WOOLLY BULLIES

BY JEFF TAYLOR

It has become a familiar pattern in recent years. Both houses of Congress pass a protectionist textile bill only to have it killed by a president committed, more or less, to free trade.

But for a while there was reason to think the Textile, Apparel, and Footwear Trade Act of 1990 would be different. By appealing to other manufacturing interests and agribusiness supporters worried about the outcome of the 97-nation General Agreement on Tariffs and Trade talks, the textile industry managed to put together a coalition that included all the big-time protectionist players. The goal was, and is, to cripple the GATT talks even if the textile bill should die.

The textile lobby needed new allies after its usual partner, the American Apparel Manufacturers Association, came out against the bill. After its members found they couldn't get enough raw fabric from U.S. companies, the AAMA became convinced that the cost of protectionism was too high. No longer are imported fabrics inferior to their American counterparts, only less expensive.

Chief U.S. Trade Representative Carla Hills warned that if the textile bill became law, consumers would pay up to $160 billion in increased clothing prices over the next five years. That averages out to a wonderfully regressive tax of $2,600 per family of four. Hills said the bill's supporters were "trying to pull the wool over the eyes" of the American people.

Sen. Ernest "Fritz" Hollings (D-S.C.), a textile stalwart who nonetheless wears Korean-tailored suits, engaged in blatant wool-pulling in a letter to the *Wall Street Journal*. He argued that "consumers do not benefit from lower-priced imports." For proof, Hollings wrote, "Glance through some mail-order catalogs and you'll see that consumers pay exactly the same price for clothing...U.S. made or imported." Of course, old Fritz didn't ask what the price of the U.S.-made item would be absent its cheaper, imported twin.

Although it had basic economic sense going against it, the textile industry had something more important working in its favor: congressional opposition to GATT. While legislators usually profess to want free trade among all nations, they realize that any GATT agreement would restrict their ability to micromanage trade issues to their political benefit.

Those with steel mills in their backyards, for example, are not keen on any measure that would allow Asian steel makers to compete with American firms. And legislators supported by organized labor would like to ban "low-wage" goods just on principle. But most important is the hostility GATT has drawn from traditionally free-trade agribusiness supporters who worry that the current round of trade talks could lead to a reduction of government subsidies for agriculture.

If any group could be counted on to string together such a diverse coalition it would be the textile lobby. Textile lobbyists are old hands at excluding foreign competition. Currently, bilateral agreements with some 40 countries limit imports so far below the level of demand that illegally evading quotas has become a tempting tactic for importers.

The U.S. Customs Agency estimates that 25 percent of all fraud investigations involve textiles. John Esau, of the agency's Fraud Enforcement Division, recently noted that the combination of strict quotas and tariffs four times the U.S. average can make it "profitable for people to try to circumvent the system."

In August K Mart Corp. paid a $6-million fine for evading quotas on men's, women's, and children's clothing between 1982 and 1986. Predictably, the powerful American Textile Manufacturers Institute trumpeted the case as an example of problems in the control of textile imports. But anyone not getting a paycheck from the industry has to question a policy that encourages clothing to be treated as contraband.

The 1990 bill would tighten these restrictions even further by abrogating the existing bilateral treaties and freezing footwear imports at their current level. Apparel and textile imports, which have been growing between 5 percent and 6 percent a year, could grow only 1 percent a year.

A measure that severe would seem to have little chance on its own merits. But back in July, farm-state senators, including Minority Leader Robert Dole of Kansas, rallied to the textile banner. They were drawn, in part, by a wrinkle added by Sen. Tom Daschle (D-S.D.). The Daschle amendment allows textile-exporting countries to up their quota by importing more U.S. agricultural products. Just how nations with anything other than command economies could arrange such a tit-for-tat swap was a question no one answered. Still, the bill passed by a veto-proof margin of 68-32.

While there has always been some overlap between agriculture and textile

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supporters, seldom has it extended beyond the Southeast's lint belt. Five years ago, in fact, Sen. Strom Thurmond (R-S.C.) worked to kill a measure similar to the one put forth by Daschle this year. But this time around, four farm-state senators who voted against the '85 textile bill—David Boren (D-Okla.), Quentin Burdick (D-N.D.), Jim Exon (D-Nebr.), and Tom Harkin (D-Iowa)—found themselves on the winning side.

The switch is not a surprise considering the GATT negotiations have been moving toward the eventual worldwide abolition of agricultural subsidies. Farm-state lawmakers know that developing countries will bolt from the talks if it looks as though Congress will not let their textile products reach U.S. markets. Passing the textile bill could put an end to GATT negotiations before any reductions can be agreed upon.

In the House the measure turned up 250 co-sponsors—a lot even for an election year and enough to worry the administration. However, it had a staunch foe in Rep. Sam Gibbons (D-Fla.), chairman of the Ways and Means Trade Subcommittee, who called the bill "a lousy piece of legislation." Gibbons has long seen the benefits of free trade flow in and out of his district through the port of Tampa. He voted to sustain the veto of the '85 textile bill and helped secure passage of the U.S.–Canada Free Trade Agreement. But Gibbons realized the votes were there to force the bill out of committee and all he would accomplish by sitting on the bill would be to make many fellow Democrats very unhappy.

Instead, Gibbons fought the bill when it came to the floor. It paid off as the bill passed 271-149—nine votes short of the two-thirds needed to override a veto. The surprising margin left opponents of the bill confident they can sustain the veto.

Gibbons notes that evidence that textiles is "a healthy, prosperous industry" drew several lawmakers to oppose the bill. Indeed, Federal Reserve Board figures show that in 1989 textile factories operated at 91 percent capacity, compared to 84 percent for all manufacturers. Since 1985, the industry's capacity utilization has grown twice as fast as other manufacturers. The industry is clearly not on the brink, and consumers would certainly benefit if textile quotas were eliminated.

But usually those in Congress benefit more from rewarding the interests that help get them elected rather than from serving taxpayers at large. That's why many lawmakers have no incentive to see trade barriers fall. GATT negotiations could lead to a global reduction in both trade barriers and agricultural subsidies. The only losers would be those industries sheltered from competition by government policies—and it is these businesses that have the ear of Congress. Accordingly, it would be a great surprise if the textile bill is the last attempt to sabotage GATT.

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OBSCENE DEBATE

BY CHARLES OLIVER

In 1973, after struggling with the issue for almost two decades, the Supreme Court hit on a formulation that seemed to come to grips with the subjective nature of obscenity. In *Miller* v. *California*, the Court ruled that a work is obscene if "the average person, applying contemporary community standards" would find that it appeals to the prurient interest; that it depicts or describes, in a patently offensive way, sexual conduct; and that it lacks "serious literary, artistic, political, or scientific value."

Should The 2 Live Crew be banned? A Florida judge said yes. His ruling could set national policy.

Superficially, at least, this scheme seemed to take into account all the arguments for and against regulating obscenity. Valuable works of art, such as *Ulysses* or even *Carnal Knowledge*, would be protected. Tolerant big cities could treat smut leniently, while small towns could ban it entirely. People who had problems with the prevailing standard in their community could move to a place more attuned to their values.

But things haven't worked out that way. Increasingly, small towns and ambitious prosecutors set the standards for the entire nation. In part, the problem is advancing technology. In part, it is incoherent law. And, in large part, it is the intractable conflict between those who would enforce "community" standards by law and those who would defy those standards in their own homes.

All of the contradictions and confusion in U.S. obscenity law were laid bare in February, when Montgomery County, Alabama, District Attorney Jimmy Evans filed obscenity charges against the American Exxxtasy Network, a satellite TV channel that showed unedited adult feature films. Evans, who has a history of prosecuting local adult bookstores, claimed he had taken another step in his long campaign to rid Montgomery of pornography. Some cynics suggested that he had kicked off his campaign for Alabama attorney general with a high-profile prosecution. Certainly the fact that Evans also included GTE and its corporate officers—the Exxxtasy Network was relayed by a GTE satellite—in his indictments seemed to confirm this conclusion.

Whatever his motivations, Evans accomplished both of these goals. GTE withdrew satellite access from both the Exxxtasy Network and its sister channel, the Tuxedo Channel, which showed edited adult films. Within two months, the Exxxtasy Network had shut down its operations. And Evans went on to win the Democratic nomination for attorney general and will likely be elected to that office.

In the Exxxtasy Network case, modern technology has shown that the Supreme Court's attempts to accommodate personal freedom and regulation of obscenity cannot stand close scrutiny. To see why, we have to consider the decisions that set the boundaries for the regulation of obscenity.

In the 1969 case *Stanley* v. *Georgia*, the Court found a right to possess obscene material in one's home. Speaking for the majority, Justice Thurgood Marshall argued that "the right to receive information and ideas, regardless of their social worth, is fundamental to our free society....If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch."

Marshall's opinion seemed to sabotage earlier Court rulings that obscenity is outside the protection of the First Amendment. But Marshall himself denied that *Stanley* had any effect on those cases, arguing that they dealt with the "commercial distribution of obscene material," not possession. The other members of the Court agreed.

Two years later, *United States* v. *Reidel* upheld a statute prohibiting sending obscene material through the mail. Justice Byron White wrote, "To extrapolate from *Stanley*'s right to have and peruse obscene material in the privacy of his own home a First Amendment right in *Reidel* to sell it to him would effectively scuttle *Roth*....*Roth* has squarely placed obscenity and its distribution outside the reach of the First Amendment and they remain there today. *Stanley* did not overrule *Roth* and we decline to do so now."

The *Roth* to which White referred was the 1957 *Roth* v. *United States* case, in which the Court first ruled that obscenity is not protected by the First Amendment. Writing for the majority, Justice William Brennan argued, "All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to