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# Book Review

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# BOOK REVIEW

## LEGAL STRUCTURE OF THE INTERNATIONAL TEXTILE TRADE. Henry R. Zheng. Connecticut, U.S.A.: Quorum Books, 1988. Pp. xi, 228. $45.00.

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The Arrangement Regarding International Trade in Textiles of 1973,[1] or the Multifiber Arrangement (MFA), and its extension protocols embody the complex international regime governing permissible import restrictions for most types of textile products.[2] After a year of negotiations the MFA was recently amended and extended through July 31, 1991. U.S. textile producers decried the final result of these negotiations and described the agreement as "terrible," an

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[1] The Arrangement Regarding International Trade in Textiles, Dec. 20, 1973, 25 U.S.T. 1001, T.I.A.S. No. 7840 [hereinafter Multifiber Arrangement or MFA]; *extended*, Dec. 14, 1977, 29 U.S.T. 2287, T.I.A.S. No. 8939; *extended*, Dec. 22, 1981, — U.S.T. —, T.I.A.S. No. 10,323; *extended*, Jul. 31, 1986, — U.S.T. —, T.I.A.S. No. 10,393, GATT COM TEX/W/183 [hereinafter MFA IV], *reprinted in* COM TEX/42, THE GENERAL AGREEMENT ON TARIFFS AND TRADE: BASIC INSTRUMENTS AND SELECTED DOCUMENTS: THIRTY-THIRD SUPPLEMENT 7 (1987); H. ZHENG, LEGAL STRUCTURE OF THE INTERNATIONAL TEXTILE TRADE apps. 4-7 (1988). The current regime consists of the basic agreement, MFA, plus minor adjustments and modifications as provided in the most recent extension protocol, MFA IV. The participants of the first MFA included Argentina, Australia, Austria, Bangladesh, Brazil, Canada, Colombia, Egypt, El Salvador, the European Community, Finland, Ghana, Guatemala, Haiti, Hungary, India, Israel, Jamaica, Japan, Republic of Korea, Malaysia, Mexico, Nicaragua, Norway, Pakistan, Peru, Philippines, Poland, Portugal (on behalf of Macao), Romania, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom (on behalf of Hong Kong), United States, Uruguay, and Yugoslavia. Nicaragua, Spain, Australia, and Norway did not participate in the second MFA, while Bolivia, Czechoslovakia, the Dominican Republic, and Indonesia became new signatories. Norway and the People's Republic of China joined the third MFA, while Bolivia did not participate. ZHENG, *supra*, at 7-8.

[2] With the most recent extension protocol, the MFA is nearly comprehensive in its coverage. It now applies to cotton, wool, synthetic fibers, silk blend fibers, and vegetable fibers if directly competitive with the foregoing and "in which any or all of those fibers in combination represent either the chief value of the fibers or 50% or more by weight of the products." MFA IV, *supra* note 1, paras. 10 & 24(i)-(ii). Thus the overwhelming bulk of clothing, yarns, and fibers are included. It does not apply to pure silk products. *See* MFA, *supra* note 1, art. 12. Another exception is made for "developing country exports of handloom fabrics of the cottage industry." *Id.* Nor does the MFA apply to "historically traded textiles which were internationally traded in commercially significant quantities prior to 1982, such as bags, sacks, carpetbacking, cordage, luggage, mats, mattings and carpets typically made from fibers such as jute coir, sisal, abaca, maguey and henequen." MFA IV, *supra* note 1, para. 24(iii). This last exception has been construed to apply only to the listed examples and closely analogous products. ZHENG, *supra* note 1, at 44.

"absolute failure," and "meaningless" in providing adequate protection.[3] The U.S. government, on the other hand, characterized the renewed agreement as providing "the maximum possible protection for American textile workers without sacrificing jobs in our healthy export industries or overburdening American consumers,"[4] and claimed that the renewed agreement was worth "billions."[5] In his detailed analysis of both the theory and operation of the current MFA regime, Zheng suggests a third point of view: that the regime is by and large a failure, because it legitimizes high textile import barriers. The MFA regime, he argues, strongly favors the interests of the textile producers in large, net textile-importing states (including the United States), but its operation runs counter to the long term interests of these states as a whole. Zheng's basic thesis is that the MFA constitutes a concession by exporting nations to the protectionist trade policies of more developed states like the United States.[6]

The MFA regime, first and foremost, removes international trade in textiles from the ambit of the General Agreement on Tariffs and Trade (GATT).[7] It legalizes import practices forbidden under GATT within the narrow field of textile imports. The GATT agreement rests upon two basic principles: 1) nondiscrimination and 2) prohibition against quantitative restrictions. Under GATT, tariffs rather than import quotas are used to defend domestic markets.[8] Consequently, GATT forbids quantitative import restrictions (*i.e.*, quotas). Under Article XIX of GATT, however, an importing country may impose import quotas against a particular product upon a showing of "serious injury to domestic producers" or threat thereof.[9] In evaluating the seriousness of injury, mere proposed injurious increases are not sufficient. Price differentiation between imports and similar domestically produced goods is not considered. Furthermore, under Article XIX injurious increases must have been unforeseen to be a factor in determining "serious injury."[10] Quotas under GATT are to be imposed only "to the extent and for such time

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[3] Ericson & Dearden, *Industry Rips New Textile Pact*, J. Com. & Com., Aug. 4, 1986, at A1, col. 1.

[4] ZHENG, *supra* note 1, at 121.

[5] Ericson & Dearden, *supra* note 3, at A1. col. 1.

[6] ZHENG, *supra* note 1, at 9-13.

[7] General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT].

[8] Under GATT, "no prohibitions other than duties, taxes, or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained (against imports). . . ." *Id.*, art. XI. Under Article I of GATT, "any advantage, favour, privilege, or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties." *Id.*, art. I.

[9] *Id.*, art. XIX.

[10] ZHENG, *supra* note 1, at 104.

as may be necessary to prevent or remedy such injury."[11] If initiated, quotas must be applied on a nondiscriminatory basis against all exporting countries.[12] Thus, under GATT, if the United States wished to impose a quota on wool imports against New Zealand, it would also have to do so against all other nations from which it imports wool, regardless of its desire not to offend other exporting nations, and regardless of whether or not imports from that source posed any threat to the domestic economy. The MFA regime arose, Zheng contends, because of the historical tendency of all nations to be particularly defensive of their domestic textile markets. The unusually high degree of political clout wielded by domestic textile interests forced developed states, in particular the United States, to seek an alternative arrangement under which domestic textile interests could be placated without disrupting the GATT framework.[13]

The MFA comprises such an arrangement. The MFA regime, Zheng contends, allows for the imposition of more stringent import restrictions under a less demanding standard than GATT. The heart of the MFA is found in Articles 3 and 4 of the agreement. These two articles are often referred to collectively as the "safeguard" mechanism.[14] Article 4 of the MFA authorizes the negotiation of bilateral restraint agreements to prevent "real risks of market disruption."[15] Article 3 further allows the use of unilateral, source-discriminatory import quotas if "market disruption" occurs.[16] Under the MFA, assuming all criteria were met, the United States could, if it wished, impose an import quota only against textiles of New Zealand origin while maintaining no barriers against similar imports from other sources. The MFA further derogates from GATT principles in that it eliminates the right of exporting countries to obtain compensation for damage caused by import quotas as authorized by Article XIX, paragraph 3 of GATT.[17]

The MFA provides a lengthy list of factors to consider in evaluating whether "damage" to a domestic producer is so serious as to rise to the level of a "market disruption";[18] what suffices in the end, however, is left undefined. These factors include turnover, market

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[11] *Id.* at 106 (quoting GATT, *supra* note 7, art. XIX, para. 1).

[12] *Id.* at 107.

[13] *Id.* at 2-5.

[14] *See id.* at 27.

[15] MFA, *supra* note 1, art. 4.

[16] *Id.*, art. 3, para. 5(i). It should be noted, however, that an importing country must first "seek consultations" with the exporting country. *Id.*, para. 3. Further, the importing country may not "decline to accept imports" from the exporting country unless the countries fail to reach an agreement within sixty days of the date of the request for consultations. *Id.*, para. 5(i).

[17] ZHENG, *supra* note 1, at 9.

[18] MFA, *supra* note 1, Annex A, para. 1. "The determination of market disruption . . . shall be based on the existence of serious damage to domestic producers or actual threat thereof." *Id.*

share of the importer, profits, employment, volume of disruptive and other imports, investment, production, utilization of capacity, and productivity.[19] The MFA gives little guidance on how to utilize these factors to determine "market disruption." Standards like "real risk" and "disruption," Zheng argues, defy efforts at quantification.[20] Article 5 of the MFA suggests only that the agreement should be administered "in a flexible and equitable manner."[21] The proviso which requires that "due account" be given to the stage of development of the exporting country, the importance of its textile trade to its economy, its employment situation, the overall balance of trade in textiles, and the balance of trade in textiles between the two countries concerned does little to add clarity.[22]

The current regime requires that "due consideration" be given to price and volume of imports.[23] Annex B to the original MFA text makes plain that the MFA is only concerned with damage caused by changes in import volume and price.[24] As to volume, there must be a "sharp or substantial increase or imminent increase."[25] Further, the increase in volume must be "a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries."[26] As to price, import prices must be "substantially below those prevailing for similar goods of comparable quality in the market of the importing country"[27] to justify import restrictions. "Substantially below" is ordinarily understood to mean "quite out of line with the normal prices prevailing on the market."[28] However, according to Zheng, even the definitions of applicable MFA standards are frustratingly vague and formless.[29]

In practice, Zheng contends, the lack of an adequate, quantifiable definition for MFA standards has led to widespread abuse. It has allowed powerful importing states to simply give whatever meaning they see fit to these standards, thus cloaking their protectionist impulses with an air of legality. Many developed states, Zheng argues, simply treat imports with sufficient domestic opposition as inherently "disruptive."[30] For example, the current U.S. practice is to presume market disruption and "trigger" quota consultations under

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19 *Id.*
20 *See* ZHENG, *supra* note 1, at 27.
21 MFA, *supra* note 1, art. 5.
22 ZHENG, *supra* note 1, at 22.
23 MFA IV, *supra* note 1, para. 7.
24 ZHENG, *supra* note 1, at 20.
25 MFA, *supra* note 1, Annex A, para. II(i).
26 *Id.*
27 *Id.*
28 ZHENG, *supra* note 1, at 20-21.
29 *See id.* at 26-27.
30 *See id.* at 22-25.

the MFA if the total growth in imports in a product is more than thirty percent in the most recent year; or if the ratio of total imports to domestic production of that product was twenty percent or more, and imports from that individual supplier account for one percent or more of total U.S. production of that product.[31]

Other procedural protections are similarly vague and full of loopholes. For example, Article 3 restrictions are limited in their duration to two years, but no provision blocks an importer from simply imposing "new" unilateral restrictions at the end of this period, without an obligation to increase the quota level.[32] Thus, unlike GATT, MFA restrictions may be, as a practical matter, of indefinite duration.[33]

Zheng points out that the provisions of Article 4 need not be abused to work disproportionately in favor of developed importing states. Although Article 4 suggests that such negotiations are proper only in cases of "real risk" of market disruption, the current regime gives no guidance as to the interpretation of this standard.[34] Its broad authorization of negotiated quota agreements thrusts the determination of proper quota levels into the political arena.[35] Economically powerful states (usually importers) have more bargaining leverage due to superior alternatives. The alternative to negotiation, Zheng points out, is the imposition of unilateral restraints by the importing countries. Powerful importers can afford to refuse to negotiate, impose unilateral restrictions, and then withstand any retaliation. This disparity of bargaining power has in practice led to "consultation clauses," wherein the exporter "consents" to the imposition of unilateral restraints under specified circumstances favorable to the importer.[36] Because these agreements are negotiated, the procedural limits (such as they are) of Article 3 do not apply.[37] Zheng concludes that in practice any difference between

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[31] *Id.* at 24. Zheng is highly critical of this practice, primarily on the grounds that it expressly ignores the many mitigating factors that should be considered in analyzing market disruption. He also asserts the "trigger" mechanism has resulted in increased trade restrictions. *Id.* at 25.

Is such a "fast and loose" interpretation of the MFA by the executive lawful? In American Ass'n of Exporters and Importers-Textile and Apparel Group (AAEI-TAG) v. United States, 751 F.2d 1239 (D.C. Cir. 1985), the D.C. Circuit held the question of MFA implementation nonjusticiable. A good analysis of this case appears at Note, *United States Trade Policy in Textiles and Apparel: Does the Multifiber Arrangement Have a Future?*, 19 GEO. WASH. J. INT'L L. & ECON. 541 (1985). The author of this note agrees with Zheng's conclusion that the U.S. trigger mechanism is nothing more than a blatant protectionist deviation from MFA principles. *See id.* at 569.

[32] ZHENG, *supra* note 1, at 30-31.

[33] *See id.*

[34] *Id.* at 32-33.

[35] *Id.*

[36] *Id.* at 35-36.

[37] *Id.* at 36.

negotiated and unilateral restrictions is of little consequence.[38] Both are effective tools by which strong importing states effectuate protectionist trade policy, at the expense of exporters.

In exchange for this broad licensing of import quotas exporting states receive little consideration. Annex B of the MFA purports to impose quantitative limits on permissible quota levels. In a complex scheme of qualifications and exceptions, the MFA ordinarily bars the tightening of previously established quota levels and requires that a "growth rate" of six percent be maintained if restrictions are to be in place for more than twelve months.[39] Further, the MFA requires that newly imposed restrictions must allow for a volume not less than the actual volume during the "twelve month period terminating two months or, where data are not available, three months preceding the month" in which quota negotiations begin.[40] Finally, if the importing state has imposed restrictions against a number of related types of textile imports, it has a duty to allow a certain amount of overflow (or "swing") if some quotas are underused.[41]

Zheng contends that even these modest concessions to exporting states are ineffective in practice. Each limitation is eaten through with loopholes and vaguely worded exceptions allowing importers to once again dictate the rules of the game. The growth rate requirement need not be adhered to if there exist "clear grounds" for finding that "market disruption" will recur if the growth rate is implemented.[42] A lower positive growth rate may then be imposed after consultation.[43] Developed importers are frequently able to craft such an argument given the vagueness of the "market disruption" standard. The United States, for example, has determined that a permanent state of market disruption is threatened by wool imports and has imposed a one percent growth rate on all wool imports.[44] "Swing" provisions are often flatly ignored by developed importing states by negotiating bilateral agreements with no mention of "swing" rights.[45]

Other MFA concessions to exporter states are similarly easy to circumvent. Paragraph thirteen of the most recent extension protocol mandates more favorable quota terms for developing cotton exporters.[46] However, an escape clause allows an importer, in setting quota limits, to take into account "the degree of vulnerability of the industrial sectors concerned in the importing country as well as the

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38 *Id.* at 35.
39 MFA, *supra* note 1, Annex B, para. 3.
40 *Id.*, para. 1(a).
41 *Id.*, para. 5.
42 *Id.*, para. 2.
43 ZHENG, *supra* note 1, at 40.
44 *Id.* at 41.
45 *Id.* at 41-42.
46 MFA IV, *supra* note 1, para. 13.

importance of cotton textile exports in the economy of the exporting country concerned."[47] Special consideration is also to be given to wool exporters. This provision too is subject to an exception which swallows the rule; such concessions need only be given to countries "whose economy and textile trade are dependent on the wool sector, whose textile exports consist almost exclusively of wool textiles and clothing, and whose volume of textile trade is comparatively small in the markets of the importing countries."[48] The consensus is that only Uruguay may be eligible to take advantage of this provision, although the United States maintains otherwise.[49] Finally, preferential treatment is to be accorded to "small suppliers, new entrants, and least developed countries."[50] However, the MFA's failure to provide definitions for these terms facilitates circumvention.

The vagueness of the applicable standards exacerbates Zheng's other principal criticism of the MFA regime: its lack of an adequate enforcement mechanism. There is no authority which can effectively compel developed importers to adhere to the letter or spirit of the MFA. The regime is administered under the auspices of the Textile Surveillance Body (TSB), described by Zheng as an "intergovernmental mediation body." Although Zheng lauds the TSB as an effective and procedurally developed mediation body, he is critical of its lack of compulsory authority and inability to impose binding solutions to disputes. Zheng describes the TSB's role in the implementation of the MFA as "passive." It has no power to interfere with the terms of an already reached bilateral agreement. The most that the TSB can do to ensure compliance with the MFA is to lend clarity to the definitions of the applicable standards and bring pressure to bear on violators. Even as to this, Zheng criticizes, the TSB has been ineffective. The TSB has failed to adhere to a rule-oriented approach, tolerating plain deviations from the agreement and even from its own procedural rules. This weakness has been exacerbated by the TSB's failure to reach a consensus on the definition of "market disruption" and the indifference of some importing nations to its requests for justifications of import restrictions.[51]

The TSB attempts to resolve disputes in the last instance by issuing a recommendation as to the proper application of the MFA to a given dispute. Unfortunately, Zheng notes, the TSB can only make recommendations on the basis of a consensus. In practice, it delays taking any action whatsoever until it perceives no chance that a bilateral solution to a dispute will be worked out. Zheng points out that with the United States as a de facto permanent member of the TSB, a

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47 *Id.*, para. 13(d).
48 *Id.*, para. 14.
49 ZHENG, *supra* note 1, at 48-49.
50 MFA IV, *supra* note 1, para. 13.
51 ZHENG, *supra* note 1, at 68-71.

consensus decision contrary to the perceived interests of U.S. domestic producers is virtually impossible. Because each member can veto the issuance of a recommendation, the TSB is, in Zheng's view, largely useless as an enforcement tool.[52]

Enforcement of TSB rulings depends ultimately on the enforcement procedures available under GATT. GATT Article XXIII allows a party to GATT to seek permission to suspend the treaty's application to another party that nullifies or impairs the former's benefits under GATT.[53] The TSB has the power to make recommendations as to the proper course of action, with a TSB recommendation prima facie constituting nullification of a GATT benefit.[54]

According to Zheng, Article XXIII of GATT is itself a phantom remedy. Authority to retaliate has been granted only once in the entire history of GATT, and litigation itself may drag on for a number of years, at the cost of steadily irritating the more powerful textile importer.[55] The weaknesses of Article XXIII cannot be sidestepped since under the most recent MFA extension protocol, retaliation under GATT may not be had until all available mediation measures under the MFA are exhausted.[56] Because this is often a process of years, there is tremendous incentive for importers to drag the proceedings out to the point where the dispute becomes moot. Thus, no true compulsory sanction exists under the MFA regime as to developed importing states, because the effectiveness of its rare sanction ultimately depends upon the relative abilities of the disputants to retaliate. Such a situation favors the more economically powerful developed importing states.

While Zheng displays a noticeable antiprotectionist bias, he does concede that the system has some merit. Noting that the MFA regime is dependent upon being renewed by protocol, Zheng expresses concern as to the possible consequences for GATT should the MFA system collapse. The MFA, he argues, has helped contain the unusually intense political pressures for import restrictions generated by domestic textile industries and thereby helped to insulate GATT from them. Zheng views the textile trade as an area of such potential divisiveness as to threaten the continued viability of GATT should the MFA collapse and textiles return to its ambit.[57] Such a return would not affect the level of protectionist pressures, and subsequent import quotas (illegal under GATT) would undermine the system. Keeping textile disputes out of the GATT framework has, according to Zheng, allowed GATT to function in those areas where developed

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[52] *Id.*
[53] GATT, *supra* note 7, art. XXIII.
[54] ZHENG, *supra* note 1, at 80-82.
[55] *Id.* at 85-88.
[56] MFA IV, *supra* note 1, para. 26.
[57] ZHENG, *supra* note 1, at 111-15.

states have an interest in promoting free trade while at the same time appeasing protectionist interests at home and maintaining some semblance of discipline. The MFA regime, Zheng summarizes, is a pragmatic approach to trade problems in an area in which GATT will not work.[58]

Zheng no doubt believes that the characterization of the MFA regime as an "absolute failure" by U.S. textile interests[59] merits serious consideration. However, his reason is not that the system does not act adequately to protect the interests of U.S. domestic producers. Zheng argues that the MFA regime benefits domestic textile industries only at a greater economic cost to their nations as a whole.[60] Protectionism, he argues, as embodied by the MFA regime is the only thing that has allowed continued domestic textile production by relatively developed states. This argument echoes the traditional liberal approach to free-trade. The textile industry is relatively labor-intensive. It is a " 'take-off' industry in economic modernization."[61] Labor is comparatively cheap in lesser developed countries, allowing textiles to be produced at lower cost. Protectionism interferes with the free flow of international trade and harms domestic consumers by raising the prices of available textile goods and depriving these consumers of the opportunity to buy more cheaply produced (and hence lower priced) textiles. The economic costs, in terms of higher consumer prices, outweigh the economic benefits of maintaining domestic textile employment.[62] At the same time, protectionism encourages economically inefficient production and removes incentives to retool by removing the threat of competition. Absent protectionist trade barriers, Zheng contends, capital in developed countries is more efficiently utilized in less labor intensive, higher technology industry.[63] Zheng further criticizes textile protectionism on the grounds that it damages the foreign exchange ability of exporting countries, and may damage long term strategic objectives of developed countries because it projects "contempt" for international order.[64] Developed nations, he concludes, would fare better in the long-term if the textile industry was permitted to shift overseas to less developed countries.[65]

Zheng ascribes the continued persistence of textile import quotas to the "strong political influence" of the textile industry.[66] He characterizes the textile industry as an established sector of the econ-

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58 *Id.* at 123-27.
59 *See supra* text accompanying note 3.
60 ZHENG, *supra* note 1, at 125.
61 *Id.* at 9.
62 *Id.* at 125.
63 *Id.*
64 *Id.* at 125-26.
65 *Id.* at 9-13.
66 *Id.* at 11.

omy, with a large population base and a high degree of geographic concentration. This concentration facilitates the election of protectionist candidates in a representative democracy. He also suggests that protectionist forces tend to be better funded and more motivated than their opposition, because the impact of adverse legislation will be more acutely felt by their constituents; they will lose their jobs or be put out of business if forced to compete internationally.[67]

Zheng foresees the probable renewal of the MFA in 1991 and with it a further proliferation of textile trade restrictions.[68] He points to both the increasing strength of domestic protectionist lobbies in developed states (particularly in the United States), as well as fragmentation amongst less developed exporting nations as important factors in this prediction.[69] Zheng is not without recommendations as to how to avoid this fate. He urges developing, exporting states to put aside their differences and unify so as to increase their bargaining capability within the MFA framework. Otherwise, Zheng warns, the developed states, with their greater ability to weather a war of trade retaliation, will continue to dictate the rules of international textile trade.[70] He further urges developing countries to stand together and retaliate in a unified fashion against the United States and other developed importers.[71] Failing such a unification of effort, Zheng seems to concede that the unbalanced nature of the textile regime will continue for some time. He sees little prospect for improvement in the structure of the MFA itself, noting that each renewal protocol has progressively favored the developed states.[72] Implicit in these recommendations is one for U.S. textile producers: spend more time considering the formation of an "Organization of Textile Exporting Countries" and less denouncing the current system.[73]

Zheng's work is for the most part a thoughtful and complete analysis of the operation of the MFA in both theory and practice. My principal criticism of Zheng's work is that he oversimplifies the multifaceted problem of protectionism into a simple matter of economic pros and cons. Although he states the case for removal of textile quotas well, he seems to suggest that the long-term solution to the problem of textile quotas is insidiously simple. Developed countries, he implies, only need to realize that it is in their long-term economic interests not to have import restrictions.

Protectionists' principal criticism of international competition in

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67 *See id.*
68 *See id.* at 123.
69 *Id.* at 123-24.
70 *Id.* at 123-27.
71 *Id.* at 126-27.
72 *Id.* at 123.
73 For Zheng's recommendations, see *supra* notes 69-72 and accompanying text.

textiles is that it results in the loss of domestic jobs. Zheng responds to this criticism solely through economic analysis. He merely reiterates his conclusion that textile import quotas raise consumer textile prices and thereby cost the aggregate economy more than the economic value of the jobs saved.[74] Zheng provides only limited empirical support for this assertion by citing to a 1984 Federal Trade Commission report which concluded that a certain class of textile restrictions had preserved an estimated nine thousand jobs, with each job saved costing consumers in the aggregate $34,500 per year.[75] Zheng concludes that import restrictions are therefore economically inefficient and necessarily contrary to the long-term interests of developed states. Are our decision-makers simply in the habit of making economically irrational decisions? Do political decision-makers pass protectionist legislation simply to avoid short-term economic disruption and political backlash? Is the problem that simple?

Zheng's argument skirts the key issue of whether or not the economic damage inflicted on consumers outweighs not just the economic benefit of the jobs saved, but whether it also outweighs the social value of preserving domestic employment. The problem of protectionism extends beyond cold, aggregate economic analysis.

It is plain, in the United States at least, that the economic impact of lost jobs is a major motivating factor behind protectionist legislation. However, when protectionist forces in Congress and the private sector decry the loss of domestic jobs, they do not just assess the net economic impact on the United States as a whole, since unemployment also carries other ramifications. At least within the United States Congress, there is a perception that the fact of employment carries inherent social worth beyond its aggregate economic value. For example, in August of 1986, Congress held a series of debates in an attempt to override President Reagan's veto of the Textile and Apparel Trade Enforcement Act of 1985.[76] One representative asked, "[H]ow long are we going to stand by and watch healthy, able-bodied American workers go on welfare in the name of free trade[?]"[77] Several others warned that communities and families

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[74] *See id.* at 125.

[75] *Id.* (citing Gesse & Lewin, *The Multifibre Arrangement: "Temporary" Protection Run Amuck*, 19 L. & POL'Y INT'L BUS. 51, 158 (1987)).

[76] H.R. 1562, 99th Cong., 1st Sess., 131 CONG. REC. H1275 (daily ed. Mar. 19, 1985). Congress introduced the Textile and Apparel Trade Enforcement Act of 1985 to stimulate the recovery of the U.S. textile industry in conformity with the MFA, by restricting imports of textiles and textile products. *See id.* Under § 5 of the Act, each year's import levels are determined by looking to import levels of previous years and deciding whether the imports come from "major" importing countries. To facilitate compliance with § 5, § 6 provides for an import licensing system requiring a textile importer to present an import permit upon entry. *Id.* The Act was geared towards remedying what some of the more protectionist members of Congress viewed as President Reagan's half-hearted use of the MFA.

[77] 132 CONG. REC. S9097 (daily ed. July 16, 1986) (statement of Sen. Thurmond).

would be "wiped out" if textile barriers were not enforced.[78]

Other protectionist forces cited nationalism as a justification for protectionist barriers. Several Congressmen suggested that not merely jobs were at stake, but "American jobs" were at stake.[79] Others suggested that a strong domestic textile base was necessary to maintain our international prestige.[80] Still others were concerned about the prospect of a significant shift in textile production to overseas concerns. These Congressmen argued that a strong and diversified domestic textile industry was necessary for national security. They asked: if faced with a need for prompt military mobilization, would the United States be able to rely on foreign textile producers?[81]

In short, many authorities do not see protectionism in textiles as a purely economic quandary. Since economic arguments do not address the broad spectrum of motivating factors, prescriptive arguments against protectionism would be more effective if not limited to economic merits alone. Rather, it could be argued that protectionist legislation is deliberately enacted to serve noneconomic goals of surpassing importance, despite the realization that import barriers are economically inefficient. What may be in a country's long-term economic interest may not necessarily equate with its long-term interests across the spectrum of goals.

Other aspects of Zheng's argument also require critical analysis. He ascribes the continued viability of protectionism in Western democracies in part to the geographic concentration of textile laborers. The final vote to override President Reagan's veto of the Textile and Apparel Trade Enforcement Act of 1985 was narrowly defeated, garnering the votes of two hundred and seventy-six Congressmen representing a wide national cross-section, with only one hundred forty-nine voting to uphold the veto.[82] This cuts against Zheng's assertion that protectionist forces derive the bulk of their strength from concentration and organization. Furthermore, a leading poll on the topic of textile protectionism, conducted by the Government Research Corporation and Matthew Greenwald and Associates in June of 1986, showed that seventy-eight percent of the voting population favored textile trade barriers.[83] This evidence would suggest that in

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[78] *E.g.*, 132 *id.* at H5494 (daily ed. Aug. 6, 1986)(statement of Rep. Hendon).

[79] *Id.* at H5520 (statement of Rep. Coble); *see also id.* at H5513 (statement of Rep. Biaggi); *id.* at H5521 (statement of Rep. Rose).

[80] *See, e.g., id.* at H5524 (statement of Rep. Bevill) (foreign nations are "laughing" at our administration's free trade stance). *See also* 132 *id.* at H5483 (daily ed. Aug. 5, 1986)(statement of Rep. Ray).

[81] *See, e.g.*, 132 *id.* at H5527 (daily ed. Aug. 6, 1986)(statement of Rep. Goodling).

[82] *Id.* at H5542.

[83] 132 *id.* at S9097 (daily ed. July 16, 1986); 132 *id.* at E2751 (daily ed. Aug. 6, 1986) (statement of Rep. Studds).

the United States textile protectionism is not solely the result of impetus provided by isolated yet organized production concerns.

The absence of import quotas may not necessarily result in lower prices for domestic textile consumers. There is nothing to stop foreign producers from setting their textile sales prices at a level comparable to U.S. prices. Although competition with domestic producers would curb this practice, note that under Zheng's prescriptive model there would be little, if any, competition from U.S. textile concerns. At least one Congressman echoes these sentiments.[84]

While this work is an enlightening look at both the theory and practice of the MFA, it must be described as largely of scholarly, as opposed to practical, interest.[85] In this light, however, LEGAL STRUCTURE OF THE INTERNATIONAL TEXTILE TRADE is a thoughtful, detailed and useful analysis of the topic.[86]

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[84] *See* 132 *id.* at H5520 (daily ed. Aug. 6, 1986)(statement of Rep. Coble).

[85] Although the author does devote substantial space to discussing the practical application of the MFA, the work is nonetheless largely analytical in nature. Furthermore, in light of his basic conclusion that the MFA "system" is largely a "non-system," it is difficult to see how his analysis, while thought provoking and certainly worth reading, could be of much use to a practicing attorney.

[86] I have two other formal criticisms of this book. First, it is a physical challenge to read. This is not so much a comment on Zheng's style as on the quality of the printing. The book's typesetting is exceptionally poor. The typeface appears to be eight-point, draft quality, dot-matrix computer printout and, in my opinion, not of professional quality. Second, prospective purchasers should take note that the book's price is $45. The book only contains, however, 127 pages of substantive text. An additional 48 pages consist of footnotes, most of which merely cite to the applicable paragraph of the MFA or GATT. Finally, the text of the MFA and all its extensions are set forth in appendices, bringing the page count up to 228.