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"CHINA CASTS A GIANT SHADOW"

THE DEVELOPING WORLD CONFRONTS TRADE LIBERALIZATION AND THE END OF QUOTAS IN THE GARMENT INDUSTRY

Dr. John A. Hall

The US$500 billion international trade in textiles and garments – what I will refer to in this paper generally as the garment industry - and in particular the recent elimination of a protectionist system of quotas and its replacement with a more liberalized trade environment, offers the opportunity for a case-study of the nature, direction and implications of globalization in the Twenty-first century. This paper will examine how the special treatment of garment and textiles in international trade law – particularly the thirty-year system of quotas - fostered the spread of apparel manufacturing throughout the developing world. The apparel factories, located in all regions of Asia, Africa and Latin America, have come to provide employment for millions of women who are frequently the sole wage earners for their families. Though criticized as “sweatshops” and sources of worker exploitation, in many instances the apparel factories offer the only viable alternative to extreme poverty for their workers. Currently there are an estimated 40 million people around the world working in the garment and textile industries, accounting for 14 percent of global employment. In addition, the export apparel sector has grown to become a vital cornerstone of many national economies. Through the system of quotas, even those nations which were less efficient and less competitive could flourish and build a successful export trade, as importing nations selectively chose which producing nations would be offered preferential access to their restricted markets. In this way, the economies of many poorer nations could develop in an environment largely protected from the harsh realities of truly unfettered global competition.

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By 2004, global textile and apparel exports were just short of US$500 billion a year, in spite of the artificial restraints resulting from the quota-system. Some estimates are that the ending of quotas will result in an expansion of total garment exports to US$1,200 billion by 2010. Despite this projected expansion in the size of the global market, there is reason to believe that there may be a fundamental shift in the pattern of international production. Indeed, the very notion of a truly global system of garment production may be in doubt. With the eradication of the quota system on January 1, 2005, which ushered-in a new era of trade liberalization, there is reason to believe that China – and to a lesser extent India – will come to dominate worldwide apparel and textile manufacturing. The result of a rapid global shift in production could be catastrophic for developing nations overwhelmed by Chinese competition. Much of the manufacturing capacity encouraged throughout the developing world during the last three decades – and with it the crucial employment and state revenues in dozens of countries - may simply evaporate.

GLOBALIZATION:

For some, the prospect of apparel and textile manufacturing spreading throughout the world offered a panacea for the host of problems facing poorer nations. They pointed, for example, to the encouragement and creation of a textile and apparel industry in developing countries as a key element in the "trade not aid" reorientation of the relationship between the developed and emerging nations. Importing companies in the developed world came to see the developing nations as a new source for low-cost textile and clothing

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4 Id.
5 See Ellen Israel Rosen, *The Wal-Mart Effect: The World Trade Organization and the Race to the Bottom*, 8 CHAP. L. REV. 261, 265 (2005) ("It is likely that the inevitable efforts by retailers, including Wal-Mart, to take advantage of the new no-quota rule, means that clothing production will move to countries that can produce the largest volume of apparel for the lowest cost.")
6 See NATIONAL LABOR COMMITTEE, *supra* note 2 (The U.S. Association of Importers of Textile and Apparel has predicted that its members will “react to the WTO’s lifting of quotas … by slashing the number countries they source production in from 50 today to just five or six countries by 2007.”)
8 See Rosen *The Wal-Mart Effect: The World Trade Organization and the Race to the Bottom*, *supra* note 5 at 265; See also, NATIONAL LABOR COMMITTEE, *supra* note 2 at 6.

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http://scholarlycommons.law.hofstra.edu/jibl/vol5/iss1/1
imports, and the process of outsourcing apparel production to cheaper overseas facilities gathered speed in the final decades of the Twentieth Century. The apparel sector was seen by policymakers in both the developed and developing nations as an easily reached low rung on the ladder of economic development for the world’s poorest countries, the key that would enable even the smallest countries to participate in the global economy, and as a quick and comparatively cheap way to generate steady industrial employment in countries with a plentiful but largely unskilled workforce. The spread of an export-oriented textile and garment industry to developing nations would act as a catalyst to growth by stimulating direct foreign investment in poorer countries, fostering a climate favorable to entrepreneurial enterprise, and creating the infrastructure which would encourage future industrial expansion.

This positive vision of the beneficial role of the worldwide spread of the garment and textile industries met with approval amongst those “Globalists” who actively lauded the potential of globalization. Participation in the global marketplace, they argued, would foster competitiveness and specialization; would encourage development, generate wealth, and raise millions in the developing world from poverty. The Economist, for example, has argued that: “[A]ll countries can raise their living standards through specialization and trade . . . [Countries] gain[] from focusing on the goods in which [their] relative advantage is greatest.” The benefit from the winning sectors should, it was believed, more than compensate for any losses associated with those sectors in which a country was less competitive. In this way, developing countries could take advantage of their abundant supply of cheap labor to become specialized manufacturing centers for goods demanded by consumers in developed economies. Indeed, it was argued, “menial manufacturing labor is the historical first step in developing economy’s first steps toward prosperity.” Manufacturing would offer developing countries employment opportunities for an often unemployed or underemployed unskilled workforce at wages
potentially far above what would otherwise be available in the local economy.\textsuperscript{14} The garment industry promised eager developing nations a crucial first step – a so-called “starter industry” – towards participation in a broader international economy, attracting foreign investment and foreign currency and stimulating wealth creation.\textsuperscript{15} Foreign consumers would in turn benefit from cheaper and more plentiful manufactured goods.

Critics of globalization, however, were more likely to stress the negative impact of the garment and textile industry on the workers of the developing nations. For much of the 1990’s, the term “sweatshop” was synonymous with the worst abuses of garment and textile workers in the developing world.\textsuperscript{16} Critics warned that the developing world would become little more than an easily exploited source of cheap labor producing consumer goods for the wealthy nations; that wages would be forced ever lower in a “race to the bottom,” as manufacturers seek advantage over other low-cost producers; that developed countries would experience a loss of unskilled jobs, exacerbating the divide between the wealthy and the poor in those nations; and that in an unprotected environment, smaller nations would ultimately be unable to compete with the economies of scale of the large super producers, and the list of nations that would ultimately benefit from global trade will inexorably shrink.\textsuperscript{17}


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THE HISTORY OF APPAREL QUOTAS:

For several decades the global trade in textiles and garments received special treatment under international trade law. As early as the 1950’s, cotton textiles were accorded special treatment, primarily because of concern in the United States about the potential impact on domestic manufacturers of low-cost textile imports from post-war Japan. The rather narrow protectionist concerns voiced by the U.S. which initially prompted such special treatment, subsequently broadened into generalized U.S. and European fears about the potential threat posed to the domestic garment and textile industry from low-cost competition from the developing world. Despite subsequent attempts by the U.S. and Europe to protect their domestic manufacturers, however, the last twenty years have seen a dramatic decline in the U.S. and European manufacturing base in the face of an increasingly globalized and highly competitive textile industry.

GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT):

The quota regime for the apparel industry was initially intended as a way to protect domestic producers in developed countries from cheap textile and apparel imports from developing countries. Following on the heels of independently negotiated agreements between various member and non-member countries, contracting parties to the General Agreement on Tariffs and Trade (GATT) agreed that Article XIX (which provides measures to safeguard local industries) would be significantly expanded for textiles. Under GATT,

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20 Ira Kalish, Quotas End, Uncertainty Continues; Understanding the impact of the Agreement on Textiles and Clothing, Deloitte Research Study (2005), at 3 available at http://www.deloitte.com/dt/cda/doc/content/DTT_DR_Quotas_Feb05(1).pdf (last visited March 26, 2005).
21 Kevin Kolben, Trade, Monitoring, and the ILO: Working to Improve Conditions in Cambodia’s
all countries are required to treat their trading partners equally. GATT also placed a preference on customs tariffs over quotas.

THE MULTI-FIBER ARRANGEMENT (MFA):

A series of expansions in the permitted safeguards for textiles were negotiated over the next thirty years, culminating in the adoption of the Multifiber Arrangement ("MFA") in 1974, which permitted importing countries to place quotas on textile imports when surges in imports of particular products threatened domestic industry. In as much as the MFA permitted importing nations to treat trading partners differently, and to adopt quotas in preference to import duties, it contradicted basic GATT principles. The final extension of the MFA, in 1991-1993, permitted importing countries to impose quotas to punish exporting countries that engaged in "trans-shipment" (shipping textiles through a third country to take advantage of that nation's unused quota allocation and conceal the country of origin).

The system of quotas permitted under the MFA benefited many developing nations in two specific ways: first, the quotas limited the growth of those nations threatening to become "mega-producer," most notably China and India, by permitting importing nations to place a cap on imports from specific countries; and second, the quotas guaranteed a clearly quantified access to


23 GATT, art. XI.
25 Kolben, supra note 21, at 89.
26 Id.
27 Id. at 89 fn 61.
28 Lamar, supra note 9, at 615. The quota system permitted under the MFA was discretionary in nature. Importing nations could choose to impose highly restrictive quotas, somewhat restrictive quotas, or indeed no quotas whatsoever, on each individual product line from each exporting country. In the U.S., it was the Executive Branch which had the responsibility and flexibility to impose quotas. Although the Executive Branch may be subject to pressure from Congress or pressure groups, it could refrain from imposing quotas if it desired. This provided enormous economic incentives for exporting nations to curry favor from the governments of importing nations. Id. It was possible, therefore, for the allocation of quotas by the U.S. to have reflected larger U.S. foreign policy and strategic objectives, enabling Washington to use quotas to reward some nations (such as Cambodia) who were moving towards greater democratization, and those (like the Philippines) deemed allies.
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U.S. and E.U. markets for small producers. In the case of the Philippines, for example, a largely cottage-based textile industry in the late 1950’s, which began expanding in the 1960’s, ballooned after the MFA was adopted in 1974. The quotas allocated to the Philippines guaranteed access to the U.S. market for Philippine textiles and garments, and propelled the growth of its garment manufacturing sector. The value of garment exports grew rapidly from US$36 million in 1970, to US$2.4 billion in 2003. Similarly, Macao’s garment industry flourished under the MFA-regime, coming to represent 70 percent of all Macau’s exports, as Hong Kong manufacturers shifted production to Macao to better access the restricted U.S. and EU markets.

THE AGREEMENT ON TEXTILES AND CLOTHING AND THE PHASE-OUT OF THE MFA QUOTAS:

Under the so-called “Uruguay Round” of WTO negotiations, concluded in 1995, the contracting parties concluded the Agreement on Textiles and Clothing (“ATC”). Under the ATC, the WTO contracting parties agreed to phase out the MFA, thereby bringing textiles back under traditional GATT rules.

Under the ATC, MFA quotas were to be phased out progressively over a non-extendable ten-year period. In the first stage, which began on January 1, 1995, WTO Members were required to integrate not less than 16 percent of their 1990 imports of textiles and garments; in the second stage, beginning in January 1998, not less than a further 17 percent was to be integrated; and in the third stage, starting in January 2002, WTO Members were required to integrate a further 18 percent. All remaining products (amounting to a maximum of 49

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30 Duvillier, supra note 29 at 1 citing Philippine Economic Indicators, National Economic & Development Authority (NEDA) at http://localweb.neda.gov.ph.
percent) were to be automatically integrated with the final elimination of all quotas on January 1, 2005. Products not yet integrated were subject to a special transitional safeguard mechanism, whereby an importing country could apply quantitative restrictions for up to three years on imports from a particular source of supply that causes or threatens to cause serious injury to domestic industry. After integration, regular GATT safeguards would apply.

In addition to this integration process, The ATC accelerated the annual growth rates for remaining quotas: 16 percent for the first stage of the agreement; 25 percent for the second stage; and 27 percent for the final stage. Further, Least Developed Countries (LDC’s) could enjoy a one-stage advancement in the acceleration of quota growth. Thus, while quotas were being removed on a certain number of product lines, the remaining quotas could be increased in the years leading up to the final elimination of the quotas. Some exporting countries, therefore, could experience a rapid expansion in their access to quota-restricted markets while enjoying protection from competitors who were less successful in obtaining quota allocations.

**PHASE-OUT AND THE RUN-UP TO ELIMINATION, 1994-2005:**

The phase-out of quotas during the three stages of the ATC prior to 2005, had far less impact than the final elimination. This was primarily due to importing nations “backloading” the quota phase-out, and retaining the most restrictive quotas on the most valuable products until the final elimination. Initially, many developing nations, who felt that their access to markets in the U.S. and E.U. had been artificially restricted, believed that the move to a more liberalized trading environment would benefit them. This optimism, however, began to evaporate as they watched with concern as China rapidly assumed global dominance in manufacturing many non-textile items which were either not governed by quotas or whose quotas were phased out.


34 Id.
35 Id.
36 Id.
37 Id.
38 Miachila and Yang, supra note 33, at 4.
39 Duvillier, supra note 29, at 1.
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In March 2004, the Istanbul Declaration was issued by the American Textile Manufacturers’ Institute (ATMI), the American Manufacturing Trade Action Coalition (AMTAC), and the Istanbul Textile and Apparel Exporters’ Association (ITKIB - Istanbul Tekstil Ve Konfeksiyon Ihracatci Birlikleri). The declaration requested that a WTO emergency conference be called on July 1, 2005, in order to discuss the possibility of extending the textile quotas until the end of 2007. The Declaration was signed by textile and trade associations from Mexico, Italy, Belgium and Austria, and was supported by trade associations from more than ten African countries. “All this has indicated,” the China Daily reported, “that the besiegement against Chinese textile exports may probably be intensified.”

On July 20, 2004, Mauritius became the first nation to make a formal request for an emergency meeting of the WTO to discuss the ending of quotas. Within the U.S., domestic lobbies urged the Bush administration to support the call for a continuance of the system of apparel quotas. Members of both the House of Representatives and the Senate drafted a letter to President Bush urging him to reexamine whether textile integration should be postponed until 2008 or later. Among the signatories was John Kerry, Democratic Party nominee for President, and perhaps as a result, the domestic U.S. debate over apparel quotas became somewhat limited by the nature of the U.S. election. In response to Democratic pressure, the Bush administration maintained that it would not support calls for an extension of the quota system.

JAN. 1, 2005: THE FINAL END OF THE QUOTAS

On January 1, 2005, the garment industry changed forever, as a new era of trade liberalization ushered in more direct and open competition between producing nations. Did it, however, herald the profound, dramatic and sudden collapse of the textile industry in much of the developing world that some had

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42 Id.
43 Id.
44 Id.
46 Id.
47 Id.
48 Id.
49 Id.
feared? Certainly the predictions were dire, and not merely amongst traditionally alarmist organizations. The World Trade Organization (WTO), for example, made a series of well-publicized predictions that China would gain significantly after January 1, 2005, at the expense of most other countries. It anticipated that, in the absence any new protectionist measures or currency movement, China’s share of E.U. apparel imports would rise from 18% to 29%. The WTO projected an even more dramatic increase in China’s share of U.S. apparel imports from 16% to 50%. The smaller increase in China’s share of the E.U. market reflects the fact that the U.S. waited until January 1, 2005, to eliminate many of its key quotas, while the EU had done so somewhat earlier. The International Monetary Fund (IMF) has estimated that China could in fact gain an even greater share of the global market than that suggested by the WTO. The IMF has suggested that, given China’s attractiveness to foreign buyers, China’s apparel exports could double by January, 2008.

The early months of 2005 offered few hopes for many developing nations, as the worst-case scenario predictions of the IMF and the WTO appeared to be coming to pass. Indeed, the initial surge of Chinese exports to the U.S. and EU has been described as “explosive” by the U.S. Agency for International Development (USAID). Between April 2004 and April 2005, for example, the volume of U.S. imports from China of cotton nightwear (quota code 351) increased 660%; of manmade fiber nightwear (651) by 248%; of cotton slacks (348) by 1,584%; of cotton knit blouses (339) by 1,639%; of cotton trousers (347) by 1,420%; of manmade fiber knit blouses (639) by 324%; and manmade fiber skirts (642) by 257%. As the USAID concluded in June 2005: “China, with its vast supply of labor, significant upstream capacity in textiles and manufacturing, efficient garment factories, and well-developed logistics infrastructure, has achieved breathtaking gains in exports in just the first few months of quota-free trade.”

50 Kalish, supra note 20, at 3.
51 Id.
52 Id.
53 Id.
54 Id.
55 Id.
57 Id. at v.
The tidal wave of Chinese imports, however, was of such a scale that it created a serious political backlash in both Europe and the U.S. The terms of China’s 2001 accession to the WTO allow WTO members to restrain market-disrupting imports for 12 years after China’s accession. The so-called textiles safeguard clause in the accession agreement, covering all products in the WTO Agreement on Textiles and Clothing, permits 90-day safeguard measures on a revolving basis, but is available only until December 31, 2008. Following the extraordinary increase in China’s apparel exports after January 1, 2005, governments in the U.S. and the EU were inundated with safeguard petitions from domestic manufacturers demanding the reinstatement of protectionist barriers to ward off the potentially crippling flow of cheap Chinese products. The U.S. Committee for the Implementation of Textile Agreements (CITA), reviewed safeguard petitions in a number of product categories, and in May 2005 announced its intention to impose new quotas in several categories. In late April 2005, the European Union also decided to investigate imports of nine product lines from China.

The uncertainty as to whether importing countries may act to limit apparel and textile imports – in particular whether the U.S. and E.U. will attempt to limit the tide of imports from China – has created uncertainty and has undoubtedly impacted decisions made by importers. Fearing the potential that their orders from China may be trapped on boats or otherwise made unavailable as a result of government protectionism, buyers have shown a reluctance to entirely switch their production to China. As Deloitte Research has predicted: “Apparel and textile producers will seek to diversify risk. As such, they will not put all their eggs in the China basket.” In June 2005, USAID similarly concluded that U.S. and EU buyers were “retaining multiple sources of supply while waiting to see how safeguard actions (new quotas) against China...

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58 Id. at 7 fn 6.
59 Id. at 7-8.
60 Id. at 7. The committee confirmed market disruption for the following categories: cotton knit shirts and blouses (quota code 338/339); cotton trousers (347/348); cotton and manmade fiber underwear (352/652); men’s and boy’s woven cotton and manmade fiber shirts (340/640); manmade fiber trousers (647/648); manmade fiber knit shirts and blouses (638/639); and combed cotton yarn (301). Id. at 7; See also CITA news releases available at www.otexa.ita.doc.gov (last visited March 26, 2006).
61 Id. at 7-8. T-shirts, pullovers, blouses, stockings and socks, men’s trousers, women’s overcoats, brassieres, flax or ramie yarn, and woven-fabric yarn. Id. at 8. See also http://trade-info.cec.eu.int/textiles/index.cfm (last visited March 26, 2006).
62 Kalish, supra note 20, at 4.
63 Id. at 1.
undertaken by the United States and European Union in early 2005 will play out." 64

The lingering possibility of future restrictions being imposed by importing countries probably explains why the dire predictions of the WTO and IMF have not yet come to pass. Ira Kalish, the Global Director of Consumer Business at Deloitte Research, has noted that the trade is “freer trade but not completely free trade. How free depends on decisions yet to be made by importing country governments.”65 This is an important observation. The elimination of quotas did not eliminate all potential barriers to the free global trade in garments and textiles. Tariffs and import duties are, with certain restrictions, still permitted. A number of countries, including the U.S., maintain duty reduction programs to favor one region over another.66 In addition, restrictive rules of origin, the rules that govern how a product is labeled and whether it can be imported, still operate.67 Thus, the garment and textile industry continues to face a number of regulatory schemes that may continue to distort trade and investment patterns.68 In addition, governments in importing countries face strong domestic pressure to counter the perceived “tidal wave” of cheap Chinese imports. As Ira Kalish noted:

Apparel producers and distributors would like to be able to plan on the basis of precise knowledge of the future trading regime. Yet that has not been possible. Importing governments may or may not act to limit apparel and textile imports depending on the future flow of goods, the political consequences, and the political power of competing interests. Consequently, risk exists and market participants must plan accordingly.69

64 USAID Report, supra note 56, at v.
65 Kalish, supra note 20, at 1.
66 Lamar, supra note 9, at 609.
67 For example, in order to qualify for duty-free importation of textiles and garments into Europe, manufacturers must meet strict rules of origin – demonstrating that the garments and certain of their constituent parts (such as yarn), have originated in Lome or Generalized System of Preferences-qualifying countries. For many producers, such as those in Africa, which rely heavily on imported constituent parts, it is frequently impossible to meet such requirements. Lamar, supra note 9, at 609.
68 Id.
69 Kalish, supra note 20, at 1.
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COUNTRY-SPECIFIC ANALYSIS OF THE IMPACT OF TRADE LIBERALIZATION AND THE PHASE-OUT THE QUOTA SYSTEM:

The ending of quotas has predictably impacted some countries far more seriously than others. Several nations have experienced a rapid loss of a significant portion of their manufacturing capacity, while others have – at least in the short term – benefited at the expense of their less competitive neighbors. Even in those countries that have witnessed an increase in textiles exports since January 2005, however, this increase is partly explained by the continuation of certain artificial restraints placed upon Chinese textile imports by the E.U., and by current uncertainty amongst Western buyers as to whether Washington will bow to political pressure and reassert trade restrictions on Chinese textiles. 70 If these artificial restraints on Chinese textile exports are resolved, the worst-case scenarios of a massive manufacturing shift from developing nations to China may materialize.

The consequences of shifts in global production of the garment industry are likely to impact all those developing countries currently active in the production of garments. Ellen Israel Rosen, for example, has predicted that amongst the “[h]uge losers in this race to the bottom” will be countries such as Costa Rica, Haiti, Jamaica, South Africa, Mauritius, Malaysia, Indonesia, Kenya, Lesotho, Madagascar and Mexico. 71 This paper will briefly outline the anticipated impact on just eight nations: five generally expected to suffer as a result of the new trade liberalization: Fiji, Bangladesh, the Philippines, Macao, and Mongolia; one country, Cambodia, which, in a closely-watched gambit, is attempting to maintain its attractiveness to Western buyers by eschewing the inevitability of the “race to the bottom” and emphasizing instead its comparatively progressive labor standards; India, the country which is aggressively – but perhaps belatedly - attempting to position itself to reap significant rewards from the end of quotas; and, finally, China, the country universally acknowledged as the huge winner in the newly liberalized trade regime. 72

70 USAID Report, supra note 56, at v.
72 For a discussion of the garment industry in Mauritius, South Africa, Lesotho, Kenya, Zimbabwe, Swaziland, Madagascar, Botswana and Tanzania, see Lamar, supra note 9; U.S. INT’L TRADE
Fiji:

Fiji is an example of how changes in the world trade in garments can impact even the smallest economy. The Fijian garment industry has had a short history, but is now a critical part of the economic structure of the country. Indeed, the garment industry surpassed sugar as the number one export sector in 1997. Fiji’s two largest industries, garments and sugar, are both currently in what has been described as “terminal crisis.” Epeli Ganilau, the former head of the Great Council of Chiefs, has estimated that Fiji stands to lose US$120 million of its national revenue, with upwards of 5,000 jobs expected to be lost in the garment industry. These predictions appear well-founded, with the April 2005 closure of the Ghim Li Apparel factory, Fiji’s largest manufacturer.
Singaporean firm Ghim Li was set up in Fiji to exploit the U.S. quota system, and manufactured apparel for Sears Roebuck, Wal-Mart and Kmart. With the end of the garment quotas in January 2005, however, the decision was made by Ghim Li to relocate production to China.  

The Fijian garment industry grew rapidly following the 1987 coup by General Sitiveni Rabuka. In an attempt to attract foreign investors, the government suppressed trade unions, set a minimum wage below the poverty level, and offered a 13-year tax “holiday” for garment firms which exported at least 70 percent of their product. Australian apparel firms invested heavily in Fiji following 1991 when the Australian Labor Government created the Import Credit Scheme, which provided subsidies to Australian exporters of textiles, clothing and footwear. The result was that Australian manufacturers began the apparel manufacturing process in Australia, before exporting the components to Fiji for assembly. The finished garments were then re-exported to Australia to take advantage of the South Pacific Area Regional Trade and Economic Cooperation Agreement (SPARTECA), which provided Fiji with tariff-free exports to Australia. At its peak in 2000, the garment industry was responsible for 31 percent of Fiji’s total exports and 11 percent of its GDP. Profit margins for the overseas firms were estimated to be around 30 percent. However the industry went into decline following a May 2000 coup and subsequent political instability and Australian trade sanctions. Foreign manufacturers began pulling out of Fiji at that time, with 14 factories closing in the months after the coup. The decision by Australia to drop its sanctions in December 2000 did not encourage the foreign firms to return. With the end of quotas on the horizon, Fiji was simply no longer considered a necessary part of international manufacturing nor a worthwhile risk, and any advantage it had once offered for its access to quota-restricted markets was soon to disappear in January 2005.

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76 Id.  
77 Id.  
78 Gaglioti, supra note 74.  
79 Id. See also Storey, supra note 73, at 9.  
80 Gaglioti, supra note 74.  
81 Id.  
82 Id.  
83 Id.  
84 Gaglioti, supra note 74.  
85 Id.  
86 Id.  
87 Id.
Oxfam research indicates that Fijian garment workers earn as little as $1.08 an hour, with some garment factory wages declining since 2000. For a majority of the workers, the wages, however meager, are critical for meeting basic needs, and are the central component of family income. A high proportion of garment workers live in peri-urban squatter settlements in order to avoid the costs of formal housing, and to minimize travel to the factory. Nevertheless, the collapse of the garment industry remove the only source of income for thousands of Fijian families, and is likely to exacerbate the problems of poverty, unemployment, social inequality, and prostitution. The Fijian Garment Industry report concluded that: "[A]ny collapse [of the garment industry] would create a crisis which would be both human and economic. Though low even by local standards, garment wages are a critical factor in supporting the urban poor." Fiji Textile Clothing and Footwear president, Ramesh Solanki, has warned that job losses in the garment industry will have serious social implications because the industry provides employment for females from poor education backgrounds who will struggle to find alternative work.

Bangladesh:

Between 1984 and 2002, the apparel industry in Bangladesh saw an increase in the number of manufacturing facilities from 180 to over 3,600 facilities, 90 percent of which are located in and around Dhaka, and the port of Chittagong. The value of Bangladesh apparel exports rose from US$131 million in 1985-1986, to US$4,583 million in 2001-2002. The United Nations Development Programme concluded that Bangladesh’s “economy has improved significantly during the last decade, driven primarily by the garment sector, which brought in US$6 billion in export earnings in 2001-2002.”

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88 Storey, supra note 73, at 31. Oxfam International is a confederation of non-governmental organizations working together to fight global poverty and injustice by focusing on development, advocacy and relief. See www.oxfam.org.
89 Storey, supra note 73 at 32-33.
90 Gaglioti, supra note 74.
92 Mlachila and Yang, supra note 33 at 7.
93 Id.
export sector was initially jump-started by Foreign Direct Investment (FDI) from foreign investors primarily from the Republic of Korea and Hong Kong SAR, who were taking advantage of Bangladesh’s export quotas to restricted markets, and who established factories in the export promotion zone (EPZ). 95 However, subsequent government restrictions intended to reserve the most valuable quotas for Bangladeshi manufacturers, have resulted in a decline in the role of FDI in the Bangladesh apparel industry. 96

By 2004, the apparel industry in Bangladesh employed approximately 1.8 million people, which represented some 40 percent of all manufacturing employment. 97 90 percent of those employed in the garment industry were women, and it is estimated that the industry supports about 10-15 million people indirectly. 98 Though the apparel industry contributes only 5 percent to Bangladesh’s GDP, it has a vital role in providing employment to a large segment of that nation’s poorest and most vulnerable families. 99 The United Nations estimates that upward of one million garment workers in Bangladesh will lose their jobs as a direct result of the elimination of the MFA quotas. 100

There was widespread concern in Bangladesh that the end of quotas would hit the Bangladesh economy hard. The Bangladesh economy relies heavily on the exports of garments and textiles. In 2002, for example, these exports accounted for over 77 percent of Bangladesh’s total manufacturing exports. 101 Only one exporter (Macau SAR) had a higher percentage of textiles and garments as a percentage of total manufacturing exports. In addition, 94 percent of Bangladesh’s textile and garment exports in 2002 were to quota-restrained markets, again amongst the highest in the world. 102 With such an overwhelming reliance upon exports to the U.S. and the E.U., in particular, Bangladesh was particularly vulnerable to American buyers switching to cheaper produces following the ending of quotas. As the authors of an IMF Working Paper noted in June 2004: “Bangladesh . . . is potentially vulnerable to the large shock of the final stage of the quotas phase-out . . . Bangladeshi exporters will likely find it difficult to compete in the short to medium term.” 103 They noted that while Bangladesh’s wages are low compared with most of its

95 Mlachila and Yang, supra note 33 at 7-8.
96 Id. at 8. The UNDP provides slightly different figures: two million people, eighty percent of whom are women. UNITED NATIONS DEVELOPMENT PROGRAMME, supra note 94.
97 Mlachila and Yang, supra note 33 at 6.
98 Id. at 6-7.
99 Id. at 6.
100 UNITED NATIONS DEVELOPMENT PROGRAMME, supra note 94.
101 Mlachila and Yang, supra note 33 at 4.
102 Id.
103 Id.
competitors, it is hampered by low productivity, inadequate infrastructure requiring public or private sector investment, and fragmented governmental policies.104 Despite the fact that Bangladesh labor costs are lower than China's, the associated transportation, logistical and materials result in Bangladesh being a more expensive place to manufacture garments.105

Bangladesh’s position is further complicated by its lack of an adequate textile industry to supply cloth to the apparel factories. Bangladesh has a small textile industry, which is unable to fully meet the demand of the garment industry. In 2002, for example, Bangladesh imported US 1.8 billion of textiles and related items.106 In addition, Bangladesh’s textile industry itself relies heavily on imported cotton and other raw materials.107 This reliance on imported textiles and imported raw materials for the domestic textile industry, makes Bangladesh particularly vulnerable to the uncertainty of the world market. As Chinese apparel manufacturing increasingly outstrips the available Chinese domestic textile supply, Chinese apparel producers are themselves increasingly turning to the international market, increasing competition for the available textile products and driving up prices that Bangladesh garment manufacturers have to pay for imported materials.108

The Philippines:

The garment industry in the Philippines reached its peak under the MFA in 1991, when it represented as much as 35% of that nation’s total exports and accounted for an estimated total workforce of one million employees.109 Starting in the mid-1990’s, however, the local garment industry witnessed a steady decline as it faced increasing competition from developing nations such as Cambodia. Under the MFA, roughly 92% of the Philippine’s garment and textile exports were to the quota-regulated markets of the U.S. and the E.U.110 While the Philippine exporters were largely shielded from the most dramatic impact of direct international competition with other producing nations, it became clear in the course of the 1990’s that the local industry was unable to

104 Id.
105 George Wehrfritz and Alexandra A. Seno, *Succeeding at Sewing*, NEWSWEEK, Jan. 10, 2005, at 38. ("[L]abor for a shirt made in Bangladesh runs just $1.52, compared with $2.28 in China, but after factoring in materials and transportation, the total cost of the Chinese shirt is $11.15 – almost a dollar cheaper [than that produced in Bangladesh]").
106 Mlachila and Yang, supra note 33 at 7.
107 Id.
108 Id.
109 Duvillier, supra note 29 at 1.
110 Id. at 3.
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compete with leading Asian exporters when forced to do so. While new producers, such as Cambodia, began gaining access to the U.S. and E.U. markets, and thereby offering a production alternative to foreign buyers, the Philippines saw its slice of the export pie gradually shrink. Between 1994 and 2004, its share of the U.S. clothing market shrunk from 4.3% to 2.8%.111 Though this decline of market share was somewhat off-set by a growth in U.S. demand, nevertheless it was evident that it was not the Philippines that was benefiting from any market expansion. In the course of the same decade (1994-2004), the number of formal textile and garment workers in the Philippines declined from around 900,000 to approximately 311,000.112 In 2003, for example, an estimated 90 textile or apparel factories closed or retrenched, eliminating 9,443 workers.113

Countries like the Philippines, which struggled with an aging manufacturing capacity and infrastructure, inefficient economic incentives from corrupt political agencies, and high-profile industrial conflict in many of its unionized factories, saw a dramatic but predictable loss of orders immediately prior to and following January 2005.114 There had been a general decline of the Philippines’ textile manufacturing base since the mid-1990’s, as foreign buyers began shifting their orders to more cost-effective nations elsewhere in Asia, but the end of quotas nevertheless had a noticeable impact.115 As of March 2005, the value of apparel and clothing exports from the Philippines decreased by 16.6% (US$149.23 million) compared to the same period in 2004 (US$179.01 million).116

In 2000 and 2001, in what many believed was an indicator of things to come, the Philippine manufacturing industry was hit by a US$198 million export loss when existing global quotas on several items (notably baby clothing and luggage products) were phased out.117 The rapidity with which production shifted following the phase-out of quotas on those items, confirmed for many a growing fear that a similar shift from the Philippines would occur following the elimination of the remaining textile and garment quotas by January 2005. Some

112 Duvillier, supra note 29 at 3-4.
114 Duvillier, supra note 29 at 1-2.
116 Id.
117 Id. at 2.
observers warned that half of all jobs in the textile and garment industry in the Philippines would be in jeopardy with the end of the quota system.\textsuperscript{118} While the Philippine garment industry has undoubtedly been hurt by the rise of Chinese manufacturing, some in the Philippines see China as a possible savior of Philippine manufacturing. With the traditional economic relationship between U.S. buyers and Philippine manufacturers in jeopardy, the Philippine government is looking to China to become a key future trading partner. In November 2005, the visiting member of the Central Committee of the Communist Party of China, Zhang Dejiang, was asked by Speaker Jose de Venecia to help rebuild the Philippine garment and textile industry.\textsuperscript{119} In particular, de Venecia noted, the Philippines "required fresh working capital, new technology, and joint ventures, [particularly] with Guangdong industrialists."\textsuperscript{120} The initial Chinese response was positive.\textsuperscript{121}

**Macao:**

Located in Eastern Asia, bordering the South China Sea and mainland China, the two islands that make up Macao have an estimated population of less than half a million people. Since its reversion to China as a special administrative region in 1999, Macao's economy has remained one of the most open in the world.\textsuperscript{122} Macao's garment industry began following World War Two, and flourished in the 1960's, when Hong Kong manufacturers moved facilities there to avoid quotas imposed by the UK on Hong Kong garment exports.\textsuperscript{123} Macao further prospered under the MFA-regime during the 1970's and 1980's, as it continued to be an attractive manufacturing base for Hong


\textsuperscript{120} Id.

\textsuperscript{121} Id.

\textsuperscript{122} CIA, THE WORLD FACT BOOK-MACAO, at http://www.cia.gov/cia/publications/factbook/geos/mc.html (last visited April 1, 2006) (Colonized by the Portuguese in the 16\textsuperscript{th} century, Macao was the first European settlement in the Far East. Pursuant to an agreement signed by China and Portugal on 13 April 1987, Macao became the Macau Special Administrative Region (SAR) of China on 20 Dec. 1999. China has promised that, under its "one country, two systems" formula, China's socialist economic system will not be practiced in Macao, and that Macao will enjoy a high degree of autonomy in all matters except foreign and defense affairs for the next 50 years.)

\textsuperscript{123} MACAO DEVELOPMENT STRATEGY STUDY CENTER, supra note 31.
Kong producers. By the 1980's, the textile and garment industry accounted for more than 70 percent of all Macao's exports, with over 80 percent going to the U.S. and EU. Though Macao's economy is heavily dependent on gaming and tourism, the number of workers in the garment industry now surpasses those working in hotels and restaurants. Macao's garment industry is characterized by "small and medium-sized enterprises, with scattered distribution and relatively [out-dated] production technology." The average manufacturing factory in Macao has just 33 employees, with 70 percent of the 1,232 factories employing between 1-19 employees, and only 42 factories having more than 200 employees. Since the early 1990's, higher labor costs in Macao, combined with the increasing attractiveness of doing business in mainland China, have resulted in a significant shift of Hong Kong-financed garment manufacturing from Macao to China, particularly to the area around Zhuhai and Zhongshan in Guangdong Province. According to the Macao SAR Government, between 1995 and 1999 the number of textile factories declined by 30 percent, and the number of garment factories by 7 percent. Between 1990 and 1999, the number of garment factories declined from 745 to 394, or 47 percent, with employees falling from 35,917 to 26,429, or 27 percent. With the end of the MFA-regime, the shift to China is expected to become even more dramatic. The small size of the Macao factories, the low technological level, low added value and labor-intensive production, the heavy reliance on outside Hong Kong investors, and the role of Macao as almost entirely a manufacturing platform geared for exports to quota-restricted markets, makes Macao particularly vulnerable to trade liberalization and the end of the MFA regime. In response to a questionnaire from the Macao Development Strategy Study Centre, only 53 of the 99 enterprises in the textile industry employing more than 100 people indicated that they planned to stay in

124 Id.
125 Id.
126 Id.
128 Id.
129 Id.
130 Id.
131 Id.
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Macao. It is anticipated that the total value of textile and garment exports from Macao will decline by 40-50 percent as a result of the end of quotas. It is hoped that some manufacturers who shift manufacturing to China will continue to keep offices in Macao, in order to avoid the currency controls in the mainland and to conduct foreign-currency payment and market operations. Smaller-scale manufacturing enterprises in Macao are, with few exceptions, not expected to survive.

Mongolia:

Mongolia, a land-locked country bordering China, is an example of a country with no history of garment production, which became the focus of Chinese garment manufacturers purely to provide access to quota-restricted markets. By 2000, over 30,000 people were employed in primarily foreign-owned factories making clothes for export to the U.S. By late 2004, as foreign manufacturers began shifting production to China, the number had declined to around 20,000. These workers were the breadwinners for an estimated 80-100,000 people. By 2004, the garment and textile industry represented 29.2 percent of the country's exports. In 2003, the total value of sewn and knitted articles had risen to US$97 million, or over 37 million items. 97 percent of all sewn articles and 98 percent of knitted articles were exported to the U.S. By late 2004, however, it was clear that the predominantly Chinese companies that had set up production in Mongolia, were

132 MACAO DEVELOPMENT STRATEGY STUDY CENTER, supra note 31.
133 Id.
136 Id.
137 Id.
138 Id.
139 Id. at § 1.
140 Smith, supra note 135, at Executive Summary.
highly unlikely to remain once the MFA quota-regime was lifted. Indeed, many of the factories had been planned to operate only until January 2005. Mongolia faces many significant problems in attempting to retain a competitive garment industry, not least of which is that it is landlocked, and relies upon China and Russia for access to raw materials and markets. Internally, logistical networks are poor, the workforce unskilled, managerial expertise lacking, and governmental bureaucracy burdensome. The Mongolian Government was aggressive in providing encouragement to foreign businesses, but failed to adequately support domestic manufacturers, resulting in an industry dominated by foreign investors with no real or long-term ties to Mongolia. Moreover, Mongolian factories produce few items with a high unit value, relying instead on basic commodity items with less value added. These basic items are particularly vulnerable to cheap competition from China. A report published by the Mongolian Economic Policy Reform and Competitiveness Project, concluded that “The Mongolian Government alone will not be able to prevent wholesale closure of the Industry, but it can set the climate to encourage industry not only to stay but also to develop for the future.” The future, however, looks desperate for the Mongolian garment industry, as its factories are closed and the manufacturing machines physically removed by their owners to facilities in neighboring China.

Cambodia:

As in many developing nations, Cambodia’s garment and textile industry flourished under the MFA as primarily Chinese investors saw an opportunity to access the U.S. and EU markets free from the need to obtain the more limited quotas available in their home countries. Throughout the 1990’s, foreign investment flowed into Cambodia, factories were constructed in and around Phnom Penh, and tens of thousands of young women poured from the countryside into the city to work in textile industry. By early 2005, the

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141 Id.
142 Id. at Executive Summary.
143 Id. at §2.
144 Id.
145 Smith, supra note 135 at §2.
146 Id. at §1.
147 Id.
148 Id. at Executive Summary.
membership of the Garment Manufacturers Association in Cambodia (GMAC) included 238 companies. Only five percent of garment factories are owned by Cambodians. The rows of factories are clustered around Phnom Penh, from which trucks transport filled shipping containers to the port city of Sihanoukville located 230 kilometers away. The value of garment exports grew from US$26 million in 1995, to US$2 billion in 2004. Garment exports constitute nearly 80 percent of Cambodia’s merchandise exports. The U.S. and the EU represent 64 percent and 29 percent respectively, of Cambodia’s total garment exports in 2004. The USAID reports that clothing manufactured for the Gap represent one-third of all Cambodian garment exports.

The sudden dependence of Cambodia on a single industry controlled by foreigners has created particular vulnerability. The influx of garment factories occurred in what had been up until that time a largely pre-industrialized rural society suffering the lingering effects of decades of war, genocidal oppression, and societal turmoil. For the government of Hun Sen, the foreign factory owners have reportedly provided a steady source of foreign currency in the form of taxes, duties, pay-offs and bribes that has helped secure his authoritarian control over the country. For the people of Cambodia, the value of the factory jobs is even more essential. By October 2004, an estimated 230,000 Cambodians worked in garment factories, of whom 85-90 percent were women. With rising poverty levels in the Cambodian countryside associated with failed government policies, illegal logging, crop failure and lowered prices resulting from cheap imported foodstuffs, the salaries of the factory workers have become a vital component of the floundering rural economy.

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150 USAID Report, supra note 56, at 3.
151 Id.
152 Id.
155 Id.
156 Factory owners have reportedly funded organizations friendly to Hun Sen’s ruling CPP party, while pro-CPP groups have attempted to suppress a free trade union movement and promote unions with strong links to the government. See George McLeod, Union riot tragedy for labor rights, PHNOM PENH POST, Issue 12/13 (June 20-July 3, 2003) available at http://www.phnompenhpost.com/TXT/comments/c12/13-I.htm (last visited April 1, 2006).
estimates that the remittances sent home by the young female factory workers now sustains 20 percent of the entire country's population of 13 million people. As USAID concluded: "These workers' incomes are critical to their families, the country, and even the region." The stakes for Cambodia's continued success in the global economy are, therefore, extraordinarily high.

Interestingly, since 1999 Cambodia has attempted to create a niche as a socially responsible manufacturing platform. There are some hopes that this niche may continue to make Cambodia attractive to buyers even if Cambodia lacks the ability to be competitive in terms of cost-efficiency with China. By the late 1990's, labor rights activists and researchers in the U.S. came to focus on the labor abuses and poor working conditions evident in many of the new garment factories in Cambodia. Trade representatives for the Clinton administration, headed by Ambassador C. Donald Johnson, saw an opportunity to pressure the Cambodian manufacturers and government to abide by international norms and local labor laws. On January 20, 1999, the U.S. and Cambodian governments signed the U.S./Cambodia Bilateral Textile Trade Agreement ("U.S./Cambodia Bilateral Agreement"). This agreement was remarkable for including a labor standards provision creating incentives for the Cambodian garment industry to bring itself substantially into compliance with international labor standards and Cambodian labor law. This was the first time that a labor standards provision had been included in a bilateral, U.S.-negotiated trade agreement.

CASD Project And WFP Target Areas, 21-27 (Tulane University 1998) available at http://www.wfp.org/operations/vam/country_experience/cambodia_vam/inex.asp (last visited April 1, 2006). Noah Davies, Acting Country Director of the U.N. World Food Program, has noted that "the poverty is getting worse right now and the situation of malnutrition of children is a crisis' with over twenty percent suffering from "acute malnutrition ... The situation is much worse than people recognize." Malnutrition Reaching Crisis Level, WFP Says, CAMBODIA DAILY, Nov. 25, 1998, at 7.

59 USAID Report, supra note 56 at 1.
60 Id.
61 Id. at 3.
62 See generally Hall, supra note 149.
Under the U.S./Cambodia Bilateral Agreement, which was renewed in December 2001, the International Labor Organization (ILO) designed and implemented a system of factory monitoring intended to ensure compliance with applicable labor law and improving working conditions.\textsuperscript{166} Though flawed in terms of scope, reluctance of the ILO to engage with unions, lack of responsiveness to workers' complaints, and hampered by problems in implementation, the U.S./Cambodia Bilateral Agreement has been described as representing "an important and momentous experiment in transparent monitoring."\textsuperscript{167} With the accession of Cambodia into the WTO in 2005, and the phasing out of the system of quotas permitted under the MFI, the ability of the U.S. to directly link access to its market with ILO-monitored compliance with local labor laws, has ended. Nevertheless, linking trade privileges to the respect of labor rights was a creative experiment which marked a significant move forward for international labor standards.\textsuperscript{168}

A June 2005 Phnom Penh workshop of garment industry, government, and labor representatives, concluded that while the end of MFA quotas undoubtedly threatened the future of the garment industry in Cambodia, the situation was not as desperate as some had predicted one year previously.\textsuperscript{169} It was noted that Cambodia had – at least temporarily – been able to hold its own in the first half of 2005.\textsuperscript{170} By May 2005, for example, it was reported that sixteen large garment factories had been scheduled to begin production by the end of 2005, more than replacing the production capacity of the dozen factories that have failed.\textsuperscript{171}

One explanation for Cambodia's apparent success in the post-quota world, is its ability to offer to buyers a guarantee of compliance with basic labor rights.\textsuperscript{172} To certain western buyers, who have been stung by allegations of

\textsuperscript{166} Kolben, \textit{supra} note 21, at 106-107.
\textsuperscript{167} \textit{Id.} at 107.
\textsuperscript{168} \textit{World Bank, Cambodia: Seizing the Global Opportunity – Investment Climate Assessment and Reform Strategy for Cambodia, Report No. 27925-KH (2004).}
\textsuperscript{169} \textit{Associates for International Resources and Development (AIRD), Phnom Penh Workshop Highlights Strategies to Increase Labor Products in Cambodia (June 2005), at http://www.aird.com/news.php?id=14 (last visited April 1, 2006).}
\textsuperscript{170} \textit{AIRD, supra note 169. David Van, Textiles and Clothing Case Study – Cambodia, Asia Pacific Regional Initiative on Trade, Economic Governance, and Human Development, United Nations Development Program (2003).}
\textsuperscript{172} \textit{For a discussion of Cambodian labor law, see Hall, \textit{supra} note 149, at 134-136 (freedom of association, the right to organize, and collective bargaining, guaranteed by Articles 36, 41 and 42 of the Cambodian Constitution; Articles 20(1) and 23(4) of the Universal Declaration of Human Rights).}
sweatshop abuses within their supply chain, this is a valuable guarantee. Brad Figel, Director of Government Affairs at Nike, for example, has indicated that Nike and other companies are willing to pay a premium for labor compliance.\textsuperscript{173} Nike. lost confidence in Cambodia’s compliance in 2000 and began the process of pulling out of the country. but re-entered Cambodia in 2002 after the ILO began the labor monitoring program and government and contractors promised greater labor compliance.\textsuperscript{174}

The Cambodian government has decided to continue with the policy of ILO factory monitoring. Undoubtedly, it concluded that for Cambodia to keep its reputation for good labor standards, “it needs to continue letting the ILO issue independent reports on factory working conditions.”\textsuperscript{175} Cham Prasith, the Cambodian Minister of Commerce who reached the deal with Washington in 1999, has indicated that the benefits of the labor enforcement program have exceeded expectations: “We are extending our labor standards beyond the end of the quotas because we know that is why we continue to have buyers. . . If we didn’t respect the unions and labor standards, we would be killing the goose that lays the golden eggs.”\textsuperscript{176} Dan Henkle, a vice president for GAP, which is by far the biggest buyer of Cambodian garments, has indicated that indeed the promise of labor law compliance is key to GAP’s decision to remain in Cambodia.\textsuperscript{177}

During an economic and trade meeting under World Bank auspices in Phnom Pehn, rights were discussed, including:

- Article 8(1)(a) of the ICESCR; Chapter XI of the 1997 Labor Code; Article 7 of the ILO Convention 87; 150-152 (dispute resolution, mediation and arbitration, protected by the 1997 Labor Code Ch. XII); 152-153 (pre-employment fees, covered by Article 7(1) of ILO Convention 181, and ILO Convention 29, ratified by Cambodia on 24 Feb. 1969; and Article 44 of the 1997 Labor Code); 154-158 (factory conditions, guaranteed by Article 7 of the ICESCR, Chapter VIII of the 1997 Labor Code); 158-159 (equality of treatment, guaranteed by Article 2 of the Universal Declaration of Human Rights, Article 3 of the ICESCR, and Articles 45 and 46 of the Cambodian Constitution); 159-162 (hours worked, guaranteed by Article 7(d) of the ICESCR, Article 1 of the ILO Convention 29, Articles 137, 147, 161, 165 of the 1997 Labor Code); 162-166 (wage issues, guaranteed by Article 23(3) of the Universal Declaration of Human Rights; Article 7(a)(ii) of the ICESCR, Articles 104, 107(2) and 117 of the 1997 Labor Code).

\textsuperscript{173} JENNIFER MAUL, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, PROMOTING CAMBODIA’S COMPETITIVENESS IN A POST-MFA WORLD (Jul. 21, 2005) at http://www.carnegieendowment.org/events/index.cfm?fa=eventDetail&id=810&&prog=z (last visited April 1, 2006).

\textsuperscript{174} MAUL, supra note 173; CAMBODIAN LABOR ORGANIZATION, WORKING CONDITION 2003 REPORT FOR IMPROVEMENT OF GARMENT, TEXTILES AND FOOTWEAR INDUSTRY (2004).


\textsuperscript{176} Becker, supra note 171.

\textsuperscript{177} Id.
Penh in February 2005, he assured Cambodian officials that GAP would remain, but only so long as Cambodia continued to follow its special labor program.178

The Cambodian Government’s “respect” for trade unions is somewhat less perfect than Mr. Cham’s comments would suggest, and several leading union officials not affiliated with Hun Sen’s ruling CPP party have been murdered in recent years.179 Nevertheless, there appears to have been a genuine improvement in factory conditions as a result of the program of ILO monitoring. Ros Harvey, the ILO’s Chief Technical Advisor in Cambodia, has noted that while factory conditions in Cambodia are still not perfect, there has been a tremendous amount of improvement.180 Nevertheless, labor standards alone will not save the garment industry in Cambodia. USAID has concluded that serious internal problems still hamper the Cambodian garment industry, including a combination of significant governmental corruption, complex business regulations, and difficult import-export procedures.181 Harvey of the ILO has warned that the country must strengthen its rule of law, reduce corruption, and improve trade facilitation for the apparel industry to remain competitive.182 It would appear that there has been some improvement in this regard. With the apparel industry now accounting for ninety-percent of Cambodia’s export earnings, and with the factory owners able to shift production to China or elsewhere with comparative ease, the factory owners are reported to have begun wielding their considerable political power to encourage the government to tackle the corruption which has been driving up production costs.183 In response, the Government has begun to reduce levels of bureaucratic rules which had required widespread “palm greasing” by business owners. One estimate is that this has reduced production costs of each dozen t-shirts from $2 to $1.10.184

179 Chea Vichea, president of a garment workers’ union was shot to death in January 2004. Four months later one of his top assistants was killed. Becker, supra note 171. See also George McLeod, supra note 156 (discussing the violent suppression of a strike at Terratex when two workers were killed on 13 June, 2003; the beating of pro-union demonstrators outside Trinunngal Komsara factory in March 2003; and the activities of so-called “Brown Shirts” – gangs like the pro-CPP Pagoda Boys, hired by factory owners to assault and intimidate independent union officials.)
180 Maul, supra note 173.
181 USAID Report, supra note 56.
182 Maul, supra note 173.
183 Becker, supra note 171.
184 Id.
Most observers recognize that lowered production costs alone will not secure Cambodia's future success. Sok Siphana, secretary of state at the Ministry of Commerce and Cambodia's lead WTO negotiator, has summarized the position Cambodia is adopting: "Companies will always go to China for their profit. Yet profit alone is not always the basis for business. Image-conscious multinationals will continue using Cambodia because of our high labor standards." Cambodia is banking on the idea that Western buyers will be willing to pay higher prices for garments produced in factories with better labor standards. The President of the Garment Manufacturers' Association of Cambodia, Van Sou Ieng, has complained that some western companies have shown reluctance to follow their vocal support for Cambodia's position with actual orders:

Instead of encouraging us with words, buyers should do it with actions. In countries that don't care about child labor, environmental protection or social justice, of course their prices will be cheaper. We believe the trend must change – if not, it will be a sad story for some factories.

India:

Along with China, India is hoping to be a big winner as a result of the end of the quota system. Some early estimates were that India's share of the U.S. market would quadruple, from 4 percent to 15 percent, and that its share of the EU garments sector would increase 50 percent, from 6 percent to 9 percent. The WTO has estimated that India's share of the global trade in textiles will increase from 3 percent in 2004 to 15 percent by 2010. There were optimistic projections of a 50 percent increase in exports in just the first quarter of 2005. Sears and Marks & Spencer have set up operations in India,

185 Kate, supra note 175.
186 Id.
187 PHD Chamber of Commerce and Industry, End of Multi-Fibre Agreement to Make Indian Textile and Garment Industry Grab 8% of World Market by 2010, (Oct. 16, 2004) at http://www.phdccimail.com/pressrel.phd?soid=77 (last visited April 20, 2006)(Founded in 1905 as the Punjab Chamber of Commerce, the PHD Chamber of Commerce currently has a wide-ranging membership of more than 1500 corporate entities and hundreds of trade organizations spread throughout Northern Region India.)
189 Basu, supra note 3.
and the Gap is expected to expand its sourcing from India.\textsuperscript{190} Observers expect Indian exports to jump from US$14 billion in 2004, to between US$40-80 billion by 2010.\textsuperscript{191} India’s economy has been expanding at a rapid pace, driven by its success as a manufacturer for the global market and protected from currency contagion by capital and currency control. Total trade grew by more than 20% over the last two years and at an annual rate of 25.6% during the first ten months of the fiscal year ending April 2005.\textsuperscript{192} In comparison, U.S. trade grew at less than half that rate.\textsuperscript{193} By 2004, the textile industry in India employed 35 million people and accounted for nearly one-quarter of India’s exports.\textsuperscript{194}

By the end of 2005, however, it was becoming clearer that, as the Wall Street Journal noted, “the anticipated boom has been more of a muted bang” for India.\textsuperscript{195} The end of quotas was seen as a “once-in-a-lifetime” opportunity for Indian manufacturing, but it appears that local companies have failed to fully exploit the situation.\textsuperscript{196} In the first quarter of 2005, for example, Indian exports to the EU actually grew by just 5 percent to US$2 billion, rather than the 50 percent projected.\textsuperscript{197} In contrast, Chinese exports to the EU jumped 59 percent to US$7.5 billion during the same period.\textsuperscript{198}

India’s textile industry has several natural advantages. India is the third largest producer of cotton in the world.\textsuperscript{199} It has a cheap skilled workforce and a huge domestic market.\textsuperscript{200} Nevertheless, the MFA quota-regime is believed by some to have fostered and protected production inefficiencies in India. Rahul Mehta, managing director of Creative Outwear Ltd, one of India’s biggest garment producers, has noted that: “Quotas afforded the comfort of assured business to manufacturers and to those who held a quota, and this imparted a sense of stability. . . Even inefficient manufacturers got quotas, which assured them business, and flab crept in.”\textsuperscript{201} In 2004, 75 percent of

\textsuperscript{190} Id.
\textsuperscript{191} Id.
\textsuperscript{193} Id. at A18.
\textsuperscript{194} Pandey, \textit{supra} note 188.
\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} Id.
\textsuperscript{200} Id.
\textsuperscript{201} Id.
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India's apparel exports were to quota countries.\textsuperscript{202} Until recently, Indian law required that garment manufacturing should be primarily a small-scale activity.\textsuperscript{203} In 2004, over 80 percent of India's apparel manufacturers operated with less than 20 machines.\textsuperscript{204} The quotas were distributed by the Indian Government on the basis of "past performance entitlement" (PPE), which did not encourage manufacturers to expand facilities or invest in modern equipment.\textsuperscript{205} The result was that the Indian apparel industry remained dominated by small-scale producers, with little to encourage the efficiencies of scale, industrial consolidation, equipment modernization, and infrastructure investment which has transformed the apparel industry in China.

In response to the anticipated ending of the MFA quota-system, the Indian Government began reversing some of its earlier policies in order to facilitate Indian competitiveness in the newly competitive global apparel trade. For example, the machinery import duty has been reduced to a nominal 5 percent; excise duties have been significantly reduced; and a "textile upgradation" fund has been established to encourage loans to support manufacturing modernization.\textsuperscript{206} Most significantly, however, four years ago the government removed garments from the list of industries reserved for small-scale manufacturers, ending a four decades-old government approach to the garment industry as primarily a vehicle for providing stable employment for India's poor.\textsuperscript{207} For decades, Indian garment companies were kept small by laws passed shortly after Indian independence; large companies were required to break up into small units, and while this encouraged geographically widespread employment throughout the country, it destroyed economies of scale and hampered India's international competitiveness.\textsuperscript{208} Though this was less a problem under the quota regime, industry and government observers recognized that it would be impossible to maintain such a system in a more competitive post-quota global environment. Further, to encourage foreign investment in India's garment industry and help generate the capital necessary for facility modernization, the Indian Government has changed the law to permit textile factories entirely owned and operated by foreigners with 100 percent Foreign Direct Investment (FDI).\textsuperscript{209} The shift from small-scale manufacturing to large-

\begin{thebibliography}{9}
\bibitem{202} Id.
\bibitem{203} Id.
\bibitem{204} Madhukar, \textit{supra} note 199.
\bibitem{205} Id.
\bibitem{206} Id.
\bibitem{207} Prystay, \textit{supra} note 195.
\bibitem{208} Id.
\end{thebibliography}
scale producers is far from complete, and most of India’s garment manufacturers still remain small by international standards. By December 2005, fewer than 10 manufacturers had yearly revenue above US$100 million, and only one of US$200 million.\footnote{It appears that a degree of expansion and modernization of capacity began in several of India’s key manufacturing centers in the months prior to the ending of quotas, as some suppliers anticipated the requirements of the post-quota world. For example, in Tirupur – the self-styled “Manchester of India” – manufacturers invested heavily in state-of-the-art machinery from Taiwan, Germany, Japan, Italy, the UK and the U.S., as well as in processing and production facilities.\footnote{V. Sridhar, \textit{Towards New Frontiers}, FRONTLINE, Nov. 6-19, 2004, available at http://www.hinduonnet.com/fline/fl2123/stories/20041119003710500.htm (last visited April 1, 2006). (The recent reliance on more expensive but more efficient and versatile foreign machinery has been a severe blow to domestic Indian manufacturers of apparel machinery. Though Indian machines cost only a fraction of the foreign brands, the imported machines offer productivity levels that are six or seven times greater than the Indian machines. In addition, the foreign machines permit more complicated designs, including computerized jacquards. It is estimated that Indian apparel producers have imported close to 10,000 machines in the past decade. Some observers have stated that Indian machine producers from Ludhiana, which used to dominate the Indian market, are now “finished.”)} In addition, a number of the apparel manufacturers in Tirupur have established vertically integrated manufacturing facilities. The Royal Classic Group, for example, has been operating in Tirupur since 1991, has established contract farms for growing the cotton it will use in its apparel factories, and anticipates expanding cotton production from 2,000 to 8,000 acres.\footnote{Id.} Additionally, Royal Classic has established its own spinning plant.\footnote{Id.} The Tirupur Exporters Association opened the Netaji Apparel Park, India’s first dedicated apparel park, spread over 180 acres off highway 47, where it was hoped that over 50 companies would build facilities.\footnote{T. Surendar, \textit{Textiles: The Big Factories Are Coming}, BUSINESSWORLD, Nov. 15, 2004, available at http://www.businessworldindia.com/nov1504/index.asp (last visited April 1, 2006).} In Bangalore, big textile companies like the Ahmedabad-based Arvind Mills and the Mumbai-based Raymond, have set up new factories to make and export clothing.\footnote{Id.}

Nevertheless, Indian manufacturers were on the whole extremely cautious to add capacity in anticipation of the end of quotas, and were therefore

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\item \footnote{Prystay, \textit{supra} note 195.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id.}
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\item \footnote{Id.}
\end{itemize}
not in a position to take full advantage of the ending of the MFA quota-regime in early 2005. Manufacturers point to restrictive labor laws to explain their initially overly-cautious reluctance to add capacity. In particular, they complain, they are forbidden under Indian labor law from hiring contract labor, and once employees are hired it is “almost impossible to fire” them. Additionally, laws designed to guarantee stable employment to India’s workers, make the closure of unwanted factories extraordinarily difficult. Many manufacturers, like Chennai-based Harbinger Singh, managing director of Roverco Apparel Ltd., delayed expanding his facilities and hiring more workers, out of concern that if he added capacity and the quota-system was extended or the anticipated boom did not materialize, he would have been left with unwanted factories he could not close and workers he could not fire. When the MFA quota system did indeed expire, and the increase in orders materialized, Singh and others scrambled to “play catch-up” and add capacity. Singh, for example, built two new factories, which opened in June 2005. Arvind Singhar, a textile industry consultant for KSA Technopak, a New Delhi textile-consulting firm, has estimated that Indian companies will invest upwards of US$5 billion in capacity in 2006-2007. In the meantime, EU and U.S. buyers have been told to wait months to place and receive their orders. Undoubtedly, many simply turned to China. As Indian manufacturers gradually ramped-up production by mid to late 2005, exports to the U.S. and EU improved markedly. In the first seven months of 2005, Indian exports to those markets increased 29 percent compared to the same period in 2004, to US$4.9 billion. Nevertheless, there is a sense that India, unlike China, missed a golden opportunity because of its failure to position itself properly to take full advantage of the end of quotas.

Aside from inflexible labor laws and a conservative and cautious investment profile amongst its manufacturers, several other hurdles remain for India to become and remain competitive with China. The size of India’s new factories, though much larger than the traditional facilities, are still much smaller than those in China. Even the biggest companies like Raymond and

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216 Prystay, supra note 195.
217 Id.
219 Prystay, supra note 195.
220 Id.
221 Id.
222 Id.
223 Prystay, supra note 195.
224 Surendar, supra note 214.
Arvind Mills, for example, are building factories that are just a tenth the size of the newest facilities in China. Gokuldas Images, India’s largest exporter, has 1,000 sewing machines in its largest factory. In comparison, medium-sized factories in China have 2,000 machines, with large factories having 10,000 machines in one location. Productivity is lower in India than in China, whose labor productivity in the garment industry leads the industry.

Indian infrastructure, in sharp contrast with China, is inefficient, poorly maintained, and frequently inadequate. As one observer has noted:

Overseas buyers and domestic suppliers all have their own horror tales of delayed shipments due to the deplorable congestion at Indian ports, the sordid conditions of roads from the manufacturing centres to the shipment points leading to consignments stranded in broken-down vehicles, traffic choke-ups at the numerous collection centres. India lacks a deep-water port, meaning that the largest container ships are unable to dock directly. Instead, “feeder vessels” carry Indian products to be transferred to a “mother ship” in some other port. Loading ships in Indian ports can take from eight days to several weeks. Moreover, goods are required to be at Indian ports seven days prior to shipment. As Kaushik Basu has noted, “In most East Asian ports the cut-off is [only] one day.” Indian ports are small and hampered by bureaucratic and logistical delays. Typically, for a product to travel from factory in India to retail outlet in New York takes around 30 days. Most East Asian countries take half that time.

225 Id.
226 Id.
227 Id.
228 Id.
230 Basu, supra note 3.
231 Id.
232 Madhukar, supra note 199.
233 Basu, supra note 3.
234 Id.
235 Id.
236 Id.
December 2004, Ratna Rao, a Delhi-based buying agent for the garment industry in the U.S. and the EU, expressed frustration with the failure of the Indian Government to anticipate necessary logistical improvements:

The government hasn’t done any clear planning. Have we increased our facilities to take extra cargo?...Currently, there’s always a backlog. We need to up-grade port facilities, we need to up-grade our airports. This entire logistics position has not been looked into. China has had the foresight to look at these issues, but not India. 237

Nevertheless, India has several advantages that may help it to remain competitive. First, as a major producer of cotton, it can offer reduced shipment costs to buyers; second, Indian exporters are finally expanding and up-grading their manufacturing capacities in order to avail itself of economies of scale; third, India offers plentiful and cheap labor; and fourth, India offers a stable second source of supply to those foreign buyers who are concerned about over-relying on China (so-called “geographical derisking” or diversification). 238

India, it has been noted, offers the advantage of a stable democratic government and a highly developed fashion industry. 239 Moreover, the agreements between China and the EU and the U.S. at the end of 2005 to cap export growth may buy Indian companies time to build capacity. Indeed, the new caps on Chinese exports are, to some observers, “a godsend for India.” 240

Indian labor activists remain profoundly concerned about the consequences of the changing face of the Indian apparel and textile industries, and in particular the decline of small-scale producers. 241 There is a belief that employer demands for increased global competitiveness will be used as an excuse to drive down wages, undermine job security, and repeal laws
guaranteeing worker and union rights. There have been demands by employers, for example, that work stoppages and strikes be banned and that 12-hour workdays without overtime should be permitted. The CPIML, an Indian trade union, has warned that:

The future of independent fabricators is at the mercy of the people who control the assembly line production... A new breed of monopoly traders come to control the entire industry with their large capital and the rest of us are at their mercy. This new breed cares for nothing but super profits. There are also demands to keep the role of state intervention at its minimum so that the market that is under the complete command of the monopoly capital can call the shots.

China:

Ira Kalish has noted that “China casts a giant shadow.” It is very much the 800-pound gorilla of the global trade in textiles and garments. In 1990, China accounted for 9% of global apparel exports; by 2002, this share had risen to 20.6%. Similarly, in 1990, China accounted for 6.9% of the global exports in textiles; but by 2002 its share had increased to 13.5%. No other country accounted for more than 5% of the global trade in 2002. In contrast to the rise of China, between 1990 and 2002, the global share of textile and

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242 Shankar, supra note 209.
243 Id.
244 Id.
245 Kalish, supra note 20, at 2. Since beginning the reforms started in the late 1970’s, which have included the restructuring of the economy and resulting efficiency gains, China has averaged 9.4 percent annual GDP growth. In 1978, China accounted for less than one percent of the world economy, and its foreign trade amounted to US$20.6 billion. By 2005, China accounted for four percent of the world economy, with foreign trade worth US$851 billion, the third-largest national total. Zheng Bijian, China's "Peaceful Rise" to Great-Power Status, Foreign Affairs (Sept./Oct. 2005) at http://foreignaffairs.org/20050901faessay84502/zheng-bijian/china-s-peaceful-rise-to-great-power-status.html. (last visited April 26, 2006) China's industrial growth rate was estimated at 27.7 percent in 2005. Measured on a purchasing power parity (PPP) basis, China in 2005 was the second-largest economy in the world after the U.S. CIA, THE WORLD FACT BOOK, CHINA at http://www.odci.gov/cia/publications/factbook/geos/ch.html (last visited April 25, 2006).
246 Id. at 1.
247 Kalish, supra note 20, at 1.
248 Id.
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apparel exports from the EU had declined by more than 10%.249

This increase of China’s role in the global trade of textiles and garments has come as the result of massive investment in modern manufacturing capacity which has resulted in very high labor productivity. Combined with relatively low labor costs, the high Chinese productivity has resulted in low unit labor costs.250 In the space of fifteen years, China has achieved extraordinary efficiency as a result of a campaign of capital investment in capacity, the creation of a highly efficient transportation and utility infrastructure, economies of scale, and favorable government regulations including avoiding currency contagion with capital currency controls.251 Even under the more restrictive quota regime, China had become the biggest apparel and textile exporter in the world.252

The Chinese Government has opened large areas near the coast for industrial development, forming giant industrial parks, offering tax benefits, and building infrastructure and transportation networks.253 The degree of vertical integration (fibre-to-yarn-to-fabric-to-garment manufacturing in easy geographic proximity) and economic specialization of these “lump economy” cities is remarkable. Entire cities have been constructed on land which was, until recently, rice fields whose factories produce nothing except one specific type of clothing for export.254 The city of Datang, in the Yangtze River Delta of coastal China, for example, had been a small town of barely 1,000 people in the late 1970’s.255 Today, it is known to buyers around the world as “Sock City,” whose factories produce an astonishing nine billion pairs of socks a year.256 Over 100,000 buyers from around the world place sock orders in Datang annually.257 The Yangtze River Delta has several giant specialty cities, such

249 Id.
250 Id.
251 Id.
252 Kalish, supra note 20, at 2. Despite China’s rapid expansion of productivity and manufacturing capacity during the 1990’s, its exports were limited by the system of quotas. China’s share of the U.S. apparel market, for example, remained steady, with its share increasing only from 15% of U.S. apparel imports in 1995, to 16% in 2002. China’s share of E.U. apparel imports rose somewhat more rapidly, from 14% in 1995 to 20% in 2002. The growth in China’s share of the global trade occurred in exports to other important markets. From 1995-2002, for example, China’s share of Japan’s apparel imports rose from 59.1% to 77.5%, in part as Japanese retailers showed willingness to purchase apparel from China. Kalish, supra note 20 at 2-3.
254 Id.
255 Id.
256 Id.
257 Id.
“International Necktie City,” “Sweater City,” “Knit Clothing City,” and “Underwear City,” whose factories can accommodate even the largest of orders. Quite simply, with such vast economies of scale, and with billions of dollars invested in new facilities, modern manufacturing equipment, infrastructure, transportation, port facilities, and supporting industries, China has become the world’s “garment behemoth.”

China has benefited from a vast untapped labor force and low wages—"averaging from 15 to 86 cents an hour in the garment industry, by various estimates." Chinese manufacturers have also undoubtedly benefited from the governmental suppression of independent trade unions and the system of internal passports that deprives migrant workers, who form the majority of the export-manufacturing labor force, of many basic rights. An AFL-CIO trade petition, prepared by Mark Barenberg of Columbia University Law School, argues that "repression of workers' rights lowers Chinese wages by 47 to 86 percent." The China Business Review has noted that

[i]n practice...the rights of Chinese workers are routinely violated. Workers are often required to work far more than 40 hours a week, have few days off, are paid below the minimum wage, and are not paid required overtime. Improper deductions from wages are common...Physical abuse of workers, and dangerous working conditions, are also common.

China's regime suppresses any attempt at collective bargaining by free trade unions, while subjecting migrant workers to a system in which they have no bargaining power as individuals. It has been estimated that if labor rights

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258 Barboza, supra note 253.
259 Id.
260 David Moberg, Trading Down, THE NATION, Jan. 10, 2005, available at http://www.thenation.com/doc/20050110/moberg (last visited April 1, 2006). The current labor force in China is estimated to be 791 million, with approximately half employed in agriculture and the rest largely divided between the industrial and service sectors. The CIA has estimated that from 100 to 150 million surplus rural workers are adrift between the villages and the cities, many subsisting through part-time, low-paying jobs. CIA, THE WORLD FACT BOOK, CHINA at http://www.odci.gov/cia/publications/factbook/geos/ch.html (last visited April 26, 2006). China's population, currently believed to be 1.3 billion, is anticipated to rise to 1.5 billion by 2030. Bijian, supra note 245.
261 Id.
262 Id.
were enforced in China, manufacturing costs would rise between ten and seventy-seven percent. In contrast, the official position of the Chinese Government has been to stress the positive economic benefits of the rise of Chinese manufacturing. Zhang Dejiang, a member of the Central Committee of the Communist Party of China, for example, has noted that in the province of Guangdong alone, 400 million Chinese have been raised to middle-class status in the last two decades, ushering in the biggest social and economic transformation in modern times.

China offers manufacturers the significant advantage of being able to offer all stages of production (harvesting raw materials, weaving, textile manufacture, dyeing, processing, cutting, sewing and knitting, packaging, and distribution), combined with staggering economies of scale, high productivity and low unit cost. Given the all too obvious competitive advantage held by China over most other producing nations, it is not surprising that prior to January 1, 2005, many textile and garment companies were actively building new production capacity in anticipation of the post MFA quota era. In 2003, for example, foreign direct investment in China’s textile and garment industry was US$4.4 billion. Taiwanese investment in China’s garment and textile sector rose 261% from 2000 to 2002. It is generally expected that the freer trade system promised with the elimination of the MFA quotas and the integration of textiles and garments into the regular GATT system, will facilitate a substantial increase in the importance of China.

Niall Ferguson, the Laurence A. Tisch professor of history at Harvard University, has urged Western nations to “wake up and smell the green tea.” “China has,” he suggests, “the most dynamic economy in the world and quite possibly in all history.” European Union finance leaders, Ferguson suggests, complacently assume that the E.U.’s economic strength relative to China is not in question. In fact, he argues, Europe is threatened with becoming the “sick man” of the developed world, whose world influence is further hindered by a weak military capacity and a lack of significant energy reserves.

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266 Id.
267 Id.
268 Id.
269 Id.
271 Id.
272 Id.
Though Ferguson’s premise of the complacent decline of the EU may be premature, his comments about the formidable growth of the Chinese economy have merit. Frank Verrastro, an energy specialist at the Center for Strategic and International Studies in Washington and a former White House advisor, has argued that, taking into account Asia’s economic expansion, population growth, and increased diplomatic influence, “I don’t see how you can get away from the theory that the center of the world is moving east.” Singaporean Foreign Minister George Yeo Yong Boon has echoed this sentiment: “If we don’t go mad and start to fight each other, then I believe the center of gravity of world civilization will shift to Asia during this century.”

In September 2005, the U.S. trade deficit swelled to US$66.1 billion, representing an 11.4% increase from the previous month, in part driven by an oil price hike after Hurricane Katrina, and a labor dispute at Boeing Co. Nevertheless, the politically-sensitive trade deficit with China continued its upward movement, and reached an all-time high of US$20.1 billion in September 2005. In October 2005, China reported a trade surplus of US$12 billion. In February 2006, the U.S. Department of Commerce reported that the U.S. trade deficit in goods and services reached a record level of US$726 billion in 2005, an 18 percent increase over 2004, while the U.S. merchandise deficit alone, which excludes services, was US$782 billion in 2005, also an 18 percent increase. China’s trade surplus with the U.S. increased 24.5% to a record US$202 billion. U.S. politicians and business lobby groups have accused China of gaining a trade advantage by keeping its currency artificially weak. 

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273 Marshall, supra note 192, at A18.
274 Id.
275 Reuters, Trade Gap Grows to $66 Billion as Exports Fall, Oil Prices Rise, L.A. TIMES, Nov. 11, 2005 at C3.
276 Id.
277 Id.
279 Id.
280 “Sen. Charles Schumer, D-N.Y., and Sen. Lindsey Graham, R-S.C. have threatened legislation that would impose tariffs of 27.5 percent on Chinese exports unless Beijing agrees to dramatically raise the value of its currency...[and] Sen. Max Baucus, D-Mont., a top ranking Democrat on the Senate Finance Committee, warned...that Congress would pass legislation to punish Beijing unless China worked to end the trade imbalance and further revalue its currency.” Donna Borak, China's Reserves Rise, Cause of U.S. Worry, UNITED PRESS INT’L, Jan. 16, 2006, at http://www.upi.com/InternationalIntelligence/view.php?StoryID=20060116-041130-4588r. (last
China currently holds more than $260 billion in U.S. Treasury bonds, and its heavy investment in the U.S. national debt is an important component of America's ability to fund a record trade deficit during a period of virtually non-existent U.S. domestic savings. China now has an estimated US$818.9 billion in currency reserves, and added $50 billion in reserves in just the last quarter of 2005. Indeed, China is expected to accumulate more than $1,000 billion in currency reserves by the end of 2006, becoming the world's largest holder of foreign currency. China's world trade surplus reached US$102 billion last year, capping an average growth rate of 9.9 percent between 1993 and 2004.

How the government in Beijing is choosing to spend its new-found wealth is also causing concern in the West. Beijing is, for example, currently investing heavily in a controversial program of military modernization presumably intended to buttress China's ability to assert itself in international diplomacy and project China's power and prestige regionally. During an October 2005 visit to Beijing, U.S. Defense Secretary Rumsfeld bluntly warned that Beijing's decision to quickly modernize its military arsenal is cause for concern: "As you know, it raises some questions about whether China will make the right choices — choices that will serve the world's interests in regional peace and stability."

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281 Reuters, supra note 275.


284 Id.

285 Id.

286 Mark Mazzetti, Rumsfeld Urges New Political Direction for China, L.A. TIMES, Oct. 19, 2005, at A3. (The enormous investment made by Beijing in China's military capacity - the scale of which has been made possible by the success of China's participation in the global economy - has provoked particular concern in Washington. In a July 2005 report, the Pentagon suggested that China may be spending $90 billion a year on its military budget, three times the amount officially acknowledged by Beijing. This estimate is disputed by Beijing. Nevertheless, China's military spending could have profound regional consequences. The Pentagon report concluded that China may pose "a credible threat to modern militaries operating in the region ... [and that Beijing] may be tempted to resort to force or coercion more quickly to press diplomatic advantage, advance security interests, or resolve disputes.") While the dispute between mainland China and Taiwan provides one deeply troubling scenario for a potential U.S.-China military confrontation, the greatly
During his October 2005 Beijing trip, Secretary Rumsfeld echoed themes previously articulated by the Bush administration: that China must become more democratic and politically open; it must abide by accepted norms of the largely free-market, democratic international economic system that has facilitated its growth; and it must play a bigger role in combating international terrorism, nuclear proliferation, disease and other threats to global stability. Rumsfeld specifically warned that China's long-term economic growth could depend on that nation's willingness to accept greater democracy: "China's future prosperity, and to some degree the future of other nations' attitudes [about China], may well depend on internal events [within China]. What is clear is that the United States is no longer the sole power that many nations look to for trade and protection.

CONCLUSIONS:

Clearly, as USAID has concluded, "the garment sourcing wars are in full swing and will remain unsettled for some time." What perhaps is most surprising is that what is occurring globally can indeed properly be described as a war rather than merely a rout. Developing countries have not been swept from the field (at least not yet), and indeed have secured some victories. It remains to be seen, however, whether they can win the war, or whether their successes will be no more than temporary holding actions during an inevitable retreat in the face of overwhelming odds. With current uncertainties associated with China's supply because of the potential reintroduction of safeguards by the U.S. and the EU, buyers will likely continue to hedge their bets by continuing to diversify their sourcing. This has undoubtedly created breathing space for developing countries, and has somewhat tempered the potentially devastating impact of the end of MFA quotas on those countries. However, the safeguards are temporary and cannot last indefinitely. The question for producers throughout the developing world is whether they can be cost-competitive when the safeguards are finally lifted.

Cambodia offers one possible model for producing nations searching for ways to protect their fledgling apparel industries from Chinese competition.

expanded military capacity of China patently challenges the automatic assumption of American military supremacy in the Pacific that has survived largely unquestioned since the end of the Second World War.

Mazzetti, supra note 286.

Id.


USAID Report, supra note 56, at 7.
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Cambodia, though undoubtedly a cheap place to produce apparel, has chosen to foster an image as a “sweatshop-free” producer rather than simply drive down wages and costs in an attempt to remain cost-competitive with China. The Cambodian Government has decided instead to continue a program of independent factory monitoring carried out by the ILO, which appears to have genuinely improved factory conditions and labor compliance. Though Cambodia still faces enormous problems associated with corruption and bureaucratic inefficiency, foreign buyers appear to have responded well to Cambodia’s attempts to improve labor and factory conditions. The higher labor standards offered by Cambodian producers, it appears, is attractive to Western buyers sensitive to accusations that their products are manufactured in sweatshop conditions. Indeed, Cambodia appears to have directly benefited from media reports of poor labor standards elsewhere, and its reputation as a safe-haven for fair labor standards has attracted international retailers concerned about consumer backlash. Whether the Cambodian model will remain merely a niche for a tiny portion of producing countries, however, remains to be seen.

In today’s global economy, international corporate mega-buyers like Wal-Mart are largely turning to those manufacturing nations able to undercut their competitors.291 The vulnerability of developing nations to decisions made by corporate boards tens of thousands of miles away, and the very real possibility that production will shortly concentrate in a tiny handful of producing nations, suggests that global free trade alone may not offer the path to widespread global development once anticipated, and that, rather, free trade leads to growth but maldistribution. The international marketplace is increasingly dominated by companies seeking little beyond lowering production

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291 See Ted C. Fishman, How China Will Change Your Business, INC. MAGAZINE, March 2005, available at http://www.inc.com/magazine/20050301/china.html (last visited April 1, 2006)(“[N]o company has been a bigger catalyst in pushing manufacturers to China,” or to embracing the potential of large-scale manufacturing in China than Wal-Mart. “In 2003, Wal-Mart purchased $15 billion worth of goods from Chinese suppliers.” Wal-Mart accounts for 10-13 percent of all Chinese exports to the U.S. More than 80 percent of Wal-Mart’s worldwide suppliers are in China.); See Rosen The Wal-Mart Effect: The World Trade Organization and the Race to the Bottom, supra note 5, at 273, (“Over the past decade, the symbiotic relationship between Wal-Mart and China has become one of the most significant in the retail industry ... The company uses its power to drive down prices among American suppliers, which are often encouraged to relocate to China as a method of reducing wages and pricing.”); See also, Pete Engardio and Dexter Roberts, The China Price, BUSINESSWEEK, Dec. 6, 2004, at 102 available at http://businessweek.com/magazine/content/04_49/b3911401.htm (last visited April 1, 2006) (Stating it is China’s willingness to please big retailers, and they are “better suppliers” is the reason many big retailers like Wal-Mart have deals with Chinese manufacturing); and Jian Jingjing, Wal-Mart’s China Inventory to Hit US $18b This Year, CHINA DAILY, Nov. 29 2004, available at http://www.chinadaily.com.cn/english/doc/2004-11/29/content_395728.htm (last visited April 1, 2006).
costs and with little interest in the social and political consequences of their corporate decisions. Though nation states and international bodies may have reason to address issues of global poverty and economic dislocation, most corporate boards have little reason to do so. And yet it is these corporate boards – who have little stake in the societies or cultures from where they purchase their products – who are making the decisions that directly effect the lives of millions of the world’s poorest workers.

The vulnerability of developing nations to large-scale and rapid market-driven shifts in global production is clear. Yet there may also be a cost to the West. While the shift of production may be interpreted by some observers merely as a natural reward for efficiency, cost-effectiveness, and competitiveness in a liberalized global trade regime, it is not without potentially catastrophic and unanticipated consequences for Western consuming nations. First, and most obviously, the end of quotas seems likely to result in the systematic rise of a handful of super producers: nations able through economies of scale to dominate the global marketplace. It should not be assumed that the United States or EU countries will be among these nations. In the case of China, in particular, there is reason to be concerned that the unprecedented expansion of wealth and manufacturing capacity in that nation will result in the rise of an economic global superpower, with political, fiscal and military implications both regionally and internationally that are hard to predict and which are not necessarily beneficial to the West.292

292 As China becomes an increasingly important and influential participant in the global economy, it has sought to secure access to the raw materials needed to support its continued expansion. China’s oil needs, for example, are expected to double in the next two decades to over 14 million barrels a day. Marshall, supra note 192, at A18. The China National Petroleum Corporation is now involved in forty projects in thirty-two countries. See Vega, supra note 11, at 387 fn. 79. China is actively attempting to expand its diplomatic and political influence over nations which can provide the raw materials upon which China is dependent, and is increasingly following a policy of direct investment in infrastructure and energy projects in those nations. Inevitably, this is placing Beijing in competition with Washington for political and economic influence in many regions around the globe, from Central Asia to Africa. China’s influence is even increasingly surfacing in the produce and oil-rich nations of Latin America – long considered America’s “Backyard.” In a late 2004 trip to Argentina, Chile, Cuba and Brazil, Chinese President Hu Jintao promised tens of billions of dollars to improve the region’s infrastructure. Mark Magnier, U.S. Is Watching China’s Latin American Moves” LA TIMES, April 15, 2006, at A14. See also Vega, supra note 11, at 377-378. It has been suggested that the closer political and economic ties between China and Latin America may undermine U.S. ability to secure regional cooperation in initiatives in trade, human rights, antinarcotics, and environmental safeguards – interests simply not shared by Beijing – as Latin American countries feel less need to cooperate with Washington. See Vega, supra note 11, at 377-378. U.S. efforts to promote democratic reform in Central Asia have similarly been undermined by the rising influence of China, including the building of an oil pipeline running thousands of miles from the Kazakh oil fields in the northern Caspian to China. Marshall, supra note 192, at A1.
Beijing’s direct economic influence is extending around the globe, from the Sudan, to Iran, to Latin America, and is often matched by diplomatic campaigns aimed at extending China’s political influence over energy- and raw product-rich nations. These include countries ambivalent - or even actively hostile - towards the Bush administration and content not to be pressed on such issues as human rights, democracy, civil society, and governmental transparency. China has, for example, taken advantage of anti-American hostility in Latin America to further its own influence in the region. China’s economic and political ties with Latin America have increased enormously since 2000. Nearly half of all China’s foreign direct investment goes to Latin America, a figure Chinese officials estimate will reach $100 billion by 2010, while Latin American trade with China grew to $50 billion—a fourfold increase from 2000 to 2005. Magnier at A14. In 2004, Latin America had one of its better economic performances, with much of that growth coming not from trade with the United States but from rapidly expanding sales of raw materials to China, rather than trade with the United States. See Larry Rohter, Bush Faces Tough Times in South America, N.Y. TIMES, Nov. 2, 2005 at A12. Beijing is not just purchasing oil and raw commodities from Latin America, it is becoming actively and directly involved in oil extraction, transportation and infrastructure construction. Brazil is China’s largest trading partner in Latin America, and bilateral trade between them tripled between 2000 and 2004. Vega, supra note 11, at 388. Brazilian exports (primarily oil and soy beans) to China reached US$1.1 billion in the first quarter of 2004, with expectations that the trade could reach US$10 billion in 2005. Vega, supra note 11, at 388.81-82. Chinese businesses are actively seeking Brazilian partners in economic sectors such as oil and agriculture, and Beijing has discussed directly investing between US$3 billion to US$4 billion in Brazilian transportation, refineries and other infrastructure, including a railway project connecting Brazil to the Pacific ports of Chile. Vega, supra note 11, at 388. In Argentina, China is also seeking to become investment partners in the infrastructure and transportation sector. Vega, supra note 11, at 388. Argentine President, Nestor Kirchner, and Chinese President, Hu Jintao, signed an agreement on June 28, 2004, under which China will begin investing in joint projects in Argentina, including a railway construction project, and Argentina will begin exporting citrus crops to China. Vega, supra note 11, at 388. China and Chile have entered into trade agreements permitting export to China of Chile’s citrus harvest. Chile, China Review Joint FTA Economic Study Progress, LATIN AM. NEWS DIG., June 4, 2004. Even in Mexico, whose factories have been hit hard by Chinese manufacturing competition, the government has decided to increase its production of oil specifically to satisfy China’s demand. Vega, supra note 11, at 388. “China has also indicated interest in [direct investment of US] $3 billion in Ecuador, primarily in its oil sector.” Vega, supra note 11, at 388. In Nicaragua, with the construction of a canal; and in Guyana, which now enjoys bilateral economic and technical cooperation with China. Vega, supra note 11, at 389. Venezuela poses a particular headache for the U.S., as its leftist president, Hugo Chavez, has actively pursued policies built upon a foundation of popular anti-Americanism and a deep-seated distrust of Washington. Venezuela’s Foreign Minister, met with managers of China National Petroleum Corporation...in order to establish a strategic alliance over the exploration, transformation and transportation of crude oil, including modernizing and upgrading necessary infrastructure. Vega, supra note 11, at 389. The growing influence of China in Latin America is of significance. The failure of the U.S. to maintain its hegemony in the region, combined with growing links between Latin American governments and Beijing, might suggest that the U.S. is losing influence even within the region long known as “America’s back-yard.” See Richard E. Friedman, Letter From the Publisher, NAT’L STRATEGY F. REV., Fall 2004, at 4, available at http://www.nationalstrategy.com/Fall%202004.pdf (last visited April 1, 2006). The rise of China in Latin America may ultimately threaten the ability of the U.S. to guarantee its future access to Latin American oil reserves, a matter of national security and of profound economic consequence. Vega, supra note 11 at 391. Washington is described as
As Tyler Marshall of the Los Angeles Times has noted:

As the Bush administration struggles to combat the threat of international terrorism, a far quieter force is challenging America’s global influence: the growing economic clout of Asia. Increasingly, other nations have become captivated by the reality, and the potential, of fast developing commercial ties with the East. Suddenly, America is no longer the only guarantor of their economic viability or their political protector of choice.293

The shift of production may have other largely unanticipated consequences. The Western search for ever-cheaper sources of production may suggest to many that Westerners view the developing world as little more than a readily exploitable source of cheap labor. At this moment in history, when Western political, economic and democratic values are confronted by an increasingly violent anti-Western and Anti-American world view, a perception that Westerners have no interest in the often appalling consequences of their search for ever-cheaper consumer products, cannot best serve Western security or political interests. Put simply, anti-Western resentment, coupled with extreme poverty and social injustice, will fuel instability, anger and violence. At the very least, consuming nations should act to ameliorate the worst consequences of sudden shifts in global production. Given the vital importance of international economic stability, Western states should pursue trade agreements intended to limit extreme national or regional shifts in production of the sort we may currently be witnessing in garment and textile manufacturing, and to set a floor for the market with reference to international labor standards. In that way, Western nations can transform their image from one of self-centered consumer-driven indifference, to one of concerned partner with the world’s poorest and most vulnerable nations.

increasingly “attentive” to China’s military-related activities in Latin America which, as Army Gen. Bantz J. Craddock told a Senate Armed Services Committee, involve “more and more Chinese non-lethal equipment,” Chinese military missions in nearly 20 Latin American countries, and an increasing number of Latin American military offices receiving training in China. Magnier at A14.