* at 12.
25. *Id.* at 10.
26. *Id.* at 15-16.
27. *Id.*

Several nations, including the United Kingdom in 1954, had used the "escape clause" provisions in the GATT to restrain trade in the textile area. Gary H. Perlow, *The Multilateral Supervision of International Trade: Has the Textiles Experiment Worked?*, 75 AM. J. INT'L L. 93, 94-96 (1981). The United States, having recently invoked this procedure in another area of trade, felt it could not do so at that time. *Id.*

28. Perlow, *supra* note 27, at 95.

Japan led this movement toward voluntary restraints by exporting countries, which in the middle 1950s to early 1960s, imposed internal restrictions on cotton textile exports to the United States. KEESING & WOLF, *supra* note 21, at 14-16. Japan was considered to be the major threat to industrialized nations because its textile exports in 1962 stood at $915 million, in addition to $211 million in clothing exports. *See id. at 13.* Textile imports from developing countries at the same time totaled less than $900 million combined. *Id.*

29. KEESING & WOLF, *supra* note 21, at 14-22.

30. *See* Perlow, *supra* note 27, at 96-97; *see also* KEESING & WOLF, *supra* note 21, at 19-20. The term "market disruption" was defined by the GATT

that market disruption be recognized as a damaging phenomenon, that the situation called for the orderly expansion of trade through a multilateral approach, and that the status of legal rights under GATT be left unaffected.[31] Additional discussions led to the Short Term Arrangement which was effective from October 1961 until September 1962,[32] and allowed interim restrictions on imports of cotton textiles for a period of one year where market disruption occurred. Long-term arrangement negotiations were pending.[33] In February 1962, the Short Term Arrangement was succeeded by the Long Term Arrangement, which, by several extensions, was effective through 1974.[34]

C. THE LONG TERM ARRANGEMENT

The Long Term Arrangement, which preceded the MFA, provided a means of both justifying and controlling the use of restrictive trade measures on cotton textiles.[35] Exporters were to be given a gradually increased share of the market in exchange for accepting export limits which would prevent a faster growth rate which developed countries labeled disruptive.[36] Developed countries believed that they were justified in demanding the restrictive measures.[37] Exporters accepted the arrangement because they had little choice; without the arrangement, developed countries would have implemented the tightest possible restrictions.[38] Although the Long Term Arrangement was called a temporary measure, it was renewed several times, and eventually expanded into the MFA.[39]

CONTRACTING PARTIES to include "(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." *Id.* at 19.

31. *See* Perlow, *supra* note 27, at 96.

32. Arrangements Regarding International Trade in Cotton Textiles, BISD 10th Supp. 18 (1961); *see also* Perlow, *supra* note 27, at 97-98.

33. KEESING & WOLF, *supra* note 21, at 16.

34. *Id.* Long Term Arrangements Regarding International Trade in Cotton Textiles, 11th Supp. 25 (1962), *extended by* Protocols of May 1, 1967 and June 15, 1970, BISD 15th Supp. 56 (1966-67), BISD 18th Supp. 18 (1970-71); *see* Perlow, *supra* note 27, at 97.

35. *See* KEESING & WOLF, supra note 21, at 19-20.

36. *See id.* at 20.

37. *Id.* at 18

38. *See id.* at 19-22.

39. *Id.* at 22.

D. THE MULTI-FIBER ARRANGEMENT

The Arrangement Regarding International Trade in Textiles, better known as the Multi-Fiber Arrangement (MFA), protects textile and clothing producers and manufacturers in industrialized countries from competition with imports from developing countries.[40] It is an expanded version of the Long Term Arrangement, covering not only cotton textiles but also textiles produced from many other fibers.[41] The MFA was concluded in 1974 and was originally structured, as was the Long Term Arrangement, to facilitate trade liberalization over time.[42] The stated objectives of the MFA were expansion of trade, reduction of trade barriers and progressive liberalization of trade in textiles, as well as ensuring an "orderly and equitable development" of trade and avoidance of market disruption in both importing and exporting countries.[43]

Countries were assigned quotas based on import levels during the years preceding the agreement.[44] After the first year, the quotas were to be increased by not less than six percent per year.[45] In addition, quotas were transferable between categories, and could be carried over or carried forward from one year to the next.[46] The MFA created a Textiles Surveillance Body (TSB) to make recommendations concerning any measures or actions which a participating country believed were contrary to its interests.[47] The TSB is composed of a balanced membership of importing and exporting countries and an impartial chairperson.[48]

The major provisions of the MFA are Articles 2, 3, and 4.[49] Under Article 2, trade restraints already in force must be either justified under GATT, made to conform to the MFA provisions, or eliminated.[50]

Article 3 allows an importing country to temporarily restrain[51] imports when it believes that it is suffering from market

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40. *Id.* at ix.
41. *Id.* at 39-40.
42. *Id.*
43. MFA, *supra* note 8, at art. 1(2).
44. KEESING & WOLF, *supra* note 21, at 41.
45. *Id.*
46. *Id.*
47. *Id.* at 42.
48. *Id.*
49. Perlow, *supra* note 27, at 101.
50. *Id.*
51. Restraints are not to exceed one year. Extensions, however, are easily obtained. MFA, *supra* note 8, at art. 3(8); *see also* Perlow, *supra* note 27, at 101.

disruption.[52] A determination of market disruption is based on damage, or threat thereof, to domestic producers caused by "a sharp and substantial rise in volume from particular sources," and "prices, which are substantially below prevailing market prices."[53] Actual damage is determined by factors "bearing on the evolution of the state of the industry in question . . . ."[54] The complaining country must first request consultations with the importing country; if no agreement is reached within sixty days, the importing country may impose unilateral restraints.[55]

Article 4 sanctions voluntary export restraints and bilateral agreements, provided that they are more liberal than Article 3 restraints.[56] Under Article 4(2), agreements are permitted if their goal is to eliminate real risks of market disruption;[57] actual market disruption is not a prerequisite.[58]

In its current form, the MFA exists as a series of bilateral restraint agreements between major textile exporting countries and importing countries.[59] GATT negotiations in the Tokyo Round cemented tariff protection of apparel because while cuts were made in other areas of trade, tariffs on apparel remained virtually the same.[60]

Beginning in 1977, the initial trade liberalizing devices were chipped away by negotiations between the European Community and developing countries which cut quotas below levels achieved earlier.[61] The goal of the European Community and many of the smaller developed countries was to change the rules of the MFA so that developing countries would be forced into a

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52. Perlow, *supra* note 27, at 101.

53. *Id.* at 101 n.38.

54. MFA, *supra* note 8, at Annex A. These factors include turnover, market share, profits, performance, employment, volume of disruptive and other imports, production, utilization of capacity, productivity and investments. *Id.* *See also* Perlow, *supra* note 27, at 101 n.38.

55. MFA, *supra* note 8, at art. 3(5)(i). In addition, if serious market disruption is considered likely to occur, it is possible to impose trade restraints prior to and during consultations. *Id.* at art. 3(6).

56. *See* Perlow, *supra* note 27, at 102.

57. *Id.* The term "real risk" is not defined. *See* MFA, *supra* note 8, at art. 4(2).

58. MFA, *supra* note 8, at art. 4(2).

59. William D. Araiza, Note, *Notice-and-Comment Rights for Administrative Decisions Affecting International Trade: Heightened Need, No Response,* 99 YALE L.J. 669, 673 n.29 (1989).

60. KEESING & WOLF, *supra* note 21, at 70-71. Small cuts were made in textiles and clothing; however, where they exist, tariffs on clothing will remain higher than on any other industrial product. *Id.*

61. *Id.* at ix-x.

sharp cutback of overall export growth.[62] The result was a restrictive and complicated set of quotas imposed by many developed countries upon textile exports from developing countries.[63]

Developing countries are determined to see the MFA dismantled.[64] The dismantling of the MFA was a matter of great dispute on the Uruguay Round agenda.[65] The Uruguay Round talks did reach a tentative agreement on a plan to phase out the MFA,[66] but the talks eventually stalled. The MFA was extended for the fifth time[67] until the end of 1993. If the Uruguay Round is completed, however, it is expected that the MFA will be dismantled.

III. THE NORTH AMERICAN FREE TRADE AGREEMENT

NAFTA,[68] finalized on August 12, 1992 between the United States, Mexico, and Canada, has been hailed by some as "the beginning of a new economic course,"[69] and by others, sarcastically, as "a big American dream."[70] NAFTA will create the

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62. *Id.* at 62.

63. *Id.* at 60-70.

64. NICHOLAS HOPKINSON, THE URUGUAY ROUND AND PROSPECTS FOR WORLD TRADE 23 (1990).

65. *See GATT Extends Textile Agreement for One Year*, Reuter Libr. Rep. (Dec. 9, 1992), *available in* LEXIS, Nexis Library, Omni File. GATT negotiators have been unable to agree on penalties for unfair competition once the MFA is dismantled. *Id.* This disagreement led to the GATT's Committee on Textiles decision to extend the Agreement for another year. *Id.*

66. *See Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, GATT Doc. MTN.TNC/W/FA (Dec. 20, 1991) § 0.1 - 0.36 (available from the office of the United States Trade Representative) for the proposed plans to eliminate the MFA.

67. *See Textiles: GATT Extends Multi-Fibre Arrangement For Another 12 Months*, Multinational Serv., National and Regional Contents, No. 0327, § III (Dec. 16, 1992), *available in* LEXIS, Nexis Library, Omni File.

68. NAFTA, *supra* note 2.

69. Mark Vaughan, *Give NAFTA Its Due*, CHRISTIAN SCI. MONITOR, May 18, 1992, at 18. Vaughan believes that NAFTA could mark a new economic course by shifting the focus of the United States from its traditional East/West stance to one that is more regional. *Id.* The author believes NAFTA could help "redefine" the role of the United States and could be an important move toward a Western Hemisphere Economic Community. *Id.*

70. Kelly McParland, *Building a Fortress: Asian Apparel Firms Fear Fallout from NAFTA*, FIN. POST, Sept. 14, 1992, § 1, at 9. The author quotes Chan Kee-wing, the managing director of an Asian apparel manufacturing company. *Id.* Chan feels that the agreement does not promote free trade, but instead creates protectionism by making North America self-sufficient. *Id.* Chan also thinks that U.S. officials's expectations regarding NAFTA's results are wrong, because he believes more factories will be moving out of North America than in. *Id.*

world's largest trading area with a combined gross product of 6.2 trillion U.S. dollars and a consumer market of 366 million people.[71] In 1993, the three member countries are expected to discuss ratification of NAFTA. The overarching purpose of NAFTA is to further trilateral, regional and multilateral cooperation.[72] The objectives of the agreement include the elimination of trade barriers, promotion of fair competition, increased opportunities in investment, and the provision for adequate protection of intellectual property rights.[73] Because the agreement provides for gradual reduction of tariffs in many areas, the total effect of NAFTA will not be felt for many years.[74]

NAFTA's basic objective is the progressive elimination of all tariffs on goods which qualify as North American goods under rules of origin provisions.[75] The textile provisions of NAFTA provide for strict rules of origin.[76] Textile or apparel goods must be produced from yarn or fiber made in a NAFTA country.[77] These provisions are called the "yarn forward" and "fiber forward" rules of origin.[78] Yarns, apparel and fabrics made in North America that do not meet the rules of origin for textiles are still eligible to qualify for preferential duty treatment up to certain import levels.[79]

In the area of textiles, NAFTA trumps the MFA and other

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71. The European Community and the European Free Trade Area currently involve 360 million people and a combined gross national product of 5.9 trillion U.S. dollars. *North America: Enterprise for the Americas*, LATIN FIN., Mar. 27, 1991, at 36, *available in* LEXIS, Nexis Library, Omni File.

72. Governments of Canada, the United Mexican States and the United States of America, Description of the Proposed North American Free Trade Agreement 1 (Aug. 12, 1992) (available from the office of the United States Trade Representative).

73. *Id.*

74. *See generally id; see also*, James M. Sheehan, *The Free-Trade Case Against NAFTA*, CHRISTIAN SCI. MONITOR, Sept. 11, 1992, at 19.

75. Description of the Proposed North American Free Trade Agreement, *supra* note 72, at 2.

76. NAFTA, *supra* note 2, at annex 300-B.

77. NAFTA, *supra* note 2, at art. 404; *see also* Description of the Proposed North American Free Trade Agreement, *supra* note 72, at 7.

78. NAFTA, *supra* note 2, at art. 404; *see also* Description of the Proposed North American Free Trade Agreement, *supra* note 72, at 7.

79. *See* NAFTA, *supra* note 2, at app. 6.0, § B(1); *see also* Description of the Proposed North American Free Trade Agreement, *supra* note 72, at 7. Preferential treatment is also provided for material cut and sewn from certain imported fabrics which are in short supply such as silks, linens and certain shirting fabrics. *Id.*

The Agreement also provides for a committee to recommend suggestions for implementation of uniform labelling requirements. NAFTA, supra note 2, at annex 300-B, § 8. This will eliminate unnecessary obstacles to textile trade agreements concluded between NAFTA countries.[80] Under NAFTA there will be no quotas on goods entering the United States or Canada from Mexico. Customs duties on textile goods will be eliminated immediately or phased out over a maximum period of ten years.[81]

While NAFTA on its face appears only to promote free trade by creating a free trade area for its member countries, nonmember countries fear that it will create a protectionist barrier to free trade, and that it will divert trade from the Caribbean and Asian regions to Mexico.[82] The Caribbean Basin countries' concern over their textile industries is well-founded.[83] Although NAFTA has been billed as a "free" trade arrangement, it greatly distorts trade.[84] Determining the impact of these distortive effects is contingent upon whether or not the MFA is dismantled.

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resulting from different labelling requirements used in each of the three countries. *Id.*

80. NAFTA, *supra* note 2, at annex 300-B, § 1(2); *see also Key Areas of Trade Agreement,* FIN. POST, Aug. 13, 1992, § 1, at 12.

81. NAFTA, *supra* note 2, at annex 300-B, § 2(1); *see also Key Areas of Trade Agreement, supra* note 80, at 12.

The Agreement also provides for the implementation of safeguards, during a transition period, for goods in the textile and apparel industries which producers feel may face serious damage due to increased imports from other members. Description of the Proposed North American Free Trade Agreement, *supra* note 72, at 6.

Safeguards may take the form of an increase in tariffs on such goods, or, in trade to or from Mexico, imposition of quotas on imports. NAFTA, *supra* note 2, at annex 300-B, § 4. Such safeguards may not be in place for a period exceeding three years, or have effect beyond the transition period, without consent of the Party against whose goods the action was taken. *Id.*

82. McParland, *supra* note 70, at 9.

83. Caribbean nations are not alone in their fear of the effects of NAFTA. Asian apparel firms fear they will be forced to move manufacturing plants to Mexico to compete for their share of the textile market. *Id.*

The Asian nations' greatest fear is that Mexican competition, free from the import quotas that plague Asian nations, will erode their share of the United States market. Makabenta, *supra* note 10.

United States trade in the Pacific region is more than $300 billion a year; forty percent greater than the United States' trans-Atlantic trade. *An Asian Free Trade Area and NAFTA, supra* note 10, at 1288.

From the angle of imports in textiles, there is no question of Asian dominance for U.S. trade. McParland, *supra* note 70, at 9. Exports from China alone accounted for ninety percent of textile products imported by the United States in the first quarter of 1992. *Id.* Fifty-one percent of Hong Kong's clothing exports in 1991 went to the United States and Canada combined, with a value of more than $21 billion. *Id.*

84. *See generally* Anne O. Krueger, Free Trade Agreements as Protectionist Devices: Rules of Origin (Sept. 1992) (unpublished paper on file with the *Minnesota Journal of Global Trade*). For example, in implementing trade bar-

IV. NAFTA WITH AND WITHOUT THE MFA

The textile industry with, and without, the MFA presents two very different pictures. The relative efficiency of the producers involved will determine whether and how well they will survive. An illustration of the positions of the parties in terms of their relative efficiency in the textile field should help clarify the ramifications of the MFA and NAFTA on the textile industry.

On a scale of efficiency, Asian and third world countries such as India are the most efficient producers of apparel products, followed by Mexico under NAFTA, Caribbean Basin countries, and finally the United States, which is the least efficient producer.[85] Assume the MFA and NAFTA are both in place.

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riers a fundamental concept is that the higher the requirements for local content in goods, the more trade from importing nations is displaced. *Id.*

Most of the local content requirements on goods included in NAFTA are high, but those relating to textiles are virtually exclusive. *See supra* notes 76-79 and accompanying text; *see also* Carlos Alberto Primo Braga, *NAFTA and the Rest of the World, in* NORTH AMERICAN FREE TRADE: ASSESSING THE IMPACT 210, 224-25 (Nora Lustig et al. eds., 1992).

Contrary to promoting free trade, the textile provisions of NAFTA will eventually serve to displace Asian and CBI importing manufacturers, because foreign producers obviously cannot meet such strict rules of origin. *See* U.S. Int'l Trade Comm Pub. 2353, *The Likely Impact on the United States of a Free Trade Agreement with Mexico,* Feb. 1991, *cited in* 1 GATT TRADE POLICY REVIEW, United States 49 (1992).

This also causes tariff escalation, which means that the cost of using foreign yarn or textiles results in a higher tariff for the entire product. For example, under NAFTA, if a Mexican manufacturer uses U.S.-produced textiles to make a product, no duty will be charged upon entry of the good into the United States. In contrast, if the same manufacturer uses foreign textiles to manufacture even a portion of the product, the entire product is charged the twenty percent tariff upon entry into the United States. The savings in the cost of the textiles from the foreign manufacturer must be at least the cost of the U.S. tariff for the Mexican manufacturer to justify use of foreign textiles. The United States thus has a captive market in Mexico because under NAFTA, no one else can sell textiles for manufacture into apparel to Mexico as inexpensively as the United States. *See generally Textile Industry Leader Advocates NAFTA Approach over Uruguay Round Trade Proposal,* PR Newswire, Oct. 1, 1992, *available in* LEXIS, Nexis Library, Omni File; Joanna Ramey, *ITC Asked to Weigh End of MFA in NAFTA Probe,* 164 WOMEN'S WEAR DAILY 17, (Nov. 20, 1992).

Additionally, Mexico is guaranteed tariff-free entry of its textile goods into the United States. NAFTA, *supra* note 2, at annex-300B.

The U.S. export market for U.S. suppliers will expand because of the probable shift of production from the Far East to Mexico. *USITC, Prospects for Future, supra* note 16, at 50.

85. The author derives this ranking from the following sources. *ITC Report Explores Ramifications of NAFTA on CBERA Apparel Producers,* 9 Int'l Trade Rep. (BNA) 1337 (Aug. 5, 1992) [hereinafter *ITC Report Explores*]; *Carib-*

The average U.S. tariff on apparel is between seventeen and twenty-two percent.[86] For the sake of convenience, this model will use twenty percent as the average U.S. tariff. Assume the original cost of the textiles used to make an apparel product is 25 monetary units (mu) for all producers. Assume also that U.S. production costs equal 75mu, CBI costs equal 45mu, Mexican costs equal 35mu, and Asian costs equal 25mu. Mexican apparel under NAFTA could enter the United States at a cost of 60mu, because no tariff will be imposed on its goods under NAFTA. Caribbean Basin goods will enter at a cost of 70mu plus the twenty percent U.S. tariff, for a total entry cost of 84mu. The gap between Caribbean and Mexican producers will be greater than it was before NAFTA, when Caribbean goods entered at 84mu, and Mexican goods at 72mu. Asian goods could enter at a total entry cost of 60mu. While Caribbean goods will still have a competitive cost advantage over U.S. goods, whose cost stands at 100mu, Caribbean producers are at a distinct disadvantage to Mexican and Asian manufacturers. As a result of the twenty percent preference for Mexican goods under NAFTA, Mexican goods can compete equally with Asian goods, and can be sold more cheaply than both Caribbean and U.S. goods.

A. NAFTA WITH THE MFA

Because the MFA has been extended until the end of 1993,[87] Mexico under NAFTA is offered an open U.S. market, without the burden of quotas or the twenty percent tariff on apparel. Other importing countries will continue to have MFA quotas and pay a twenty percent duty. As long as the quotas exist and restrain the most efficient Asian and other third world suppliers, there will probably continue to be room in the U.S. market for relatively less efficient Caribbean Basin countries. While quota-free Mexican production might eventually expand enough to crowd out Caribbean Basin producers, this is not an immediate threat.

New industry, however, is likely to invest in Mexico, rather than the Caribbean countries because with no quotas and a twenty percent tariff advantage, Mexico is obviously the location

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bean Industry Fearful U.S. Proposal for Global Quotas Will Undermine Progress, *supra* note 5, at 793; *Impact of CBI Act on U.S. Economy Is Minimal*, *supra* note 6, at 1533; McParland, *supra* note 70, at 9.

86. *See generally* U.S. INT'L TRADE COMM., USITC Publication 2567, HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (1993).

87. *See supra* text accompanying notes 64-67.

with the greatest growth potential. This structure accomplishes the goal of NAFTA in developing Mexican industry and enhancing its competitiveness.[88] In this situation, Caribbean textile industries may survive, but are unlikely to grow. Indeed, over the long run they will probably decline. A report issued by the International Trade Commission found that NAFTA provides large incentives for Asian manufacturing plants which are now located in Caribbean Basin countries to shift locations to Mexico.[89] Thus, the picture for Caribbean Basin countries only looks worse if the MFA is dismantled.

B. NAFTA WITHOUT THE MFA

The harm to the Caribbean Basin countries by dismantling the MFA could be significant. The textile industry there has grown around, and as a result of, the complicated system of quotas which comprises the MFA.[90] As Asian and third world producers filled their own quotas in the U.S. market, their search for regions with unfilled quotas led them to build the textile industry in the Caribbean region.[91] The textile industry now comprises an important part of the Caribbean Basin economic system, and may not be able to survive without the assistance of distortive trade measures such as the MFA.[92]

With no system of guaranteed quotas in place, CBI countries will be forced to compete for a piece of the U.S. market.[93] Countries such as India, Pakistan, Hong Kong and China are much more efficient producers of textiles and apparel than are CBI countries.[94] The dismantling of the MFA will give countries such as China the chance to compete freely in the U.S. market. Whatever the eventual market for imports, countries such as China are likely to take the whole market once they are released from MFA quotas.[95]

88. Description of the Proposed North American Free Trade Agreement, *supra* note 72, at 1.

89. *Prospects for Future*, *supra* note 16, at 81. *See also*, *ITC Report Explores*, *supra* note 85, at 1337.

90. *Caribbean Industry Fearful U.S. Proposal for Global Quotas Will Undermine Progress*, *supra* note 5, at 793.

91. *See supra* note 12 and accompanying text.

92. *Caribbean Industry Fearful U.S. Proposal for Global Quotas Will Undermine Progress*, *supra* note 5, at 793.

93. *Id.*; *see supra* text accompanying note 85.

94. *See supra* note 85 and accompanying text.

95. *See generally China May Dominate World Textile Market as MFA Ends, U.S. Industry Officials Say*, 8 Int'l Trade Rep. (BNA) 1844 (Dec. 19, 1991); *Textile Association Leader Challenges President to Demonstrate Support for*

Once quotas are eliminated, U.S. prices will decrease as U.S. manufacturers are forced to compete for market share with the more efficient producers. U.S. and Caribbean Basin manufacturers will be the first to be eliminated from the market because their prices will remain the highest.[96] Only the most efficient of the U.S. manufacturers will survive. Once the MFA is dismantled, Caribbean Basin producers are less likely to become efficient enough to survive, and their ability to compete in the U.S. market will be neutralized by NAFTA. Optimistically, less efficient U.S. producers can be absorbed into the U.S. economy and job market,[97] however, Caribbean workers will have nowhere to go. Caribbean Basin economies depend upon apparel manufacturing.[98] The diverse job market that exists for U.S. workers is simply absent in Caribbean countries.

V. POSSIBLE SOLUTIONS

The best solution from a world textile trade perspective, but perhaps the most difficult, is for the United States, Canada, and Mexico to fail to ratify NAFTA and to conclude the GATT negotiations by dismantling the MFA. Although this is the most beneficial solution in terms of the world textile trade, to Caribbean Basin countries, it is the most damaging. This solution would, for the first time in decades, liberate trade in textiles and provide for a more efficient allocation of world resources. Those who can produce textiles most efficiently and inexpensively would be able to sell them on the world market on a trade-barrier-free basis. Undoubtedly, this is not an easy solution for apparel workers in countries where apparel cannot be produced

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U.S. Jobs and Industry, PR Newswire, Apr. 9, 1992, *available in* LEXIS, Nexis Library, Omni File.

96. *See supra* text accompanying note 85.

97. Trade experts have stated that the best thing for U.S. trade would be for textile industry workers to let lower-paying textile jobs go to developing countries like Mexico. *See* Joyce Barrett, *U.S. Study Hits Textile Industry Action*, 66 WEEKLY HOME FURNISHINGS NEWSPAPER 90 (Apr. 6, 1992). In their opinion, retraining U.S. workers for higher-paying jobs is a better, more efficient way of conducting trade and allocating world production resources, as well as promoting development and industry in developing countries which need it. *Id.* A study completed by the Congressional Budget Office was done at the request of the House Subcommittee on Trade. The study, "Trade Restraints and the Competitive Status of the Textile, Apparel and Nonrubber-Footwear Industries," recommended that the U.S. textile and apparel industries retrain workers for higher-paying jobs and let lower-paying jobs go to workers in developing countries. *Id.* U.S. textile and apparel industry workers and representatives, however, have not responded positively to this suggestion. *Id.*

98. *See supra* text accompanying note 20.

efficiently and inexpensively. Realistically, it will probably never happen. U.S. apparel workers, for example, have lobbied strongly for protectionist measures in favor of their industry, and this trend is likely to continue.[99]

A more pragmatic solution is to allow Caribbean Basin countries into NAFTA prior to the dismantling of the MFA.[100] Inclusion in NAFTA could minimize damage caused as a result of a dismantled MFA. CBI countries' requests for parity with NAFTA's market access provisions, however, have been met with neither enthusiasm nor action by the United States. Public and private sector representatives from Caribbean Basin countries lobbied for inclusion in NAFTA as early as September of 1991,[101] but response from U.S. officials has been cool.[102] The United States has said that it will consider Caribbean Basin Countries' entry into NAFTA in four or five years.[103] Because it will take several years to dismantle the MFA, if it is in fact ever dismantled, Caribbean countries have a window of time to convince U.S. officials to allow them entry into NAFTA.

If the United States is concerned about the Caribbean Basin as it has stated in the past,[104] and as it should be, then inclusion of Caribbean countries into NAFTA is the only remaining realistic solution. Caribbean countries can only benefit from inclusion; without it, their textile industries will not survive because they are less efficient than either their Asian or Mexican counterparts.[105] With the MFA dismantled, the Caribbean countries would at least have the protection of NAFTA. Without the sup-

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99. *See USITC, Prospects for Future, supra* note 16, at 111; Joanna Ramey & Joyce Barrett, *Protests Planned Against NAFTA's Signing Today: North American Free Trade Agreement,* 164 WOMEN'S WEAR DAILY 2 (Dec. 17, 1992).

100. *USITC, Prospects for Future, supra* note 16, at 81. In addition to CBI nations' entry into NAFTA, there are three other proposals to mitigate damage to Caribbean industries and economies. *Id.* First, it is suggested that Mexico be required to open its market to Caribbean Basin products either on a tariff-free basis or on the same basis under which they enter the U.S. *Id.* Second, that rules of origin under NAFTA permit Caribbean goods to be treated as if they were Mexican in origin. *Id.* Third, that Mexico allow Caribbean nations to ship goods freely through Mexico. *Id.*

101. *See Latin American, Caribbean Producers Seek Increased Access to U.S. Markets,* 8 Int'l Trade Rep. (BNA) 1356 (Sept. 18, 1991).

102. *Small Nations Fear Bush Enterprise Initiative, Mexico FTA May Dim Their Economic Prospects,* 7 Int'l Trade Rep. (BNA) 1892 (Dec. 12, 1990).

103. Canute James, *Mexican Meat Could Be Caribbean Poison - Canute James On Concerns that Mexico's Presence in NAFTA Will Undermine the Region's Economies,* FIN. TIMES, Aug. 20, 1992, at 3.

104. *See supra* note 1 and accompanying text.

105. *See supra* text accompanying note 85.

port of NAFTA and a dismantled MFA, however, their industries cannot hope to compete.

CONCLUSION

Caribbean Basin countries' apparel manufacturers will be seriously disadvantaged in the U.S. market if NAFTA is concluded. This disadvantage will be more pronounced and immediate if the MFA is dismantled. However, even if the MFA is not dismantled, Caribbean Basin countries are still likely to lose market share and new investment to Mexico under NAFTA.

Inclusion of Caribbean countries in NAFTA is a realistic and effective solution. It would be beneficial to the Caribbean countries and responsible foreign policy on the part of the United States. The United States once voiced concern for the Caribbean Basin. It remains an area that needs United States assistance to grow and prosper. It is the most logical solution to a problem in an industry in which trade becomes more complicated every day. It seems that in the textile field, the more free trade agreements that are concluded, the more complicated the picture, and the less free the trade.