

TERRITORY OF GUAM

TEXTILE PROTECTIONISH LEGISLATION
FEBRUARY 1987

COMPILED BY: BUREAU OF PLANNING

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TEXTILE PROTECTIONISM LEGISLATION

INTRODUCTION:

Protectionist measures aimed at the textile manufacturing industry have been and most likely will be acted upon by the lawmakers in Washington, D.C. The Democratic leadership of the 100th Congress has identified that the passage of protectionist legislation will be one of its priorities. Guam and the other U.S. territories could be negatively impacted by such protectionist measures as the territories were identified as "foreign" in the 1983 and 1985 proposed textile protectionist legislation. The "foreign" designation will result in Guam receiving less favorable trade treatment than those accorded to Canada, the European Economic Community or the Carribean nations.

BACKGROUND OF PROPOSED LEGISLATIONS:

The 1983 proposed textile protectionist legislation pursued a policy of broad import-relief of global quotas on textile imports. Commerce Secretary Malcolm Baldrige, however, contrary to a previous agreement, threw his support for the textile industry's original demands to impose a new import-licensing system and to tighten the entry of specific products from Hong Kong, Taiwan, and South Korea. The 1983 legislation fell through as opponents negotiated an exemption for smaller low-wage countries from import-tightening and making temporary holds on imports a matter of discretion. A criticism of the 1983 legislation was that it was biased against Asian textile producers and favored European and Carribean textile producers. Proponents of the 1983 textile protectionist legislation were two prominent Republican Senators from textile-producing states: Strom Thurmond of South Carolina and Jesse Helms of North Carolina.

In 1984 the U.S. Customs clamped down on apparel imports due to complaints made by the U.S. textile industry about import quota abuses. The alleged abuses were by producers in Asia, Central America, and the Carribean.

As a result of these complaints, Customs revised its rules to accept under a country's textile quotas only products wholly made in that country or "substantially transformed" from material imported from elsewhere. As a result, retailers have become "Creative Marco Polo's", seeking new suppliers in other countries where apparel exports are just developing and have not been imposed with quotas.

The second major thrust for textile protectionism legislation occurred in 1985. Congressmen from textile-producing states put together an import-quota bill that slashed current import levels, especially for major foreign textile manufacturers such as Hong Kong and South Korea. The 1985 legislation (H.R. 1562 and S. 680) garnered 283 co-sponsors in the House and 53 in the Senate. (While the legislation was passed, it was vetoed by the President and Congress was not able to override the veto). The restrictions contained in the legislation did not apply to the European Economic Community or Canada. In addition, a special dispensation was afforded to Mexico, countries eligible for designation as a beneficiary under the Caribbean Basin Initiative and for countries with a low level of 1984 textile exports to the U.S.

CURRENT STATUS IN THE REGION:

Currently, Guam's textiles are entering the U.S. through a Hong Kong visa waiver. This waiver permits 160,000 dozen sweaters made on Guam to enter the U.S. without counting against Hong Kong's quota. This arrangement is a result of the Multi-Fiber Agreement of 1974 which were renegotiated during July 1985.

The CNMI is currently pursuing legal relief through the Courts arguing that Headnote 3(a) allows for the admission of substantially transformed articles from the territories to the U.S. and thus no quota should be placed. The U.S. Courts of Appeals for the Federal Circuit has held that Head Note 3(a) pertains only to tariffs and has nothing to do with quotas. Moreover, the

Court has held that Congress gave to the Executive Branch the right to establish quotas. As a result of the Court's decision, CNMI is appealing to the Supreme Court. The CNMI has, through its attorneys, requested Guam to join in the suit. It is likely that CNMI will approach Guam on this subject and request our active support. Based upon the legal briefs and the Court's opinion which were provided to Guam, it appears that this is not the best avenue to pursue in order for Guam to obtain relief.

Hawaii faces a similar situation with textile protectionism legislation as its apparel industry depends on imported textiles from the Orient. The unique print that Hawaii uses in its islandwear apparel industry is not sufficiently available from domestic textile mills.

CONCERNS:

The proposed Textile and Trade Enforcement Act of 1985 would have affected Guam and the U.S. Territories negatively as they were defined as foreign countries and, thus, they would have received less favorable treatment than Canada, the European Economic Community or beneficiaries of the Caribbean Basin Initiative. The Pacific Territories should not be classified as major exporting countries however, due to their low levels of textile exports into the U.S. As a result, Guam's low-level of imports do not make Guam, or the Pacific territories, a threat to the U.S. textile industry.

RECOMMENDED ACTION:

Hawaii is a member of the Pacific Basin Development Council along with Guam, the Commonwealth of the Northern Mariana Islands and American Samoa. Together, we should seek to form a coalition with representatives of California and

Washington (states which appear to be sympathetic) and approach the pro-protectionist supporters, specifically those representatives of textile-producing states such as North Carolina, South Carolina, and Georgia, to persuade their support to exclude Guam and the U.S. territories from their protectionist measures by considering the territories "domestic" rather than "foreign" in trade relations with the U.S.

Expect trade bill to be tough, Demos assert

BAL HARBOUR, Fla. (AP) — Democratic leaders of Congress promised to the AFL-CIO on Monday that they would pass a tough, import-restricting trade bill that President Reagan was almost certain to veto.

House Majority Leader Thomas Foley, D-Wash., and Senate Majority Leader Robert C. Byrd, D-W. Va., told the labor federation's 35-member executive council to start mustering grass-roots support from 128 million union members for overriding a veto.

"I'm confident we're going to have a piece of legislation on the president's desk by midsummer," Byrd told reporters after he and Foley spent two hours behind closed doors with the union leaders, who are meeting here this week. "We will need and profit by labor's input."

The federation, meanwhile, made it clear to the Democratic leaders that it would oppose any bill that does not require Japan, Taiwan and South Korea

to reduce their trade surpluses with the United States and set fixed yearly targets for them to do it. Reagan has opposed such an approach.

"Frankly, our attitude is that any bill that the president doesn't veto is not worth passing," said Morton Bahr, president of the 515,000-member Communication Workers of America. "Our objective now is working towards the type of bill that almost insures a veto and then work towards getting Congress to override it."

AFL-CIO President Lane Kirkland called a bill written by Senate Finance Committee Chairman Lloyd Bentsen, D-Texas, "a box with no contents."

"We cannot and will not support purely cosmetic legislation," Kirkland said of Bentsen's bill, which emphasizes U.S. industries improving their competitiveness with no new restrictions on imports. "I won't be a party to that sort of fraud."

FDN 2/18/87

Source: Pacific Daily News February 18, 1987

Note: While this article does not directly relate to textile protectionary legislation, it does give a good sense of what Congress's attitude is toward protectionary legislation in general.



BRIEFING PAPER: HEADNOTE 3(a)

General Headnote 3(a) of the Tariff Schedules of the United States sets forth the general conditions of a trade preference accorded by the U.S. to its insular possessions, providing duty-free entry into the U.S. Customs Territory (or withdrawal from warehouse) of goods that qualify as being produced in these possessions. Being a U.S. flag territory outside of U.S. Customs' jurisdiction, Guam qualifies for this preference.

In its simplest terms, Headnote 3(a) (Hn3(a)) allows duty-free entry of all articles which are wholly the growth or product of Guam, or manufactured or produced wholly from the growth or products of Guam, the other insular possessions, or the United States. In other words, anything produced in Guam strictly from materials originating in the U.S. and/or its possessions can enter the U.S. with no tariff charged. Unfortunately, because of its geographic location and virtual lack of primary resources, this simplest approach to Hn3(a) rarely applies to Guam. Rather than shipping its own primary products to the U.S., Guam has historically imported materials and component parts from foreign nations for processing and/or assembly before shipment. This practice has led Guam into the more complex conditions of the preference.

There are two major criteria for Hn3(a) qualification for goods produced with foreign content: the first, the "value-added" criterion, requires that a specified minimum portion of the final market value of a product must have been created in Guam; the second, the "substantial transformation" criterion, requires that the product be a different and distinct item of commerce, with a different character, name or usage than any of the foreign materials or

components used in its production. These two criteria seem simple enough, but have become complicated in their regulatory interpretations.

To meet the value-added criterion, goods must have a minimum of thirty (30) percent of their market value created on Guam, except for a specified set of goods that must have fifty (50) percent thus created. This specified set is comprised of: textile and apparel articles which are subject to textile agreements; footwear; handbags; luggage; flat goods; work gloves; leather wearing apparel; prepared or preserved tuna, in airtight containers not over fifteen (15) pounds each; and, petroleum and petroleum products provided for in part 10 of Schedule 4 of the Tariff Schedules of the U.S. (crude petroleum, gaseous and liquid petro- and natural fuels, and lubricants derived from petroleum). Although there are several methods of computing this value-added percentage, the most commonly used is based upon the difference between the landed cost (excluding tariffs, taxes and other fees, but including transportation) of foreign inputs and the F.O.B.-Guam price of the finished product. For purposes of clarification, the F.O.B.-Guam price of the watches shipped by Timewise, Ltd. must be at least thirty percent higher than the landed cost of the imported watch casings, movements and other parts to qualify under Hn3(a); the sweaters shipped by Sigallo-Pac, Ltd. would have to have at least fifty percent of their F.O.B.-Guam value created here. This value may include administrative costs and profit.

The substantial transformation criterion is considerably more vague, and many interpretations of this term seem to defy logic. Originally, products that were classified under a different category in the Tariff Schedules than their respective inputs met this requirement; more recently, the U.S. Customs Service

has imposed standards based more upon the actual economic activities performed in the production process. Simple assembly of component parts will usually no longer meet Hn3(a) requirements; some true transformation of the imported inputs must occur during manufacture. Generally, though, components for a product must be imported in different shipments, by different carriers, and not as "broken-down" entities, to qualify. These imports must be clearly documented, and a "Certificate of Origin" (U.S. Customs Form 3229) must be issued by the Customs and Quarantine Division of the Guam Department of Commerce to accompany the shipment into the U.S. This Certificate of Origin documents the determination here (which is non-binding upon U.S. Customs) that substantial transformation has occurred.

Finally, to qualify for duty-free entry under Hn3(a), the goods must be shipped directly from Guam to the U.S. Customs Territory (mere transshipment in a foreign port does not disqualify items from eligibility, though).

Originally, Hn3(a) was a boon to manufacturing on Guam, stimulating off-island investment in several manufacturing industries, most notably watches and textiles. In the early 1970s, manufacturing output was higher in real value (adjusted for inflation) than it is today. Several events have led to its decline. First, a minor scandal over the source of some watch movements (communist nations) eventually led to restrictive quotas being applied to watch shipments (2 million units from Guam). This reportedly led to the closure of several watch manufacturing facilities here. (Note: the application of quotas to the Territory is of questionable legality, but this one is, nevertheless, in force.) Then, due to changes in the world economic environment, including international currency exchange rates, several textile plants closed. Most

recently, a change in the Interpretations of what constitutes "substantial transformation" in the textile industry threatened closure of Guam's one remaining textile firm. The ultimate remedy was that Sigallo-Pac's sweaters no longer enter U.S. Customs Territory under Hn3(a), or even with Guam as the Country of Origin; they enter with Hong Kong as the Country of Origin, under a "Waiver of Visa", meaning that the 161,600 dozen annual allotment does not count against Hong Kong's quota.

The economic benefits that Guam now realizes under Hn3(a) are relatively slight, but still important, at approximately one (1) percent of Gross Island Product. The major benefit that the island's economy derives from the program is an opportunity: Hn3(a) holds the prospect of making the small difference that induces foreign firms to invest and locate manufacturing facilities here. Of course, the high costs of land, labor, power, water and transportation on Guam are the major factors dissuading firms from locating here, but in some instances Hn 3(a) benefits make that marginal difference in the location decision. Whereas Guam does not take much advantage of the program at present, that does not mean that it has no value and should be terminated. It is a benefit that should not be cast away lightly.

Two final notes of interest: 1) more advantageous benefits are extended by the U.S. to textile manufacturers in Canada, the European Economic Community, and some nations in South America and the Caribbean Basin than are extended to Guam and the other Pacific Territories; 2) contrary to reports prepared by the Guam Department of Commerce from 1975 to 1985, Guam is not now, nor has it ever been, a beneficiary of the U.S. Generalized System of Preferences (GSP), because, since 1974, the requisite Presidential Executive Order was never prepared or

signed. Headnote 3(a), then is the only trade preference extended to Guam by the United States.

DEPARTMENT OF COMMERCE
BRIEFING SERIES 1987
DATE 1/30/87

PROJECT:

General Headnote 3(a) of the Tariff Schedules of the United States.

SUMMARY/BACKGROUND:

General Headnote 3(a) (hereafter, Hn 3(a)) extends certain trade preferences (i.e., duty-free entry and withdrawal from warehouse) to goods produced in the United States' Insular possessions, including Guam. While quite beneficial to manufacturing here in the early 1970s, changes in regulations and interpretations have since restricted the types of manufacturing processes that meet the requirements of the program. Many firms from the Asian Pacific Rim, though, still express an interest in locating on Guam in order to take advantage of the benefits of Hn 3(a).

CURRENT STATUS:

Only one firm on Guam, at present, is making use of Hn 3(a), so that its current benefits to the island are relatively slight. The expanded restrictions, over the years, have led to the closure of several plants here that ceased meeting the requirements of the system as those requirements changed.

CONCERNS/ISSUES:

It has been reported that there is a movement underway in Washington to discontinue the preferences extended under Hn 3(a). Whereas the program is only of slight concrete benefit to Guam today, it does serve to attract potential investors to the island, allowing more concentrated and better tailored promotional efforts than limited resources would allow us to expend elsewhere; it "gets our foot in the door". Should the program be discontinued, our promotional efforts would be more expensive and/or less effective, reducing the amount of investment that can be attracted to the island.

RECOMMENDED ACTION:

- 1) Request that the Hn 3(a) benefits be continued and the attendant restrictions relaxed.
- 2) Request that the Government of Guam and other interested parties be notified of and given the opportunity to comment on any and all proposed changes in the program, well in advance of the proposed implementation date of any change.
- 3) If Hn 3(a) is to be discontinued, request that the necessary Presidential Executive Order be prepared and signed to extend the benefits of the U.S. Generalized System of Preferences (GSP) to Guam and the other Insular possessions. (Note: The U.S. GSP is neither extended to Guam nor as beneficial in terms of tariff treatment as Hn 3(a)).

SUPPORTING DOCUMENTS:

Briefing Paper prepared for the Governor via the Bureau of Planning, January 16, 1987.

DEPARTMENT OF COMMERCE
BRIEFING SERIES 1987
DATE 1/30/87

PROJECT:

Quotas applied to the Guam Textile Industry.

SUMMARY/BACKGROUND:

In the wake of changes in the "substantial transformation" criterion under General Headnote 3(a) of the Tariff Schedules of the United States, as it relates to textile products, in 1984, Sigallo Pac, Ltd. was granted a concession by then-U.S. Trade Representative William Brock to allow Sigallo to ship 160,000 dozen sweaters into the U.S. annually under a "Waiver of Visa". Under this waiver, the sweaters enter the U.S. Customs Territory with a Hongkong "country of origin", but do not apply against the quota imposed on Hong Kong. The agreement between Mr. Brock and the Government of Guam provided for an escalation of the waiver quantity under the same terms as in the MultiFibre Agreement, which at that time was four percentum annually. This has since been reduced to one percentum.

CURRENT STATUS:

Sigallo Pac, Ltd. has recently expanded, and is producing other types of clothing that meet the Headnote 3(a) requirements, but is coming very close to its limit on sweaters. Clayton Yeutter is now U.S. Trade Representative. The Waiver of Visa needs to be renewed, but the original agreement allowed not only the MultiFibre Agreement escalation, but a negotiated increase as well.

CONCERNS/ISSUES:

It is unlawful for the U.S. to apply quotas to products of the Insular possessions. Although the waiver of visa is not a quota per se, it has exactly the same effect. The only reason that Sigallo's sweaters are not products of Guam is that there was an untenable change in the country of origin substantial transformation criterion in 1984.

Impeding textile exports to the U.S. from Guam adversely affects employment here, but even more importantly has caused several prospective firms during the past two years to withdraw their plans for locating here.

RECOMMENDED ACTION:

- 1) Negotiate with the U.S. Trade Representative, Clayton Yeutter, for an increase in the waiver of visa quantity to at least 200,000 dozen sweaters annually, but preferably to 500,000 dozen so that new firms can locate on Guam.
- 2) If unsuccessful in negotiating an increase, renew the agreement with the U.S. Trade Representative, including the one percentum increase in quantity, so that Sigallo can maintain its sweater operations.



Pacific Basin Development Council

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RESOLUTION

TEXTILE and TRADE ENFORCEMENT ACT OF 1985

Governor Ricardo J. Bordallo

President

ident

Governor A.P. Lualaba

President

President

Governor Pedro P. Tenorio

President

President

Secretary

Governor George R. Ariyoshi

President

Secretary

WHEREAS, H.R.1562 and S.680, known as the Textile and Trade Enforcement Act of 1985, place the territories of the United States within the definition of "foreign countries", and

WHEREAS, garment and apparel products of the United States Pacific territories will be placed under quotas as the products of foreign countries, and

WHEREAS, the proposed quotas will prevent any growth of the garment industry in the Territories of Guam and the Northern Mariana Islands and will prevent the foundation of any such industry in the Territory of American Samoa, and

WHEREAS, the garment industry in the Territories of Guam and the Northern Mariana Islands provides the people of the territories with employment opportunities and the governments with significant revenues, and

WHEREAS, the people of Guam are U.S. citizens, the people of the Northern Mariana Islands are interim U.S. citizens, and the people of American Samoa are U.S. nationals, and

WHEREAS, the people of the United States territories located in the Pacific are members of the American family, and

WHEREAS, it is basic to such a relationship that the American territories be able to trade freely with American states,

THEREFORE, BE IT RESOLVED by the Board of Directors of the Pacific Basin Development Council that the Governors of the American Pacific Islands are strongly opposed to the passage of either H.R. 1562 or S. 680 or any legislative effort which attempts to define American territories as foreign countries and exclude them from membership in the American family, and

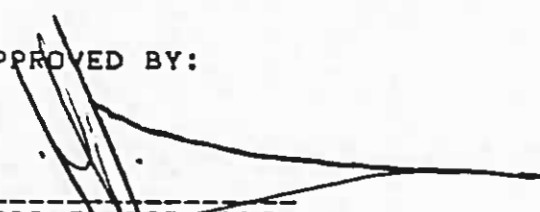
RESOLUTION
August 23, 1985
Page 2

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the members of the Congressional committees which are now or may later undertake the review of these legislative bills.

APPROVED BY:

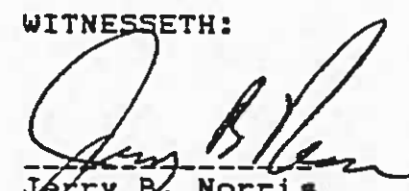
August 23, 1985

Date of Approval

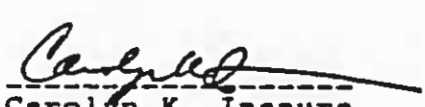


RICARDO J. BORDALLO
President and
Governor of Guam

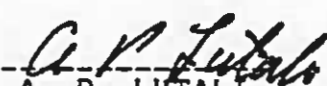
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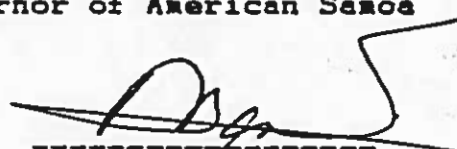
Jerry B. Norris
Executive Director



Carolyn K. Imamura
Director of Planning
and Programs



A. P. LUTALI
Vice President and
Governor of American Samoa



PEDRO P. TENORIO
Secretary and
Governor of the
N. Mariana Islands



GEORGE R. ARIYOSHI
Treasurer and
Governor of Hawaii



Pacific Basin Development Council

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RESOLUTION

ernor Ricardo J. Bordallo

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ident

TEXTILE and TRADE ENFORCEMENT ACT OF 1985

ernor A.P. Lutali

frican Samoa
President

WHEREAS, H.R.1562 and S.680, known as the Textile and Trade Enforcement Act of 1985, will reduce the total amount of imported textiles needed to maintain production in Hawaii's apparel industry, and

ernor Pedro P. Tenorio

monwealth of the
rthern Mariana Islands
ernor

WHEREAS, the garment industry in Hawaii consists of 138 establishments employing 2,950 workers, and

ernor George R. Ariyoshi

aii
surer

WHEREAS, the Hawaii garment industry, from its very beginning, has depended on imported textiles, and

WHEREAS, as much as 64 percent of the materials used by Hawaii's manufacturers come from foreign countries, either directly or indirectly through domestic fabric houses, and

WHEREAS, only 13 percent of the dollar value of Hawaii textile imports would not be affected by the proposed legislation since restrictions under the measure would apply to exporting countries other than Canada, the Caribbean region, and European Economic Community member states, and

WHEREAS, the quality of prints, the colors, and the prices and special screened fabrics used in the Hawaiian garment trade are available from only a few domestic mills and are not produced in sufficient quantities for the Hawaii industry, and

WHEREAS, "Island wear" has developed and flourished with Hawaiian tourism, the state's top industry, with visitor expenditures on clothing and accessories totaling \$417.8 million in 1983, and

WHEREAS, over 33% of Hawaii's 1983 overnight and longer visitors were foreign residents, and



y B. Norris

RESOLUTION

August 23, 1985

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WHEREAS, Hawaii is a significant destination for Japanese visitors whose expenditures per day average over two and one-half times that of westbound (i.e., mainland U.S.) visitors, and

WHEREAS, the apparel industry in Hawaii contributes favorably to the U.S. balance of trade as foreign visitors spend their money and carry (U.S.) Hawaii-made garments home, and

WHEREAS, the legislation creates a bias against those garment manufacturers with established connections to, and dependence on, Asian textile producers and favors those garment manufacturers buying from Europe and the Caribbean, and

WHEREAS, the textile quota bill would impose punitive actions against Asian nations and other Pacific islands, causing significant damage and further adding to the area's political insecurities by unfairly focusing its action on one area of the world,

THEREFORE, BE IT RESOLVED by the Board of Directors of the Pacific Basin Development Council that the Governors of the American Pacific Islands are strongly opposed to the passage of either H.R.1562 or S.680, and

BE IT FURTHER RESOLVED that it is unfair and unreasonable to single out Asia as the cause of the textile deficit and that the increasing market share of textiles from Asian countries could be resolved through negotiations without penalizing those segments of the U.S. garment industry which rely on Asia's unique brand of textiles, and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the members of the Congressional committees which are now or may later undertake the review of these legislative bills.

August 23, 1985

Date of Approval

APPROVED BY:

RICARDO T. BORDALLO
President and
Governor of Guam

RESOLUTION

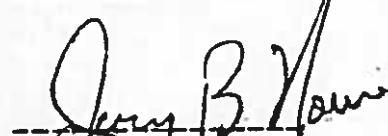
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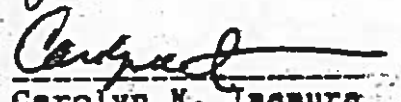
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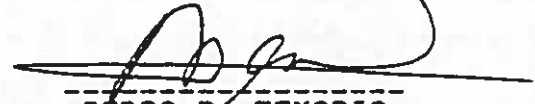

A.P. LUTALI

Vice President and
Governor of American Samoa

WITNESSETH:


Jerry B. Norris
Executive Director


Carolyn K. Iacura
Director of Planning
and Programs


PEDRO B. TENORIO
Secretary and
Governor of the
N. Mariana Islands


GEORGE R. ARIYOSHI
Treasurer and
Governor of Hawaii

THE TEXTILE AND TRADE ENFORCEMENT ACT OF 1985

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~~Prepared by the Staff of the
Pacific Basin Development Council~~

For the Governors
of
The American Pacific Islands

June 28, 1985

I. INTRODUCTION

Recently H.R. 1562, and its companion in the Senate, S. 680 have been introduced into the Congress. Both bills purport to prevent damage to U.S. textile and apparel manufacturers and the loss of jobs by U.S. workers and implement the objectives of the Multi-Fiber Arrangement by requiring the effective enforcement of textile import levels contemplated by the MFA.

The U.S. and most major textile producing countries are parties to the Multi-Fiber Arrangement, the purpose of which is to ensure the orderly growth of imports of textiles and textile products and to avoid disruption of the markets for textiles and textile products in importing countries. While it entered into force in 1974 and has been extended through July 1986, its objectives have not been achieved, largely due to a combination of the lack of an enforcement mechanism and, from the U.S.'s point of view, the use of fibers and blends not covered by the MFA in the production of textiles for import to the U.S. The restrictions of the MFA are stringent and are often cited as the "nation's most egregious protectionist measure."

What follows is a history of recent textile legislation (from which one can gain an insight into the major players and draw ideas concerning building a consensus for better treatment of the Territories), its effect on the retail industry, a brief analysis of the industry, a review of the current proposal, the effect that the legislation will have on the industries within the Pacific Territories, and an analysis of the strategies we might employ to gain a more favorable outcome for our Islands. Hearings on the legislation are scheduled for July 15 - the bill is currently under review in the House Ways and Means Committee.

This analysis includes an overview of the major provisions of the proposed legislation and is not meant to be a full legal analysis of the bill.

The staff of Pacific Basin Development Council wishes to acknowledge and thank the following people for their help in researching this report: Alice Taber and Norma T. Herkes (Hawaii State Library), Joy Wong and Marrienne Conner (International Trade Administration, U.S. Department of Commerce, Honolulu), Victor Renaghan and Patrick Corrigan (U.S. Customs Service, Honolulu)

II. HISTORY OF RECENT TEXTILE LEGISLATION

A. 1983 Industry Complaint

The current episode began in the Fall of 1983 when the American Textile Manufacturers Institute and the American Apparel Manufacturers Association filed an unfair-trade practices complaint against mainland China, charging unfair subsidies by China to its textile makers. Commerce Department officials have never said so publicly, but U.S. investigators reportedly found a relatively low level of subsidy from the Chinese government - any penalty duties would have been symbolic at best, and it was felt that there would not be any serious reason to fear trade retaliation.

Nevertheless, at the time the petition was presented, the administration felt itself to be in a bind. If the government sided with the industry, it would risk worsening the U.S.'s relations with China - the Chinese had bridled the previous June when the U.S. was trying to tighten textile-import quotas with Peking, canceling purchases of U.S. grain and sending Midwestern farmers into a frenzy. In addition, no one wanted to jeopardize President Reagan's trip to China scheduled for April.

On the other hand, policy makers were fearful of the domestic political ramifications - there are 1.8 million textile workers scattered across all 50 states, and in the 1980 campaign candidate Reagan gave personal assurances to the industry that he would work to protect it from imports. What's more, two prominent Republican Senators from textile-producing states - Strom Thurmond of South Carolina and Jesse Helms of North Carolina - were up for reelection. In early December 1983 Senator Thurmond marched into the White House to lay out the industry's side.

The administration's goal was a compromise that would satisfy the industry without antagonizing China. But in the end, the issue was decided primarily for domestic political reasons.

The issue came to a showdown shortly before a December 6, 1983 administrative deadline for handling the industry petition. After consultations with Commerce Undersecretary Lionel Olmer and a last-minute appeal by Secretary Baldrige, the industry agreed to suspend its complaint in return for a broader import-relief program, in lieu of their immediate wish, a system of global quotas on textile imports that Commerce had determined to be unrealistic. December 16 was established as the new deadline.

B. The Baldrige Plan

On Friday, December 16, the cabinet-level-panel's noon

meeting (on textile imports) with the President was expected to be routine. Just the night before panel members thought they had agreed to recommend that the President reject the U.S. textile industry's demands for more protection in favor of a milder import-relief program. But during the luncheon Commerce Secretary Malcolm Baldrige pulled a surprise, jettisoning the cabinet group's plan and aggressively pressing the industry's original demands. Mr. Reagan was swayed, outflanked cabinet officers sputtered their protests, and the luncheon gave way to a rapid-fire drafting session.

At the last minute, opponents managed to soften parts of the Baldrige plan, but by early evening, the White House had announced a series of trade-tightening measures that went far beyond what even the industry had thought possible.

Under the Baldrige plan, the government would have agreed to set up a new system for automatically "triggering" both a temporary hold on Third World textile imports and negotiations toward new restrictions. The industry also wanted the administration to impose a new import-licensing system, and it wanted another major tightening on specific products from Hong Kong, Taiwan, and South Korea.

Opponents of the Baldrige plan pressed to keep the final proposal by an ostensibly free-trade administration from going too far to protect an industry that critics insisted didn't seem to need the help. Textile makers, already one of the most protected sectors of the U.S. economy, were in a relative boom period. Domestic textile production was up over 20% in 1983 from the preceeding year and mills were humming along at more than 91% of capacity. Imports were up 23% over the same period, but experts say the increases came mainly from the continued high value of the dollar, which makes foreign goods more attractive and U.S. exports less competitive.

The drafters diluted the Baldrige plan by adding two critical ingredients: first, they exempted smaller low-wage countries, concentrating the import-tightening on larger textile-producers such as China, Hong Kong, South Korea, and Taiwan. Then they inserted a crucial "and" to make it more difficult for temporary surges in imports to trigger consideration of additional quotas. They also made any temporary "hold" on imports a matter of discretion, not mandatory. Previously deleted were industry proposals for a new import-licensing system and other tightening of import quotas. And in the final version the trigger system itself only set off an investigation of whether import quotas were needed - it did not automatically block imports.

Government officials said that industry lobbying on the issue was kept to a minimum. Secretary Baldrige's arguments, plus the obvious political pressures, they said, were the deciding factors. Critics suggested that Mr. Baldrige's aggressiveness may have been linked to his bid to win support for

a new Department of International Trade and Industry, a pet Baldrige proposal. The Secretary had been trying to convince business groups for months that they would fare better if former U.S. Trade Representative Bill Brock's office was folded into a new Commerce-based department of trade. But Baldrige associates argued with some conviction that the Secretary genuinely believed the industry had a case when it claimed the existing quota system wasn't working well. Even other cabinet members agreed the procedures could be tightened.

In any event, President Reagan decided in March 1985 not to ask Congress to create a Department of International Trade and Industry. Administration officials said the President rejected the proposal in view of near-unanimous opposition within the cabinet and dim prospects for passage by Congress, which shelved a similar plan in 1984. Some officials believed that the President was leaning toward reviving the proposal this year, but its fortunes apparently turned after Secretary of State George Shultz strongly protested the plan. Opponents argued that a new department would be more likely to push for protectionist measures.

Meanwhile, White House political lieutenants were especially loath to anger the industry at the start of a presidential election campaign year. And political groups on the other side of the issue - such as importers and retailers - simply don't have much power. With such sympathetic ears inside, it was easy for Senator Thurmond and other politicians from textile-producing states to lay claim to further concessions as an extension of the president's 1980 campaign promise.

C. The August 1984 Transshipping Regulations

Free-trade proponents were not mollified by the last-minute softening of the Baldrige plan; with the system in effect it can easily be expanded. And although U.S. textile makers won more than they expected, they certainly didn't get everything they asked for. Said a senior administration policy maker at the time, "You can bet they'll be back again."

And indeed they were. In August 1984 the U.S. Customs Service tightened the rules on apparel imports after the U.S. textile industry complained about the abuse of import quotas. The regulations were an attack on producers in Asia, Central America, and the Caribbean who ship to the U.S. clothing assembled from parts made in countries that had filled their own U.S. quotas. The National Retail Merchants Association, which represents most of the major U.S. department and chain stores, complained about the suddenness of the change and the short notice for compliance, and the American Association of Exporters and Importers argued that a lot of investors who relied on their best understanding of the law in making business decisions would be hurt.

U.S. clothing manufacturers had complained that some big

apparel-producing countries were "transshipping" garments after filling their U.S. quotas. This refers to making all the parts of a garment and shipping them to a country that hasn't filled its quota for assembly and shipment to the U.S.

Under the new rules the Customs Service would accept under a country's textile quota only products wholly made in that country or "substantially transformed" from material imported from elsewhere. Ineligible by this definition was clothing that is simply sewn, looped, or linked together from imported segments. From the October 31 effective date, apparel shippers had to certify how their goods were manufactured or processed, the sources of imported material and the costs involved. It would be harder for U.S. companies to disguise transshipments.

III. EFFECT ON THE RETAIL INDUSTRY - CREATIVE MARCO POLO'S

The crackdown on textile imports has run afoul of U.S. retailers, who watch with dismay as federal authorities embargo imported goods that the stores have come to depend on so heavily. In a typical example, K mart Corporation ordered a \$912,000 shipment of Shetland-wool sweaters from China in 1982. The sweaters were subject to a 1983 import quota, and before they reached port in the U.S. the quota had been filled. Federal officials embargoed the men's pullovers and K mart had to wait until the embargo was lifted before the garments could be sold. The company was stuck with thousands of dozens of out-of-style sweaters on which it recovered only sixty cents on the dollar. They never anticipated having to wait more than two years before the garments would appear in the big chain's retail outlets. Now garments are ordered a full year before they're to be sold, to ensure that they will enter the country before quotas are filled. The new system interjects a considerable amount of risk into purchasing decisions, since retailers now have to predict what the economy is going to be like 12 months later. Additionally, the costs of advance buying are onerous for large-volume retailers, since the inventory, purchased with borrowed funds, sits idly for long periods of time.

Retailers complained that what they call the governments erratic enforcement of import restrictions has disrupted the way they do business. The Retail Industry Trade Action Coalition, a newly-formed trade group formed to fight import restrictions, asserted that the costs associated with the whole system of import curbs could add as much as \$4.4 billion to U.S. shoppers' clothing bill in 1984. The trade group and a number of U.S. retailers and trade associations filed suit in the U.S. Court of International Trade seeking to stop the federal government from enforcing the rules that bar countries from shipping to the U.S. under their own quotas apparel assembled from pieces made elsewhere. They asserted in their petition that the Federal government exceeded its authority by announcing the rules "without affording any opportunity for public comment." The Customs Service didn't hold public hearings before announcing the

rule changes on August 3, 1984.

Meanwhile, hunting for loopholes in import regulations has become an industry pastime. Retailers have become, as one puts it, "creative Marco Polo's," roving the world for suppliers in countries like Sri Lanka and Bangladesh where apparel exports are in their infancy and haven't been hit with many quotas. "People have been asking about atolls in the Pacific," said a spokesperson for the American Association of Exporters and Importers."

Retailers began their far-flung search early last year when the Commerce Department stepped up use of "quota calls," or temporary embargoes of imports in a category not previously subject to trade restraints. Quota calls are issued when the government decides that domestic producers are being injured by a sudden surge in imports of non-quota merchandise. In the agreement reached on December 16 the government for the first time established specific percentages for triggering such calls on non-quota apparel imports. Federal officials were thereby able to hastily embargo goods whenever a surge in imports occurred. These embargoes, issued without advance notice to importers, usually precede bilateral negotiations aimed at setting formal quotas on the goods in question.

U.S. officials were quick to apply the new rules. In the first eight months of 1984 the government issued 90 calls, compared with 110 in all of 1983 and only 38 in 1982.

Particularly vexing to importers and retailers is the practice of issuing quota calls without warning, often long after the apparel is purchased and on its way to the U.S. The importer signs a contract to buy goods, opens a letter of credit and pays the suppliers. When those goods are suddenly embargoed, the importer is left holding the bag with no way to get paid and no place to sell his goods. But government officials contend that quota calls are just another risk inherent to the importing business. Faced with such risks, retailers are turning not only to new apparel-exporting countries but also to countries less frequently hit by quota calls because of foreign-policy considerations.

Some importers try to dodge quotas by importing garments in sections. Sport-jacket sleeves might be shipped into Los Angeles, while the rest of the coat arrives in New York. Importers gamble that the coat parts will be placed in the "basket category," a miscellaneous classification without quota restrictions. However, in an effort to plug a similar loophole, the Reagan administration recently changed the "rules of origin" import regulations. Domestic apparel manufacturers had argued that countries like China circumvented U.S. quota agreements by assembling garments in other nations. Under former rules, a garment cut in Hong Kong, for example, but assembled in Singapore would be included under Singapore's quota. Now, however, the

change that took place October 31 makes the country where work on a garment begins the country of origin.

Retailers argue that they have little choice but to go abroad, because some garments - sweaters for example - aren't produced domestically in significant quantities. In a number of instances, they say, the U.S. is protecting merchandise that isn't available in this country. Retailers claim that import restrictions risk shortages of garments for middle- and low-income shoppers. Quotas are based on units rather than dollar volume, and overseas apparel makers therefore produce higher-priced goods to maximize their quota allocations. Even American manufacturers do a great deal of importing: The American Association of Apparel Manufacturers says its members imported 25% of their production in 1983.

IV. CONDITION OF THE U.S. TEXTILE MANUFACTURING INDUSTRY

A. An Era Of Change

Not since the U.S. textile mills' mass migration from New England to the South has so much changed for the U.S. textile manufacturing industry. While the industry is loudly bemoaning imports, it also is quietly doing something about its problems. The companies are retooling obsolete mills with new high-speed machines, weaving more types of fabric faster and with fewer workers, and targeting production for niches not filled by imports. In some mills, robotic pluckers lift and unpack dusty cotton bales, computers direct the tugs and conveyor belts feeding mill assembly lines, and defects in weaving yarn are spotted by electronic eyes and cut out.

But the most important change is in the mills' core, the weaving room, where yarn spun from bales of cotton and man-made fibers is turned into bolts of cloth. Companies are buying Japanese and European looms, which are three and four times faster than the American-made machines being junked. These looms weave with jets of air, a technological leap over conventional looms, which weave with wooden shuttles, much as they did a century ago. So, ironically, while the textile industry broke out a "Crafted with Pride in the U.S.A" campaign similar to the "Buy American" drives in the steel and auto industries, it also is retooling its mills with foreign-made looms. The president of the American Textile Manufacturers Institute explained that domestic loom makers let themselves slip while technological advances were being made overseas.

According to the American Textile Manufacturers Institute, the industry's capital spending in 1984 was expected to rise 24% over 1983, to a record \$1.72 billion. Burlington Industries, with the deepest pockets, budgeted \$220 million in 1984 to refit mills with new equipment. Springs Industries, the fourth-largest U.S. producer, expects to spend \$210 million by 1987 to scrap 6,600 antiquated shuttle looms and, among other things, to

install 1,160 Swiss and Japanese air-jet weaving machines. In many instances the industry is junking old machines in lieu of selling them so that they won't go to a foreign country and come back as competition. Everyone of the new machines replaces three of the old shuttle looms, and about half of the looms operating in the U.S. will be shuttleless within the next few years.

B. The New Loom Boom

The companies have to modernize to stay in business. Some smaller companies will be broken, textile executives predicted, because they can't afford to replace shuttle looms, bought in the 1960's for about \$5,000 apiece, with a \$35,000 air-jet loom or a \$50,000 projectile loom. The industry was slow to adopt shuttleless looms, which became available in the U.S. 20 years ago. Then imports exploded, forcing the change.

The new-loom boom is making the industry more productive and competitive. There is two to three times as much cloth coming off one jet-air loom, compared to the older model, and one person can still handle that one loom. Increased productivity also brings layoffs and plant closings - some of the old mills can't be refitted with the new looms. The plant closings are contributing to a 10-year drop in the number of mill jobs in the Southeast. Total jobs in the Southeast mills dropped to 518,600 in 1983 from 674,100 in 1973, according to the Labor Department. Many of the companies are leaving the mass production of commodity fabrics such as print cloth to low-wage foreign mills and are targeting their mills on smaller markets such as bed sheets and cloth for high-fashion apparel, which are harder for foreign mills to serve because consumer tastes change quickly. The modern mill has to be very versatile so that companies can find niches, fill them, and move on after the market changes again.

V. THE CURRENT LEGISLATIVE PROPOSAL

The textile industry mounted another major campaign for tighter restrictions on foreign imports in March 1985 when Congressmen from textile-producing states unveiled a tough import-quota bill that would slash current import levels, particularly for major foreign textile manufacturers such as South Korea and Hong Kong. Although few analysts expected the proposal to pass, the identical bills have amassed 283 cosponsors in the House (seven short of the two-thirds majority needed to override a Presidential veto) and 53 in the Senate. The textile industry has proved unusually successful in previous years in winning protection from foreign competition.

The legislation essentially would limit shipments from the 20 largest textile-producing countries - the "major exporting countries" under the proposed act, ie, those with 1.25% or more of total U.S. textile imports - to 1983 levels. It also would broaden the quotas to cover a wider range of textile and apparel

imports, reallocate some of the existing import share to smaller countries (at the expense of South Korea, Hong Kong, Taiwan, Japan, and China), and require the government to set up a special import-licensing system to police the import limits. Currently, licenses are not required for any imports into the U.S., textile or otherwise.

Industry spokesmen say the U.S. textile makers' legislative campaign also is designed to pave the way for a tightening of textile quotas when the administration begins negotiations to renew the Multi-Fiber Arrangement, a system of world-wide textile import quotas that has been in effect since 1974. The negotiations are scheduled to begin in July.

For 1985, the formula contained in the proposed legislation would limit textiles from the "major exporters" to 101% of the amount they could have sold in the U.S. had the volume they shipped in 1980 grown by 6% a year (1% for wool products). The 6% and 1% figures are what the industry says the administration promised would be the upper limit for import-growth in the past few years. Actual import levels have risen far more, however. As a result, analysts say the bill would mean a rollback to 1983 levels for most large producer countries.

For smaller textile-producing countries, the legislation would limit imports for 1985 to 15% (1% for "import sensitive" items) above their 1984 shipment levels.

"Import sensitive" textiles are defined in the act as those categories of imports for which the ratio of imports to domestic production equals or exceeds 40.0% for the preceding calendar year, and any category covering wool products (defined as an article containing over 17% by weight of wool).

For 1986 and beyond, the quantity of textiles that may be imported per year is limited to the previous year's level plus 1% (for major exporting countries), and in the case of smaller exporting countries, the previous year's level plus 6% (for non-import sensitive items) or, plus 1% (for import sensitive items).

The restrictions would not apply to the European Economic Community or Canada; special dispensation is afforded to Mexico, countries eligible for designation as a beneficiary under the President's Caribbean Basin Initiative and for countries with a low level of 1984 textile imports. Additionally, if during any year a country's exports exceed the 1.25% threshold, then that country will be considered to be a major exporting country for all succeeding years.

VI. STATUS OF THE PACIFIC TERRITORIES UNDER THE PROPOSED ACT

Paradoxically, the U.S. Territories are classified as foreign countries under the proposal and receive less favorable treatment than Canada, member states of the European Economic

Community, or countries eligible for designation as beneficiaries of the Caribbean Basin Initiative. The Pacific Territories are not eligible for CBI designation, though the 30% value-added rule, down from the previous 50% figure, contained in the CBI legislation has been administratively applied to them by the U.S. Customs Service (19 CFR Part 10 as printed in the Federal Register Volume 49, Number 237, December 7, 1984).

In researching the textile exports of the American Flag Islands into the U.S., despite an extensive search, no figures whatsoever were available for the Northern Mariana Islands; Guam's and American Samoa's exports to the U.S. were easily obtained (American Samoa had no textile imports during the period 1980 through 1984). It is questionable whether this information is publicly available at the Federal level in the case of the Northern Marianas, though certainly the NMI government tracks this. The Bureau of the Census does not keep figures on the Marianas (see note 1 to the tables), and the Tariff Schedules of the United States Annotated (1985) (Schedule C-I - Classification of Country and Territory Designations for U.S. Import Statistics) lumps the Marianas together with the Caroline and Marshall Islands under the category, "Trust Territory of the Pacific Islands" for statistical reporting purposes. (Guam and American Samoa are separately identified in the schedule).

The U.S. Customs Service sent a team down to the Marianas recently to crosscheck their import statistics with the Marianas-generated statistics, so it may well be that there is confusion at the Federal level over exactly what articles are coming out of Saipan and into the U.S. In the event that these numbers are not available within the U.S. Customs records, some have suggested that for enforcement of the proposed act the parties might either settle on Marianas-generated figures, take the Trust Territory of the Pacific Islands figures and assume that all textiles listed for the region were exported from the Marianas, or use the 70,000 dozen figure in the quota exemption negotiated with the Marianas last March.

A. Foreign Exporting Countries

Presumably, all of the Pacific Territories avoid classification as a "major exporting country" due to their low level of textile imports into the U.S. A "major exporting country" is defined as one "from which the United States imported an annual aggregate quantity (emphasis added) of textiles and textile products under all categories that equalled or exceeded 1.25% of all textiles and textile products under all categories imported into the U.S. from all countries...during calendar year 1984."

The aggregate quantity of U.S. textile imports was not available, but the aggregate value of textile imports for 1983 was \$11.735 billion (see Table 1). Using dollar values in lieu of quantity values as an estimate, 1.25% of total U.S. imports in 1983 is \$146,687,500. By comparison, Guam imported textiles into

the U.S. in 1983 valued at \$6,247,784 and \$10,476,763 in 1984. So it is safe to assume that neither Guam nor any of the other U.S. Pacific Territories would be classified as a major exporting country under the proposal for the foreseeable future.

B. Levels for 1985 And Beyond

1985 textile imports for the Territories under the act would be limited to 1984 levels plus a growth rate, based on quantities, of 1% for import sensitive items and 15% for all other items. An import sensitive item is defined as a wool product and also a category for which the ratio of imports to domestic production is greater than or equal to 40% for the preceeding year.

Table 2 lists reference data for Guam necessary to compute the allowable growth for Guam's future textile exports to the U.S. in Tables 3 and 4. Again, the figures for the Northern Marianas were not available and American Samoa had no textile exports to the U.S., but the Tables have been constructed in such a manner that hopefully applicable information can be substituted from on-island sources for the latter two jurisdictions - Pacific Basin Development Council stands ready to assist.

Table 3 shows that over 98% of the 1984 Guam exports would be classified as "import sensitive" items under the act; additionally, over 95% of their exports on a value basis came from one category - number 445, mens and boys sweaters - which, as an "import sensitive" item, would be limited to growth of 1% in each year after 1984.

Table 4 takes the 1984 Guam levels and computes the 1985 limitations for these items based on the growth formulas in the proposed act and the reference data in Table 1. Note 6 to the Tables explains how the 1985 levels were obtained, and how to compute growth for years after 1985.

The act does not limit any of the islands to solely producing textiles in categories that were produced in 1984, and manufacturers on Guam would not be prevented from producing other categories of goods not listed on Table 4; the Table simply takes Guam's 1984 production and maximizes the levels for 1985.

The proposed law devises a global system of quotas - if a manufacturer desired to make an item not previously produced his production would be limited by the "minimum quantities" discussed below. For instance, if American Samoa manufacturers desired to produce the same type of mens and boys wool sweaters as was produced in Guam in 1984 (Category 445), production would be limited to 100,000 square yard equivalents divided by the 14.88 conversion factor, or 6,720 dozen sweaters. Growth in the next year would be limited to 1%, or 7,392 dozen. They could produce other types of wool wearing apparel in addition, but no other under category 445. The law penalizes those jurisdictions that did not have the good fortune to have their textile industry

already developed by 1984.

Given the growth that the textile industries in Guam and the Northern Mariana Islands have achieved in recent years, it is important to note that if their 1985 shipments have already exceeded the allowable levels, they would be enjoined from further shipments during the 1985 calendar year and any excess shipments over the allowable levels would be used to reduce their 1986 allowable limits.

American Samoa had no U.S. textile imports in 1984. The proposed act includes a section on minimum quantities which would be applicable to Samoa or any jurisdiction that produced any category in small quantities (Guam's womens' cotton shirts, for instance).

Under that section, if the aggregate quantity of textiles and textile products from a country that may be entered during a calendar year under a category is -

- (1) less than one million square yard equivalents, in the case of a category covering yarn, fabric, made-ups, and miscellaneous products, other than wool products;
- (2) less than seven hundred thousand square yard equivalents, in the case of a category covering apparel, other than wool products apparel; or
- (3) less than one hundred thousand square yard equivalents, in the case of a category covering wool products,

then the aggregate quantity of textiles and textile products that may be entered from such country under such category during the calendar year is limited to one million, seven hundred thousand, and one hundred thousand square yard equivalents, respectively. Growth in the succeeding years would be the same as for all other exporting countries - 6% for non-sensitive categories and 1% for sensitive categories.

The minimum quantity limitations are not cumulative - production for all non-wool wearing apparel does not have to be less than 700,000 square yard equivalents, but production for each category of non-wool wearing apparel must be.

A few further points as they might apply to the islands -

The Northern Marianas and also perhaps Guam too, due to the quota rules discussed below, currently are dividing up their allotment of sweaters among producers. This act will make that process more difficult from an administrative standpoint since the quotas extend to virtually every textile item produced, not just the 5 categories applicable to the islands as enumerated below.

Any island producer who has already committed money for new lines of textiles, or any that is counting on future growth in his production to payoff his outlays, is probably in the hurt locker already if this passes.

The act will interject a considerable degree of extra risk into textile operations in the islands, as it will for other jurisdictions too. Producers may decide on manufacturing a certain category because it has a low (well under 40%) rate of imports to domestic U.S. production, and thus would not be classified as import sensitive. But the import to domestic production ratios will be subject to wide fluctuations year-to-year, since worldwide all producers will be making the decision partly on the same criteria. One would think they would be extremely hesitant to commit the capital necessary for equipment and other things should the payback period be in excess of one year.

VII. THE MARCH 1985 LIMITED TERRITORIAL EXEMPTION FROM THE IMPORT QUOTA RULES

Effective April 15, 1985, cotton, wool and man-made fiber sweaters under categories 345, 445, 446, 645 and 646, which are determined by the U.S. Customs Service to be products of foreign countries or foreign territories, are exported from Guam or the Northern Marianas, and are certified to have been assembled in Guam or the Northern Marianas, may be imported into the U.S. in an amount not to exceed 160,000 dozen for Guam and 70,000 dozen for the Northern Marianas. Imports under this procedure will not be charged to limits established for exports from the country of origin. This exemption is effective for sweaters exported from these Pacific Territories during the period November 1, 1984 through October 31, 1985. (Federal Register Volume 50, Number 42, March 4, 1985).

The proposed legislation grants the Commerce Department general authority to prescribe regulations governing the entry of textile products under this act. Unfortunately, it is not clear whether the above exemption would still be in force, and therefore, whether these sweaters would be charged to the quota limits proposed under the act for Guam and the Northern Marianas or not. Section 5(a) of the proposed act includes the provision that the new quota system for the islands will be in spite of any other provision of law. At this point, the method of integration, if any, of the exemption feature for Guam and the Northern Marianas into the proposal is unclear.

VIII. IMPORT LICENSING FEATURES OF THE BILL

The act includes an import licensing scheme that is reported to be the first of its kind. Any textile importer, however small, would be required to obtain a license from Washington,

D.C. There are strong indications that Commerce is not set-up to handle this sort of thing and that the requirement would be seen as so burdensome as to dissuade small, potential importers. The track record at Commerce would not indicate that it has enough manpower or necessarily the inclination to make a licensing scheme work efficiently without a long break-in period.

IX. STRATEGIES FOR THE TERRITORIES

A. THREE STRATEGIES ON THE FOREIGN ISSUE

Under the U.S. Customs Headnote 3(a) program and the Caribbean Initiative Legislation, U.S. Territories are encouraged to establish businesses which are allowed to "import" into the U.S. market duty free those products of foreign origin which have undergone a "substantial transformation" wherein a minimum of 30% of the products value has been added on-island. The Headnote 3(a) program was established to encourage job and business creation in our Territories and to create revenue from local taxes. Currently, there are a number of textile manufacturing operations in the Commonwealth and in Guam in addition to a Guam watch assembly plant. American Samoa has current plans to take advantage of the Headnote 3(a) provisions.

Unfortunately, in a historical sense, Territorial-based manufacturers have not been able to rely on even-handed treatment by the Federal government with regards to the Headnote 3(a) program. In her book, The Office of Territorial Affairs, Ruth Van Cleve wrote that Australian wool processing in the 1950' and wristwatch and textile manufacturing in the 1960's were hampered or closed via legislative or administrative blows dealt when the perceived successes threatened the "domestic" industry.

The words "domestic" and "import" are used with some irony here as circumstances have dictated that the U.S. Territories are treated as being as foreign as Hong Kong or China. The U.S. does not have a good record in regulation of the Headnote 3(a) program. Rules have been changed in midstream after businesses have been established and individuals hired; regulation changes have occurred in unusual and accelerated manners, actually going into effect without benefit of the normal comment period; and the sensitivities of those most affected have not been considered. Effectively, with regards to textile products, the United States has said, "No rags, no riches".

We should consider not only trying to mount an initiative to treat the American Territories as domestic in this legislation, but on a larger scale, build a consensus in Congress that the Territories are domestic producers for all U.S. Customs trade purposes. What we have now is a system that forces the Territorial governments and producers into a continuously reactive role, rather than the proactive stance both they and the U.S. desire for the Territories in the development of the island economies. Wouldn't it be nice if we were allowed to concentrate on construction rather than on putting out fires?

In the March 19, 1985 Congressional Record, the date that the legislation was introduced into the House, there was no justification given for the treatment of the Territories as foreign- treatment of Canada, Mexico, the members of the European Economic Community, and the islands of the Caribbean was fully discussed - the Territories were not even mentioned. While sources in Washington say that the textile industry perceives imports from the Territories as a major problem, it would appear that as a matter of policy the industry goes after every perceived loophole, in hopes of gaining whatever they can.

RECOMMENDATION 1. The Territories should be treated in no less a manner than the treatment afforded the European Economic Community and Canada - therefore, an amendment should be drafted which would extend the general quota exemption now enjoyed by those countries.

RECOMMENDATION 2. Barring that option, the Territories should receive treatment similar to the Caribbean Basin countries and therefore be exempt from the "import sensitive categories."

RECOMMENDATION 3. As a longer-term objective, we should explore ways in which the Territories can forever after be treated as domestic producers in a manner that will avoid problems such as this in the future. The focus of this review should be no more narrow in scope than for purposes of the Headnote 3(a) provisions but could also be expanded as the Governor's see fit to include other "trade" related issues such as the Jones Act, regulation of air service, and commercial coverage/assistance by the International Trade Administration, U.S. Department of Commerce. It appears that for some purposes it would be in the best interest of the Territories to be treated as both foreign and domestic. Perhaps negotiations during the next Omnibus Territorial Act would be a good forum for this purpose.

B. POSITIONS OF HAWAII'S CONGRESSIONAL DELEGATION

It is virtually a forgone conclusion that some version of the bill will pass both houses. Interestingly enough, positions of Hawaii's four-member congressional delegation are split at this writing. Senator Daniel Inouye is a co-sponsor and supporter of the bill, Senator Spark Matsunaga questions parts of it but for the moment is non-committal, Representative Cec Heftel signed on as a co-sponsor with an eye toward winning support for sugar, and Representative Daniel Akaka opposes the bill. In Hawaii, the campaign to block passage already has won backing from, among others, the Fashion Guild of Hawaii and the Retail Merchants of Hawaii (an affiliate of the Chamber of Commerce of Hawaii). Other groups showing "concern" are the chamber itself,

the State Department of Planning and Economic Development, the Economic Development Corporation of Honolulu, and the Hawaii-Pacific District Export Council, which advises the U.S. Department of Commerce.

Here is how Hawaii's delegation explains their differing positions on the legislation, as reported this week in the Honolulu Advertiser:

* Senator Inouye says "I will do whatever I can to make certain that our people (Hawaii manufacturers) aren't hurt. At the same time I can't close my eyes to what is happening to the whole textile industry in the United States". Regarding the argument that textile/garment import restrictions will invite retaliatory measures abroad, "We anticipate those people (foreign nations) to retaliate but we're not supposed to retaliate.... What we are trying to say is, 'if you want us to open our doors, open your doors slightly.'"

* Representative Heftel is a cosponsor of the House version but only because of the tremendous amount of support the bill has within the house "and this is not the sort of thing you're going to stop." Congressmen who support the bill "are to a great extent the same people we have to have for assistance in developing sugar (price support) legislation." He hopes certain provisions can be introduced - a multi-colored fabric exemption, for example - to make the bill less objectionable to Hawaii aloha wear manufacturers.

* Senator Matsunaga says his main concern with the bill as drafted "is that its intended impact is aimed at Asia and the Pacific..." Because as a member of the Senate subcommittee on international trade he will be hearing testimony on the bill, he is reserving further assessment, he says.

* Representative Akaka opposes the bill because "the level of protection included is contrary to free market principles". Also, the resulting higher prices "would adversely affect every citizen in the United States." Furthermore, for Hawaii as an agricultural state, the prospect of retaliatory measures can't be ignored, he says.

RECOMMENDATION 4. Each member of Hawaii's delegation should be approached and advised of the injurious features in this bill with regards to its current impact and the deleterious message it sends to those business persons who would desire to embrace Headnote 3(a) in the future. While Hawaii's leaders have gone on record with their positions on the bill, given Hawaii's history of Federal - Territorial relations, they are normally sensitive to the needs of our islands, and may be persuaded to assist us with recommendations 1, 2, and 3 above.

C. MOOD OF THE CONGRESS

Congress has been escalating its assault on the Reagan administration's free-trade policies and the White House seems paralyzed in responding. The trade issue is as politically sensitive as the budget deficit, but since this measure has been introduced the administration does not seem to be on the same kind of track. As a result, the lawmakers are moving to limit the administration's leeway and are taking trade policies into their own hands. Many analysts think pressures could intensify to the point where the lawmakers may push through riders designed to limit imports in hard-hit industries, and the possibility that Congress may impose a surcharge on foreign imports looms in the background. Whatever the eventual outcome, the trend is unmistakable: Congressional proposals for new import restrictions cover the full range of domestic manufacturing industries.

There isn't any shortage of problems:

(1) lawmakers are moving to limit the President's authority to reject trade complaints when he considers them unjustified, one of the government's long-standing buffers against protectionist demands. Instead, they are seeking to require imposition of import restraints in more cases

(2) Senator Danforth (R, Missouri) introduced a bill that would force Mr. Reagan to restrict imports if Europe and Japan refuse over the next two years to open their telecommunications markets to U.S. companies

(3) the House Ways and Means Committee is taking a new look at a bill that could cause a confrontation with Saudi Arabia over trade in petrochemicals

(4) both houses have established new trade caucuses to draft further proposals

(5) Congress is pounding the administration to do something about the super-high dollar

(6) the U.S. is on the brink of a major confrontation with the Common Market over steel that could blow apart the global steel quotas the President ordered last autumn

(7) Washington and Brussels are heading for a showdown on agricultural trade

It is difficult to say where the congressional frustration may lead. The Senate's aggressive mood on trade with Japan appears to have peaked for now. And strategists concede Congress could go through the entire session without considering major

trade legislation at all; lawmakers may be so preoccupied with the budget and the tax-revision bill that they won't have much time for other issues.

But congressional planners caution there still is a danger that the current angry mood could spawn protectionist riders. No one is sure what Congress wants the administration to do. Few on Capitol Hill genuinely want to go protectionist, but they do want Mr. Reagan to pay more attention to trade. Republicans are banking on Treasury Secretary James Baker, who is heading the administration's newly created Economic Policy Committee, to focus more forcefully on the trade issue.

In 1983, when the Textile Bilateral Agreement between China and the United States expired, the U.S. imposed unilateral restraints on Chinese textile imports. China retaliated by boycotting U.S. cotton, soybeans, and synthetic fibers. China also shifted its purchases of U.S. grain to other suppliers. As a result, as reported in the National Journal last fall, U.S. earnings from farm exports to China decreased from \$1.5 billion in 1982 to \$544 million in 1983. To this day, American farmers have been unable to recapture these lost purchases.

RECOMMENDATION 5. Other Congressional "friends of the Pacific" should be contacted for their support. Retaliation by foreign trading partners is a very real risk, and the districts they represent may stand to lose with this legislation. There is no doubt that retaliation will occur under the General Agreement on Tariffs and Trade; historically, agriculture is the first to suffer.

Integration of the exemption feature, whereby sweaters in the amount of 160,000 dozen (for Guam) and 70,000 dozen (for the Northern Marianas) are allowed to be imported into the U.S. without charge to the limits established for exports from the country of origin, is unclear.

RECOMMENDATION 6. The issue should be addressed in the proposed legislation - the exemption granted should be allowed to stand so that the 160,000 and 70,000 dozen figures are not charged to the quotas proposed for the two Territories under the pending act.

X. A NOTE ON PROTECTIONIST LEGISLATION

Import protection is almost always a rotten idea, but some trade barriers are more pernicious than others. In many cases, new rules have been bizarre enough to match the most creative fashions of the garment trade itself.

U.S. garment makers have complained about imports since the 1930's, when they won "voluntary" restrictions on imports from

Japan. They not only punish efficient foreign garment makers but also send a perverse message to developing countries who are being asked by the U.S. to earn their own way, but, don't sell in the U.S. The perils of protectionism are cited so frequently these days as to sound like a familiar litany, but paradoxically, protection measures also damage the very groups whom trade restrictions are supposed to protect.

Relief from tough foreign competition may temporarily benefit protected industries and workers, however, the protected clearly run the danger of becoming fat and lazy - too comfortable with artificial prosperity, too loath to improve productivity, too willing to ignore shrinkage in their markets - and eventually they become more vulnerable than ever. What may not be so clear is that some of them also risk widening the cyclical swings in the demand for their product.

This is because whenever the overall demand for a product declines, such as in a turndown in the economy, foreign producers tend to capture more of the market. The loss in sales comes out of the hides of the domestic firms. Consequently, U.S. companies' bad years become worse. This phenomenon has been demonstrated in the auto, steel, machine tool, and textile industries. The widening swings in these cyclical industries' shipments probably can be blamed more on foreign producers' price advantages than on protectionist measures, but the trend is clear and dismaying.

Through both pricing and protectionism, American manufacturers are simply writing off a portion of the domestic market. When foreign producers permanently lock onto a significant portion of the U.S. market, the cyclical swings in American shipments intensify. All of these American industries are attacking the problem of foreign competition partly by, in effect, creating another problem.

In handing foreign rivals a relatively stable slice of the market, they are increasing their own instability. They are also keeping capital and labor tied up in sectors condemned to low returns and to layoffs. It's a poor substitute for becoming truly competitive.

TABLE 1

NO. 1370. US IMPORTS AND EXPORTS OF TEXTILES AND APPAREL PRODUCTS: 1965 TO 1983

(In millions of dollars. Excludes passengers, ironium, rubber and leather apparel and clothing donated for charity. Minus sign (-) indicates deficit)

PRODUCT	1965	1970	1975	1979	1979	1980	1981	1982	1983
Exports	613	731	1,873	2,824	3,891	4,458	4,539	3,449	2,928
Textile mill products	510	579	1,533	2,073	3,029	3,457	3,473	2,954	2,255
Yarn and thread	119	133	271	330	590	642	613	641	479
Cotton broad woven fabric	108	112	376	426	626	548	325	236	186
Other broad woven and knit fabric	135	151	387	433	678	809	825	553	467
Narrow fabric	21	15	32	84	95	108	129	117	117
Special fabric	64	29	194	406	504	709	684	569	517
Made-up articles	52	53	185	252	329	318	332	253	216
Textile floor coverings	11	25	88	143	207	327	345	293	270
Apparel	103	152	341	561	772	1,001	1,047	785	671
Imports	1,280	2,275	3,530	7,045	7,229	8,139	9,728	10,980	11,735
Textile mill products	789	1,124	1,197	2,117	2,119	2,372	2,911	2,703	3,098
Yarn and thread	61	217	114	237	147	168	207	229	301
Cotton broad woven fabric	137	173	219	427	380	433	607	484	580
Other broad woven and knit fabric	421	498	433	754	729	784	983	900	892
Narrow fabric	8	21	20	39	48	43	56	62	63
Special fabric	89	32	215	207	263	299	292	278	303
Made-up articles	35	56	98	253	294	362	460	473	535
Textile floor coverings	50	62	98	200	280	283	306	277	332
Apparel	483	1,151	2,333	4,928	5,110	5,787	6,817	7,367	8,648
Trade balance	667	-1,542	1,667	4,420	-3,438	-3,681	-5,208	-8,441	-8,808

Source: U.S. Bureau of the Census, *U.S. General Imports, Schedule A Commodity by Country, Report FT135*, and *U.S. Exports, Schedule E Commodity by Country, Report FT410*, monthly.Source: Statistical Abstract of the United States, 1985
U. S. Department of Commerce, Bureau of the Census

TABLE 2

TEXTILE SHIPMENTS FROM GUAM TO THE UNITED STATES DURING
1984 - REFERENCE DATA

=====

REFERENCE NOTES:

1	2	3	U	4	5	4	
TSUSA NUMBER	TSUSA COMMODITY DESCRIPTION	CAT NO.	N I T	1984 NET QUANT	1983 IMPORT RATIO	CONVERSION FACTOR	IMPORT SENSITIVE ???
-----	-----	---	---	-----	-----	-----	-----
379.7630	MENS SWEATERS WOOL KNIT NOR > \$5/LB NSPF	445	DOZ	107,347	111.7%	14.88/DOZ	YES (WOOL)
379.7640	BOYS SWEATERS WOOL KNIT NOR > \$5/LB NSPF	445	DOZ	690	111.7%	14.88/DOZ	YES (WOOL)
379.9030	M&B SHIRTS MMF NOR KNIT NSPF	638	DOZ	300	18.1%	18.0/DOZ	NO (<40%)
379.9630	M&B OTH MMF PAJAMAS NK NOR	651	DOZ	1,868	3.6%	52.0/DOZ	NO (<40%)
383.8073	W&G SWEATERS KNIT MMF NOR	646	DOZ	5,555	173.6%	36.8/DOZ	YES (>40%)
383.6371	WOMENS OTH WOOL KNIT SWEATERS >\$5/LB NOR	446	DOZ	73	425.8%	14.88/DOZ	YES (WOOL)
379.7685	M&B WOOL KNIT WAPP NSPF NOR >\$5/LB	459	DOZ	1,146	NONE	2.0/LB	YES (WOOL)
379.9690	M&B MMF OTH WAPP NK NOR NSPF	659	DOZ	81	NONE	7.8/LB	N/A
383.2730	WOMENS OTH SHIRTS CTN KNIT NOR	339	DOZ	459	91.8%	7.2/DOZ	YES (>40%)
383.5227	WGI OTH WAPP KNIT NOR VEGETABLE FIBER EXCEPT CTN, SUBJ TO CTN RESTRAINTS	359	DOZ	1,331	NONE	4.6/DOZ	N/A
389.6255	MMF INKED RIBBONS NK ORN NSPF	N/A	LB	343	NONE	NONE	N/A

TABLE 3

QUANTITIES AND DOLLAR VALUE OF 1984 TEXTILE SHIPMENTS FROM GUAM TO
THE U.S. BY THE SENSITIVE/NON-SENSITIVE CATEGORIES
UNDER THE PROPOSED H.R. 1562 ACT

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TSUSA NUMBER -----	U N I T ---	1984 ---IMPORT QUANTITIES--		1984 ---IMPORT VALUES---	
		SENSITIVE CAT -----	NOT SENSITIVE CAT -----	SENSITIVE CAT -----	NOT SENSITIVE CAT -----
379.7630	DOZ	107,347		\$9,628,983	
379.7640	DOZ	690		\$55,117	
379.9030	DOZ		300		\$23,964
379.9630	DOZ		1,868		\$149,216
383.8073	DOZ	5,555		\$311,333	
383.6371	DOZ	73		\$7,144	
379.7685	DOZ	1,146		\$113,454	
383.2730	DOZ	459		\$67,449	
TOTAL		115,270	2,168	\$10,183,480	\$173,180
PERCENT		98.15%	1.85%	98.33%	1.67%

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TABLE 4

1984 TEXTILE SHIPMENTS FROM GUAM TO THE U.S. - MAXIMUM GROWTH
FOR SHIPMENTS IN CALENDAR YEAR 1985

=====

REFERENCE NOTES:

1	2	3	5	5	6	
TSUSA	TSUSA COMMODITY	CAT	BASE	1984	MAXIMUM	
NUMBER	DESCRIPTION	NO.	YEAR	SQUARE	1985	
-----	-----	---	1984	YARD	SHIPMENTS	
			(DOZENS)	EQUIV	(DOZENS)	
379.7630	MENS SWEATERS WOOL KNIT NOR > \$5/LB NSPF	445	107,347	14.88	1,597,323	108,420
379.7640	BOYS SWEATERS WOOL KNIT NOR \$5/LB NSPF	445	690	14.88	10,267	697
379.9030	M&B SHIRTS MMF NOR KNIT NSPF	638	300	18	5,400	38,889
379.9630	M&B OTH MMF PAJAMAS NK NOR	651	1,868	52	97,136	13,462
383.8073	W&G SWEATERS KNIT MMF NOR	646	5,555	36.8	204,424	5,611
383.6371	WOMENS OTH WOOL KNIT SWEATERS >\$5/LB NOR	446	73	14.88	1,086	6,720
379.7685	M&B WOOL KNIT WAPP NSPF NOR >\$5/LB	459	1,146	2	2,292	50,000
383.2730	WOMENS OTH SHIRTS CTN KNIT NOR	339	459	7.2	3,305	97,222

Note 6 - Please refer to the reference notes which follow
these tables.

REFERENCE NOTES

REF

- 1 Tariff Schedules of the United States. Annotated (1985). The numbers correspond to the information supplied on customs entry and withdrawal forms with respect to articles imported into the customs territory of the United States from Guam during 1984.

The source of the data for the TSUSA numbers and quantity and dollar values in the succeeding tables was: Shipments from U.S. Possessions to the United States by TSUSA Commodity, Table 4, by the U.S. Bureau of the Census.

A pertinent note to the above source follows:

"Data on shipments from the Virgin Islands, Guam, American Samoa, and Puerto Rico are obtained from import documents filed with U.S. Customs Officials. The data shown in this report reflects entries for immediate consumption and entries into Customs bonded warehouses....

Information on shipments between the U.S. and other U.S. Possessions are not compiled by the Bureau of the Census."

The above source book reflected no textile exports from American Samoa into the U.S. during the Calendar years 1980 through 1984.

TSUSA numbers change periodically to reflect, among other things, combinations of the commodities described or renumbering of the tariff schedules. For instance, mens and boys wool knit wearing apparel imported from Guam in 1984 under TSUSA number 379.7680 is described under TSUSA number 379.7685 in the 1985 schedules. The following, supplied by the U.S. Customs Service in Honolulu, lists the TSUSA number used in the above source book and the new commodity number in the 1985 tariff schedules:

Reported No.	New Number
379.7680	379.7685
379.9680	379.9690
380.8140	379.9540
380.8443	379.9555
382.3347	383.4747
382.0459	383.2205
383.5226	383.5227

REF

- 2 Abbreviations used in the commodity descriptions are as follows:

CTN - Cotton
DEN - Denim
DOZ - Dozen
INC - Including
LB - Pound
M&B - Mens and Boys
MMF - Man-Made Fiber
NK - Not Knit
NOR - Not Ornamented
NSPF - Not Specifically Provided For (a "basket" commodity number in the schedules)
ORN - Ornamented
OTH - Other
T&S - Trousers and Slacks
W&G - Womens and Girls
WAPP - Wearing Apparel
WGI - Womens, Girls, Infants
> - Greater Than

Subject to Cotton Restraints - Articles in which the cotton component equals or exceeds 50 percent by weight of all component fibers.

- 3 Category numbers as referenced in Section 4(2)(A) of the proposed "Textile and Apparel Trade Enforcement Act of 1985" (H.R. 1562) and derived from the U.S. Department of Commerce publication "Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated, January 1985.
- 4 Import ratios as referenced in Section 4(3)(A) of H.R. 1562 and derived from the U.S. Department of Commerce publication "U.S. Production, Imports and Import/Production Ratios for Cotton, Wool and Man Made Fibers Textiles and Apparel. The ratio is expressed as the total 1983 U.S. imports under that category divided by the total 1983 U.S. domestic production of that category. A ratio greater than or equal to 40.0% for the preceeding calendar year is an "import sensitive" category under the proposed act (in addition to any wool product regardless of the import ratio). The 1983 figures were the latest available.
- 5 Conversion factors are used to convert the unit of issue to square yard equivalents under the section on "minimum quantities" in the proposed act (Section 5(c) H.R. 1562). For instance, 100,000 square yard equivalents of mens wool sweaters under TSUSA number 379.7680 at a conversion factor of 14.88 per dozen

would equal 6,720 dozen sweaters. The source for these conversion factors is the same as in reference note 3 above.

- 6 Realistically, Guam producers might not be able to achieve the growth allowed in certain categories that had low levels of production in 1984, due to marketing considerations, material availability, workforce training, or equipment constraints; Guams' principal 1984 production lines are limited to 1% growth.

The formulas for computing the maximum levels for 1985 and beyond are as follows:

For wool products, under each category:

(a) If 1984 shipments are less than 100,000 square yard equivalents, then 1985 shipments are limited to 100,000 square yard equivalents, otherwise, 1985 shipments are limited to 1984 levels multiplied by 101%. Growth in succeeding years, after the 100,000 square yard equivalent level is reached, is limited to 1%.

For wearing apparel other than wool, under each category:

(b) If 1984 shipments are less than 700,000 square yard equivalents and the category is import sensitive, then 1985 shipments are limited to 700,000 square yard equivalents. Growth in succeeding years, after the 700,000 square yard equivalent level is reached, is limited to 1%.

(c) If 1984 shipments are less than 700,000 square yard equivalents and the category is not import sensitive, then 1985 shipments are limited to 700,000 square yard equivalents. Growth in succeeding years, after the 700,000 square yard equivalent level is reached, is limited to 6%.

(d) If 1984 shipments are greater than 700,000 square yard equivalents and the category is import sensitive, then 1985 shipments are limited to the 1984 level multiplied by 101%. Growth in succeeding years is limited to 1%.

(e) If 1984 shipments are greater than 700,000 square yard equivalents and the category is not import sensitive, then 1985 shipments are limited to the 1984 level multiplied by 115%. Growth in succeeding years is limited to 6%.

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January 26, 1987

William Ulrich, Esquire
Office of the Attorney General
701 P.D.N. Building - 7th Floor
238 O'Hara Street
Agana, Guam 96910

RECEIVED
FEB - 3, 1987
ATTORNEY GENERAL'S OFFICE

Dear Mr. Ulrich:

We specialize in matters relating to the customs and tariff laws of the United States, and I enclose for your information the Firm card from the Martindale-Hubbell (the "attorney directory").

We are counsel to a number of companies with operations or proposed operations in the insular possessions of the United States. We have worked with Congressman Ben Blaz's office in connection with a seminar recently sponsored by the American Association of Exporters and Importers. We have also worked with Congressman Ron deLugo (Virgin Islands) in connection with a number of possible situations which have resulted in substantial investment and corresponding employment in the Virgin Islands. Further, we are currently discussing with some of our clients possible operations in Guam.

We are concerned with the chilling effect the decision of

William Ulrich, Esquire
Office of the Attorney General
Agana, Guam
January 26, 1987
Page Two

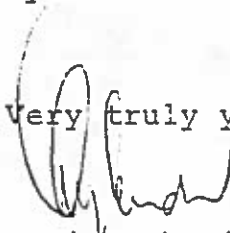
the United States Court of International Trade, affirmed by the U.S. Court of Appeals for the Federal Circuit in Yuri Fashions Company, Ltd. v. The United States (632 F.Supp. 41 (Ct. Int'l Trade, 1986; aff'd __F.2d__ (Fed. Cir. November 28, 1986)). (Copies of both decisions are attached for your convenience.)

We believe that the Yuri decisions will ultimately bring an end to many of the benefits resulting from locating operations in the insular possessions of the United States.

We have been advised by counsel for Yuri that the case will be appealed to the Supreme Court of the United States. We would appreciate the opportunity to discuss the basis on which we may represent the Government of Guam in a brief filed as amicus curiae.

I look forward to hearing from you.

Very truly yours,


Louis Schneider

LS:ac

Enclosures

cc: Congressman Ben Blaz
Attention: Beb Bibb, Esquire

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PHILIP YALE SIMONS, born Everett, Massachusetts, September 14, 1940; admitted to bar, 1977, New Jersey and U.S. District Court for the District of New Jersey; 1978, New York and U.S. Court of International Trade; 1982, U.S. Court of Appeals for the Federal Circuit. Education: Boston University (A.B., 1962; A.M., 1963); Pennsylvania State University (Ph.D., 1967); Seton Hall University (J.D., 1977). Member: New Jersey State and American Bar Associations.

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JERRY P. WISKIN, born Brooklyn, New York, July 27, 1947; admitted to bar, 1975, New York. U.S. Court of International Trade and U.S. District Court, Southern District of New York; 1976, New Jersey and U.S. District Court, District of New Jersey; 1977, U.S. Court of Appeals for the Federal Circuit. Education: Brooklyn College of the City University of New York (B.S., 1968); Brooklyn Law School (J.D., cum laude, 1974). Member: New York County Lawyers Association (Member, Standing Committee on Customs Law, 1978-1980).

United States Court of Appeals for the Federal Circuit

YURI FASHIONS CO., LTD.,
Appellant,

v.

Appeal No. 86-1126

THE UNITED STATES,
Appellee.

Andrew P. Vance, Barnes, Richardson & Colburn, of New York, New York, argued for appellant. With him on the brief was Michael A. Johnson

Velta A. Melnibrancis, Commercial Litigation Branch, Department of Justice, of Washington, D.C., argued for appellee. With her on the brief were Richard K. Willard, Assistant Attorney General and David M. Cohen, Director.

Appealed from: U.S. Court of International Trade

Judge DiCarlo

United States Court of Appeals for the Federal Circuit

YURI FASHIONS CO., LTD.,

Appellant,

V.

THE UNITED STATES,

Appellee.

Appeal No. 86-1125

DECIDED: November 18, 1936

Before SMITH, Circuit Judge, BENNETT, Senior Circuit Judge,
and NEWMAN, Circuit Judge.

NEWMAN, Circuit Judge.

Yuri Fashions Co., Ltd., appeals the judgment of the United States Court of International Trade, Judge DiCarlo presiding, holding that appellant's merchandise was properly excluded from entry. Yuri Fashions Co. v. United States, 632 F. Supp. 41 (Ct. Int'l Trade 1986). The judgment is affirmed on the basis of Judge DiCarlo's opinion.

AFFIRMED



YURI FASHIONS CO., LTD., Plaintiff,

v.

The UNITED STATES, Defendant,

and

American Fiber/Textile/Apparel Coalition, Defendant-Intervenor.

Court No. 84-12-01807.

United States Court of
International Trade.

March 21, 1986.

Importer challenged exclusion of sweaters imported from the Commonwealth of Northern Mariana Islands and sought declaratory judgment that regulation of the President, defining textile products of insular possessions of the United States for purposes of quota restraints, was ultra vires and void. On cross motions for summary judgment, the Court of International Trade, DiCarlo, J., held that: (1) General Headnote of Tariff Schedules of the United States regulated only duty paid on imports from insular possessions and, thus, did not conflict with the regulation; (2) importer's sweaters could be excluded under the regulation as a product of Korea; and (3) importer lacked standing to challenge the regulation as applied to products of insular possessions or to challenge directive of Chairman of Committee for Implementation of Textile Agreements.

Action dismissed.

1. Customs Duties ≈ 22

Tariff Schedules, General Headnotes and Rules of Interpretation, Headnote 3(a) did not address quota or other restrictions but regulated only the duty paid on imports from insular possessions, such as the Commonwealth of Northern Mariana Islands and, thus, did not conflict with regulation promulgated by the President, defining textile products of insular possessions of the United States for purposes of quota restraints.

2. Customs Duties ≈ 10

President has been delegated broad authority under Agricultural Act of 1956, § 204, as amended, 7 U.S.C.A. § 1854 to negotiate textile restraint agreements with other nations, and to order promulgation of regulations to carry out such agreements.

3. Customs Duties ≈ 12

Sweaters imported from the Commonwealth of Northern Mariana Islands could be excluded under regulation promulgated by the President, defining textile products of insular possessions of the United States for purposes of quota restraints, where country of origin of the sweaters may have been the Commonwealth for duty and marking purposes but was Korea for textile restraint purposes.

4. Declaratory Judgment ≈ 300

Importer, which did not allege it was adversely affected or aggrieved by regulation of products of insular possessions, lacked standing under 28 U.S.C.A. § 1581(i) to challenge application of regulation of President, defining textile products of insular possessions of the United States for purposes of quota restraints, to products of the Commonwealth of Northern Mariana Islands; importer's merchandise was product of Korea and not product of an insular possession.

5. Declaratory Judgment ≈ 300

Importer, which did not allege any facts to indicate that it was or would be adversely affected or aggrieved, lacked standing to challenge directive of Chairman of Committee for Implementation of Textile Agreements to Customs Service, permitting 70,000 dozen sweaters to be imported from Commonwealth of Northern Mariana Islands during period November 1, 1984 to October 31, 1985.

Barnes, Richardson & Colburn, Andrew P. Vance and Michael A. Johnson, New York City, for plaintiff.

Donald C. Woodworth, for amicus curiae Com. of the Northern Mariana Islands.

Richard K. Willard, Asst. Atty. Gen., David M. Cohen, Director, Commercial Litigation Branch, Civil Div., Washington, D.C. (Velta A. Melabrencis), New York City, for defendant.

Miller & Chevalier, Chartered, Donald Harrison, Washington, D.C., for defendant-intervenor.

MEMORANDUM OPINION AND ORDER

DiCARLO, Judge:

Plaintiff challenges the exclusion of sweaters imported from the Commonwealth of Northern Mariana Island

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that a regulation, 19 C.F.R. § 12.130(b) (1985),¹ defining textile products of insular possessions of the United States for purposes of quota restraints, is *ultra vires* and void.

Plaintiff's merchandise was denied entry on the grounds it was not accompanied by export visas from the Republic of Korea (Korea), which the United States Customs Service (Customs) maintained was the country of origin of the merchandise, pursuant to 19 C.F.R. § 12.130(b). Plaintiff says its merchandise is a product of the CNMI for all purposes, pursuant to General Headnote 3(a) of the Tariff Schedules of the United States (TSUS), and cannot be excluded from entry as a product of Korea by virtue of 19 C.F.R. § 12.130(b). Plaintiff also argues that regulation is *ultra vires* as applied to the CNMI.

Plaintiff alleges jurisdiction pursuant to 28 U.S.C. §§ 1581(a)² and 1581(d)(3) (1982), and seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 (1982) and Rule 57 of the Rules of this Court.

The American Fiber/Textile/Apparel Coalition, a coalition of twenty-one American trade associations and unions whose mem-

bers are involved in production of textiles and textile products, was granted leave to intervene as a party defendant in that part of this action brought under 28 U.S.C. § 1581(d).³ The CNMI, through its Resident Representative to the United States, was granted leave to appear as *amicus curiae*.

Plaintiff moves, and defendant cross-moves, for summary judgment. The parties agree that no issues of material fact are disputed.

The Court holds that 19 C.F.R. § 12.130(b) does not conflict with General Headnote 3(a).

I. The Exclusion of Plaintiff's Merchandise

In November, 1984 plaintiff attempted to enter a shipment of sweaters processed in the CNMI from components made in Korea. The merchandise was accompanied by a completed Customs Form 3229, certifying that more than fifty percent of the total value of the merchandise was added by materials made and labor performed in the CNMI. Applying 19 C.F.R. § 12.130, Customs determined that the country of origin of the sweaters was Korea.⁴ Since the

Thus intervention is not permitted where the Court has jurisdiction under 28 U.S.C. § 1581(a) over a cause of action to contest the denial of a protest under 19 U.S.C. § 1515.

4. 19 C.F.R. § 12.130 changed the country of origin requirements for textiles and textile products subject to quantitative restraints. In order for a textile product manufactured in two countries to have the second country as its country of origin for quota purposes, the product must undergo "substantial transformation" in the second country. Section 12.130(b) states in part:

For the purpose of this section ... a textile or textile product, subject to section 204, Agricultural Act of 1956, as amended, imported into the customs territory of the United States, shall be a product of a particular foreign territory or country, or insular possession of the U.S., if it is wholly the growth, product, or manufacture of that foreign territory or country, or insular possession. However ... a textile or textile product, subject to section 204, which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession.

1. 19 C.F.R. § 12.130 was published as an interim regulation by T.D. 84-171, 49 Fed.Reg. 31248 (August 3, 1984) and as a final regulation by T.D. 85-38, 50 Fed.Reg. 8710 (March 5, 1985). Plaintiff's merchandise was excluded by virtue of the interim regulation. Since plaintiff's merchandise would also be excluded under the final regulation, which differs, with respect to insular possessions, from the interim regulation only in form, the Court considers the final regulation. See *infra*, note 4.

2. Plaintiff protested the exclusion of its merchandise and demanded action on the protest within 30 days pursuant to 19 C.F.R. § 174.21(b) (1984). Plaintiff brought the action under 19 U.S.C. § 1515(b) (1982) and 28 U.S.C. § 1581(a) when no action was taken, and the protest deemed denied, after 30 days.

3. 28 U.S.C. § 2631(j)(1)(A) (1982) provides that Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that—no person may intervene in a civil action under section 513 ... of the Tariff Act of 1930....

merchandise was not accompanied by export visas from Korea, the merchandise was refused entry.

Plaintiff contends that General Headnote 3(a), TSUS, precludes application of 19 C.F.R. § 12.130 to its merchandise. Plaintiff says that its merchandise is a "product or manufacture" of the CNMI under General Headnote 3(i) for all purposes, and may not have another country as its country of origin for textile restraint purposes unless so provided for by act of Congress. The Court disagrees.

A. General Headnote 3(a)

[1] By its terms, General Headnote 3(a)⁵ regulates only the duty paid on imports from insular possessions, such as the CNMI. The headnote is captioned "Rates of Duty" and it expressly speaks only to the "rates of duty" for articles imported into the customs territory of the United States.

The Court agrees with the recent holding of the Court of Appeals for the Ninth Circuit that nothing in the headnote addresses quota or other restrictions:

Headnote 3(a) applies solely to tariffs and duties.... [A]fter examining the common meanings of the words "duty" and "quota," we conclude that "duty" cannot be read to encompass "quota".... Consequently we hold that that

upon which it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

See *East Industries, Inc. v. Regan*, 3 CIT —, 596 F.Supp. 1567 (1984) (upholding section 12.130 as within the authority delegated to the President under section 204 of the Agricultural Act of 1956, as amended, 7 U.S.C. § 1354 (1982)).

5. At the time of the attempted entry, in 1984, General Headnote 3(a) provided, in part:

Rates of Duty

(a) Products of Insular Possessions.

(i) Except as provided in headnote 6 of schedule 7, part 2, subpart E, and except as provided in headnote 3 of schedule 7, part 7, subpart A, articles imported from insular possessions of the United States which are outside the customs territory of the United States are

Headnote 3(a) does not apply to quotas, and therefore, that it did not preempt the quota restrictions imposed [on the imported merchandise].

United States v. Patel, 762 F.2d 784, 790-91 (9th Cir.1985). Plaintiff says that *Patel*, in which fraudulent violation of import laws was alleged, turned on very different facts than this case, and that the Ninth Circuit apparently overlooked headnote 6 of schedule 7, part 2, subpart E (setting a quota on timepieces imported from insular possessions), when the Court said that it "can find absolutely no reference to quotas in any part" of the TSUS. 762 F.2d at 791. But neither of these observations provide a reason why the *Patel* Court's interpretation of General Headnote 3(a) should not be followed.

The Court also disagrees with plaintiff's argument that the legislative history of General Headnote 3(a) indicates that Congress intended that provision to define the country of origin of merchandise imported from insular possessions for all purposes.

A tariff preference for goods from all insular possessions of the United States was first enacted as part of the Customs Simplification Act of 1954, Pub.L. 76S, 6S Stat. 1136, 1139, § 401 (enacted as section 301 of the Tariff Act of 1930), which stated in pertinent part:

subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value (or more than 70 percent of their total value with respect to watches and watch movements), coming to the customs territory of the United States directly from any such possession, and all articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty [emphasis added]

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There shall be levied, collected, and paid upon all articles coming into the United States from any of its insular possessions ... the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries; *except that all articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the United States, or of both, which do not contain foreign materials to the value of more than 50 per centum of their total value ... shall be admitted free of duty upon compliance with such regulations as to proof of origin as many be prescribed by the Secretary of the Treasury* [emphasis added].

According to its legislative history, this provision was intended to

provide for the *duty status* of importations from the insular possessions of the United States. The new section would provide that all articles imported from an insular possession of the United States ... shall be dutiable at the same rates as are importations from foreign countries, except those which (1) are entirely of native origin or (2) *are manufactured in such possession and do not contain over 50 percent of foreign materials*

S.Rep. No. 2326, 83rd Cong., 2d Sess. (1954) reprinted in, 1954 U.S.Code Cong. & Ad. News 3, 3900, 3905 (emphasis added).

General Headnote 3(a) was enacted as part of the Tariff Schedules of the United States in 1962, by the Tariff Classification Act of 1962, Public Law 87-456, 76 Stat. 72. The *Tariff Classification Study* published by the Tariff Commission stated that:

General headnotes 3 and 4 prescribe the conditions obtaining with respect to the "Rates of duty" columns numbered 1 and 2 in the proposed revised schedules.

6. The *Tariff Classification Study* is considered an important source of legislative history of the Tariff Schedules. *United States v. Andrew Fisher Cycle Co.*, 57 CCPA 102, 106-07, C.A.D. 1986,

In doing so, general headnote 3 covers the substance of the special treatment presently accorded to products of insular possession (under par. 301 of the Tariff Act of 1930, as amended)....

Submitting Report, Vol. 1, p. 17 (emphasis added).⁶

In 1956, Congress considered the tariff status of products of insular possessions in enacting headnotes to Schedule 7 of the TSUS to establish quotas on importation of timepieces and a special country of origin rule for buttons from insular possessions. The legislative history of Pub.L. 89-205, providing for the timepiece quota, states, in part:

Under paragraph (a) of general headnote 3 of the TSUS articles, *the growth or product of a U.S. insular possession outside the customs territory of the United States, are free of duty when imported into the U.S. customs territory if they do not contain foreign materials to the value of more than 50 percent of their total value.*

S.Rep. 1679, 89th Cong., 2d Sess. (1966), reprinted in, 1966 U.S.Code Cong. & Ad. News 4389, 4390 (emphasis added). The legislative history of Pub.L. 89-806, providing for the country of origin rule for buttons, describes General Headnote 3(a) as providing an "advantage" for goods from insular possessions.

This advantage consists of *duty-free treatment* for articles coming from the insular possessions *if they meet two simple tests*. First, the article arriving from the possession must have a value at least double the value of the foreign materials contained in it. *Second, it must have been subjected to some manufacturing or processing operation in the possession.*

426 F.2d 1303, 1311 (1970); see 2 R. Sturm, *Customs Law and Administration*, § 52.2, 10-13 (1985) (citing cases).

S.Rep. 1600, 89th Cong., 2d Sess. (1966), reprinted in 1966 U.S. Code Cong. & Ad. News 4398, 4401 (emphasis added).⁷

From the legislative history of General Headnote 3(a), the Court draws two conclusions. First, nothing in the legislative history of General Headnote 3(a) known to the Court indicates that the headnote was intended to regulate anything other than rate of duty. See *Patel, supra*. Second, the legislative history indicates that Congress intended that General Headnote 3(a) grant duty-free treatment to merchandise which (1) is a growth, product or manufacture of an insular possession and (2) satisfies a specified percentage of its value derived from the insular possession. Congress has never specified how merchandise is to be defined as a growth, product or manufacture of an insular possession.⁸ Congress presumably left definition of these terms to the Executive branch.

Plaintiff points to the quotas Congress enacted on timepieces imported from insu-

lar possessions, apparently to argue that Congress has reserved for itself authority to enact quotas on merchandise which met the rule of origin stated in General Headnote 3(a). But the fact that Congress has enacted quotas with respect to one kind of merchandise hardly argues that it has not delegated to executive branch authority to adopt other country of origin rules for non duty purposes.

B. 19 C.F.R. § 12.130 and the CNMI

Plaintiff and *amicus curiae* argue at length that Customs had no authority to exclude products imported from the CNMI under 19 C.F.R. § 12.130 since (1) the source of executive power to regulate textile imports is section 204 of the Agricultural Act of 1956, as amended, 7 U.S.C. § 1854 (1982),⁹ (2) that statute grants the President authority to issue regulations governing importation of products of

7. Congress also amended General Headnote 3(a) in 1974 and 1983 to implement the Generalized System of Preferences and the Caribbean Basin Initiative, respectively. The Trade Act of 1974, Pub.L. 98-618, 88 Stat. 1978, § 502; Caribbean Basin Economic Recovery Act, Pub.L. 98-617, 97 Stat. 392, § 214(a)(1)(B). Both enactments altered the foreign content permissible with respect to duty-free entry of goods from insular possessions. Neither enactment is accompanied by any indication that Congress created or approved any particular administrative test for "product" of an insular possession.

8. *Amicus curiae* argues that General Headnote 3(a) establishes a single "value added" test, referring to legislative history of the Tariff Act of 1909, Ch. 6, 35 Stat. 11, § 5 (1909), and the Tariff Act of 1930, Ch. 497, 46 Stat. 590, § 301 (1930), which provided for duty-free treatment for imports from the Philippine Islands.

The two-prong test was established in the Customs Simplification Act of 1954, the first legislation to permit duty-free entry of imports from the CNMI. As Customs Ruling CLA-2 CO:R:CV-G 553239 PR, issued to plaintiff after promulgation of 19 C.F.R. § 12.130, recognizes, Customs had an established and uniform practice of defining "products" of insular possessions, a requirement that was additional to the value added test. In a previous ruling, Customs described that practice as follows:

Whether an article is a "product" of an insular possession within the meaning of General Headnote 3(a), TSUS, depends upon whether substantial processing operations are performed in the insular possession. Customs

has consistently ruled that Headnote 3(a) requires more than merely "some processing." Articles imported into the insular possession must undergo extensive operations to satisfy the requirement that the merchandise be the growth or production of the possession.

On August 2, 1985 Customs proposed a change in this established and uniform practice in order to conform the definition of product under General Headnote 3(a) with the country of origin rule of section 12.130(b). 50 Fed.Reg. 3193.

9. Section 204 states in part:

The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States of any agricultural commodity or product manufactured therefrom or textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles, or textile products to carry out any such agreement. In addition, if a multilateral agreement has been or shall be concluded under the authority of this section among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded, the President may also issue, in order to carry out such an agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement [emphasis added].

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"countries", and (3) the CNMI is not a country, but an insular possession in commonwealth status with the United States.¹⁰

[2] But, plaintiff's merchandise was excluded because it was determined to be a product of Korea, not the CNMI. The President has been delegated broad authority under section 204 to negotiate textile restraints and free trade with other nations, and to order the promulgation of regulations to carry out such agreements. See *American Association of Exporters and Importers—Textile and Apparel Group v. United States*, 751 F.2d 1239 (Fed.Cir. 1985). Pursuant to this authority, the United States entered into an agreement with Korea limiting imports of textile products from that country into the United States, and the President ordered 19 C.F.R. § 12.130 promulgated to prevent the circumvention and frustration of such agreements. See Exec. Order No. 12475, 49 Fed.Reg. 19955 (May 11, 1984). Plaintiff does not question the President's authority to negotiate such an agreement with Korea, or to order the promulgation of section 12.130 to carry out such agreements. See *Mast Industries, Inc. v. Regan*, 8 CIT —, 596 F.Supp. 1567 (1984); *American Association of Exporters and Importers—Textile and Apparel Group v. United States*, 751 F.2d 1239 (Fed.Cir. 1985).

10. Since 1947 the United States has administered the Northern Mariana Islands as part of the Trust Territory of the Pacific Islands under a United Nations Trusteeship Agreement. Trusteeship Agreement for the Former Japanese Mandated Islands, 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189. Under the Trusteeship Agreement, Art. 3, the United States, as Administering Authority has:

full powers of administration, legislation, and jurisdiction over the Territory subject to the provisions of this Agreement, and may apply to the Trust Territory, subject to any modifications which the Administering Authority may consider desirable, such of the laws of the United States as it may deem appropriate to local conditions and requirements.

Article 8, § 4, of the Trusteeship Agreement gave the United States power to negotiate and conclude treaties and agreements with other nations on behalf of the CNMI.

The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, Pub.L. 94-241, 90 Stat. 263, (1976) printed at 48 U.S.C. § 1681, note (1982), was approved by act of Congress on

July 24, 1978. Article 1, section 101 of the Covenant provides: "The Northern Mariana Islands upon termination of the Trusteeship Agreement will become a self-governing commonwealth to be known as the Commonwealth of the Northern Mariana Islands," in political union with and under the sovereignty of the United States of America."

Plaintiff contends that Congress has limited its delegation of authority to the President under section 204 to define products of "countries" for textile restraint purposes to excluding from such restraints products subject to duty-free treatment under General Headnote 3(a). But the Court finds nothing in the legislative history of General Headnote 3(a) or section 204 which requires such an interpretation of the statutes. General Headnote 3(a) provides only for duty-free treatment of products of insular possessions. It is not impermissible for section 12.130(b), defining products for purposes of quantitative restraints on textiles, to affect products imported from insular possessions.

[3] In effect, the country of origin of the merchandise was Korea for textile restraint purposes, and may have been the CNMI for duty and marking purposes.¹¹ This situation may be awkward, but there is no violation of General Headnote 3(a).

II. The Declaratory Judgment

Plaintiff seeks for a declaratory judgment in several paragraphs in its complaint.¹²

Paragraph 24, b(7). Article 1, section 101 of the Covenant provides: "The Northern Mariana Islands upon termination of the Trusteeship Agreement will become a self-governing commonwealth to be known as the Commonwealth of the Northern Mariana Islands," in political union with and under the sovereignty of the United States of America."

11. Since the merchandise was not entered, it was not assessed a rate of duty.

12. Plaintiff's complaint does not set forth separate causes of action. Plaintiff requests declaratory relief in the following numbered paragraphs.

14. Plaintiff seeks a declaratory judgment that 19 CFR § 12.130, as applied to the imported merchandise and to future importations of textile articles from the Commonwealth of the Northern Mariana Islands, is an *ultra vires* Executive Act, contrary to statute, and void.

27. By Notice published at 50 Fed.Reg. 860-51, March 4, 1985, the Chairman of the Committee for the Implementation of Textile

Plaintiff seems to request that the Court declare *ultra vires* and void (1) section 12.130(h) on its face and as applied (a) to plaintiff's merchandise; (b) to future shipments of plaintiff's merchandise; and (c) to "textile articles from" the CNMI; and (2) the notice of the Chairman of the Committee for the Implementation of Textile Agreements, limiting to 70,000 the number of sweaters that may be imported from the CNMI without application of section 12.130 during the period November 1, 1984 to October 31, 1985.

Plaintiff seeks relief under the Declaratory Judgment Act, 28 U.S.C. § 2201 (1982).¹³ The Customs Court Act of 1980, § 301, 28 U.S.C. § 264 (1982), or Acting the Court of International Trade, specifically granted the Court authority to order any form of relief that is appropriate in a civil action, including declaratory judgments.¹⁴ Although the Court has

considered its jurisdiction to issue declaratory judgments under 28 U.S.C. § 1581(h) (1982),¹⁵ see *718 Fifth Avenue Corp. v. United States*, 7 CIT — (Slip Op. 84-39), apparently there has been no judicial opinion discussing the Court's authority to issue declaratory judgments under 28 U.S.C. § 264(c)(1) or 28 U.S.C. § 2201.

Analyzing the Declaratory Judgment Act, the Supreme Court has been clear that "[t]he requirements for a justiciable controversy are no less strict in a declaratory judgment proceeding than in any other type of suit. . . . This court is with utter power to give advisory opinions. . . . It has long been its considered practice not to decide abstract, hypothetical or contingent questions." *Alabama Federation of Labor v. Mr. Idory*, 325 U.S. 450, 461, 65 S.Ct. 1384, 1389, 39 L.Ed. 1725 (1945). The

Agreements, purports to permit a quantity of sweaters, not to exceed 70,000 dozen during the period November 1, 1984 through October 31, 1985, to enter the United States without application of 19 CFR 12.130, upon certification of the Government of the Commonwealth of the Northern Mariana Islands, pursuant to section 204, Agricultural Act of 1956, as amended. The provision is termed an "arrangement" and not an agreement.

28. Any arrangement or agreement promulgated by the Executive Departments of the United States and the Commonwealth of the Northern Mariana Islands cannot be premised upon section 204, Agricultural Act of 1956, as amended, 7 U.S.C. 1854. Any such arrangement or agreement does not conform to said section and exceeds the power delegated thereby to the Executive by the Congress of the United States. Judgment is sought declaring the law in the premises.

37. 19 CFR 12.130 in so far as it purports to limit the importation of products of the Northern Mariana Islands by criteria not enumerated by the Congress of the United States in General Headnote 3(a), TSUS, in the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, and in the legislation passed by the Congress of the United States in furtherance thereof, is a regulation beyond the power of the Executive to adopt. Judgment is sought declaring any such criteria contrary to law and void.

42. The determination of the country of origin of the imported merchandise upon the basis of 19 CFR 12.130 is contrary to law,

since 19 CFR 12.130 is without statutory basis as applied to the insular possessions of the United States, and particularly to the Commonwealth of the Northern Mariana Islands. Judgment is sought declaring said regulation, as amended, adopted, and published on March 5, 1985 at 50 Fed.Reg. 8723-25, contrary to law and unenforceable in these respects.

13. 28 U.S.C. § 2201 (1982) provides that "[i]n the case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration. . . ."

14. The Customs Court lacked power to grant equitable relief, and declaratory judgments sound in equity. *Alberta Gas Chemicals, Inc. v. Blumenthal*, 82 Cust.Ct. 77, 88, C.D. 4792, 467 F.Supp. 1245, 1254 (1979).

15. 19 U.S.C. § 1581(h) provides that the Court shall have exclusive jurisdiction, of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

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Court therefore will examine each issue with respect to which plaintiff requests declaratory judgment to determine whether it presents "a real, substantial controversy between parties having adverse legal interests, [and is] a dispute definite and concrete, not hypothetical or abstract." *Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 295, 39 S.Ct. 2301, 2308, 60 L.Ed.2d 829 (1979).

Plaintiff concedes that section 12.130(b) validly regulates products of "countries". The Court has decided that plaintiff's merchandise was lawfully excluded pursuant to section 12.130(b) as a product of Korea. See pages 4-15, *supra*. Thus the Court has already held section 12.130(b) valid as applied to plaintiff's merchandise, and, by extension, future shipments of similar merchandise.

[4] Plaintiff also challenges reference in section 12.130(b) to "products ... of insular possessions" and application of the regulation to "products" of the CNMI.

An action under 28 U.S.C. § 1531(i) may be brought "by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5," 28 U.S.C. § 2531(i) (1982). But plaintiff has not alleged that it is adversely affected or aggrieved by the regulation of products of insular possessions, since plaintiff's merchandise is a product of Korea and not the product of an insular possession. The Court may not issue a declaratory judgment "advising what the law would be on a hypothetical state of facts." *Actna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 241, 57 S.Ct. 461, 464, 81 L.Ed. 617 (1937).

[5] Plaintiff also lacks standing, on the present record, to challenge the directive of

the Chairman of the Committee for the Implementation of Textile Agreements (CITA) to Customs, which permits 70,000 dozen sweaters to be imported from the CNMI without application of section 12.130 during the period November 1, 1984 to October 31, 1985.¹⁶ Nothing in plaintiff's complaint, or in its briefs on the pending motions, alleged any facts to indicate that plaintiff was or would be adversely affected or aggrieved by the CITA directive.¹⁷

The Court holds that section 12.130(b) is valid as applied to plaintiff's merchandise, and that plaintiff lacks standing to claim that the regulation is invalid as applied to products of the CNMI or to challenge the CITA directive excepting 70,000 dozen sweaters imported from the CNMI.

III. Conclusion

The Court holds that General Headnote 3(a) of the TSUS regulates only duty paid on imports from insular possessions and does not define the country of origin of merchandise imported from insular possessions for all purposes; that plaintiff's merchandise was lawfully excluded pursuant to section 12.130(b) as a product of Korea; and that plaintiff lacks standing to challenge (1) section 12.130 as applied to products of insular possessions and (2) the CITA directive.

Defendant's motion for summary judgment is granted. So ordered.



16. Plaintiff challenges the directive on two grounds. First, it says that the Executive, and his delegate CITA, have no authority under section 204, or any other law, to impose quotas on goods imported from insular possessions. Second, plaintiff says that under the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, imports from the CNMI are "subject to the same treatment as imports from Guam", article 603(c), and that since the number of

sweaters that may be imported from Guam without application of section 12.130 during the period is 160,000, the directive limiting CNMI imports is contrary to law.

17. The Court could consider a motion under Rule 39 of the Rules of this Court if plaintiff shows it is adversely affected or aggrieved by the CITA directive.