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# CBI/NAFTA Parity Proposals: A Comparison

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## Summary

The tariff and quota treatment of U.S. imports from Mexico under the North American Free Trade Agreement has resulted in a distinct and increasing competitive disadvantage for imports from the beneficiary countries of the Caribbean Basin Economic Recovery Act (CBERA). To eliminate this disadvantage, proposals have been made to extend to imports from Caribbean Basin countries preferential treatment equivalent to that accorded imports of identical goods from Mexico. This report compares the provisions of four such proposals: Title I of H.R. 984, Title I of S. 371, H.R. 1834, and S. 1389 (including a measure identical to S. 1389, included as **Title II** in a substitute amendment proposed in the Senate to **H.R. 434** and passed subject to a restrictive amendment). All four would accord, during a limited transition period, to imports of certain products (primarily textiles and textile apparel) from CBERA countries unilateral preferential treatment equivalent to that accorded to comparable imports from Mexico under the NAFTA. This report will be updated as events warrant.

## Background

With the entry into force, on January 1, 1994, of the preferential tariff and quota provisions of the North American Free Trade Agreement (NAFTA), the earlier trade advantage of the beneficiaries of the Caribbean Basin Economic Recovery Act (CBERA) over Mexico (until then a beneficiary of the generalized system of preferences) was eliminated. The further gradual implementation of the NAFTA—to be fully completed by January 1, 2008—has placed those countries in an increasingly disadvantageous competitive position compared to Mexico.

As in three previous Congresses, proposals have been made in the 106th Congress which would mitigate, if not eliminate, the adverse effect of the competitive advantage that Mexico has gained and will continue to gain relative to CBERA countries. These proposals would, during a limited transition period, accord to certain imports from CBERA countries that are by law ineligible for the CBERA preference, tariff and quota treatment identical with or very similar to (in "parity" with) that accorded to similar

imports from Mexico under the NAFTA. They would also aim at the eventual accession of all CBERA countries to a multilateral free-trade agreement (NAFTA or the proposed Free Trade Area of the Americas - FTAA) by the year 2005, or the conclusion of an equivalent bilateral agreement with the United States.

## Proposals

In the 106th Congress, four CBI/NAFTA parity proposals have been introduced: United States-Caribbean Trade Partnership Act (Title I of H.R. 984, Caribbean and Central America Relief and Economic Stabilization Act); and three measures titled identically United States-Caribbean Basin Trade Enhancement Act (CBTEA): Title I of S. 371, Central American and Caribbean Relief Act; H.R. 1834 (the Administration proposal); and S. 1389. Of these, H.R. 984 has been ordered reported on June 10, 1999, and S. 1389 has been reported favorably Sept. 16, 1999 (S.Rept. 106-160); the reported language of S. 1389 has been included as Title II in Senate substitute amendment SP 2325 to H.R. 434 (not treated individually in this report), amended further and passed by the Senate on November 3, 1999, as the Trade and Development Act of 1999 (including an amendment denying any benefits granted under the Act to countries not enforcing the standards of the ILO Convention for the Elimination of the Worst Forms of Child Labor).

Although these measures differ in certain particulars, all four have in common a twofold purpose: (1) unilateral extension by the United States to imports from the CBERA countries, during a limited transition period (of varying length in each proposal), of preferential trade treatment equivalent or similar to that accorded to imports from Mexico under the North American Free Trade Agreement (NAFTA), and (2) the eventual accession, by the year 2005, of all CBERA countries to a multilateral free-trade area, including the United States (NAFTA, or the prospective Free Trade Area of the Americas - FTAA), or bilateral free-trade agreements with the United States comparable to a relevant multilateral one.

In all four measures, the focus is on imports of textiles and textile apparel, while three of them also provide preferences for certain other import-sensitive articles,[1] all of which are at present ineligible for the CBERA preference, but benefit from the gradual elimination in stages of all trade barriers under the NAFTA.

The countries benefitting from the program are called "partnership countries" in H.R. 984 and "beneficiary countries" in S. 371, S. 1389, and H.R. 1834. The term "beneficiary country" is occasionally used in this report also to double as the meaning of "partnership country" where applicable.

**Beneficiary (or partnership) countries** of the program are defined in all four proposals as the current beneficiary countries of the CBERA, with H.R. 1834 and S. 1389

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[1] Defined in Section 213(b)(B)-(F) of the CBERA as footwear ineligible for duty-free status under the GSP; tuna in airtight containers; petroleum or petroleum products; watches and watch parts containing material produced in a non-MFN country; and articles subject to reduced (rather than zero) duty rates (handbags, luggage, flat goods, work gloves, and leather wearing apparel ineligible for GSP duty-free treatment). Duty rates on such articles have been reduced by 20% (but no more than 2.5% ad valorem) below those applied on December 31, 1991.

also requiring the President to determine a country's eligibility for the program by considering a lengthy list of additional criteria comparable to some of those contained in the NAFTA and the World Trade Organization (WTO) Agreement.

**Transition period** varies among the proposals. In H.R. 1834, it runs from October 1, 1999, through June 30, 2001; in S. 1389, from October 1, 1999, through the earlier of December 31, 2004, or the day FTAA or an equivalent bilateral trade agreement between the CBTEA country and the United States enters into force; in S. 371, from October 1, 1999, through September 30, 2005; and in H.R. 984, from the date of its enactment through the earlier of the date five years after its enactment, or the date of the CBERA country's accession to the NAFTA or a comparable bilateral agreement.

**Preferences for textiles and textile apparel**, the key category of articles addressed in the proposals, also vary among them. In some instances, preferential treatment is specifically made identical to that of imports under the NAFTA; in others, duty-free or reduced-rate treatment is only functionally identical with or very similar to NAFTA treatment.

Tariff treatment specifically identical to that accorded to identical Mexican articles under the NAFTA[2] would be extended under H.R. 984 to articles "originating" (as defined in the NAFTA) in a partnership country, while "nonoriginating" articles or those not qualifying for other duty-free preferences provided by H.R. 984 (see below) would be subject, within import quotas allocated among the partnership countries, to the same duty rates that apply to tariff-quota imports for nonoriginating articles from Mexico. This preference may be implemented by the President after consultation with domestic textile and apparel industry and other interested parties.

*Duty-free treatment* without specific reference to NAFTA treatment would be accorded under

(1) H.R. 984, S. 371, and S. 1389 to

(a) apparel assembled from fabrics wholly formed and cut in the United States from U.S.-formed yarns (usually referred to as a "yarn forward" situation) and entered under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 9802.00.80 (production-sharing provision)[3], or under chapter 61 or 62 (in H.R. 984, also chapter 63), which would qualify for HTSUS 9802.00.80 treatment except for certain additional marginal operations;

(b) apparel made with component parts cut in a beneficiary (partnership) country from fabrics wholly formed in the United States from yarns wholly formed in the United States (in S. 371 and S. 1389, also: assembled with U.S.-made thread);

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[2] Although most textile and textile apparel imports from Mexico already are duty free under NAFTA, many are still dutiable at rates that are being gradually reduced to zero.

[3] Under HTSUS subheading 9802.00.80, *any* imported article assembled (but not further processed) in any foreign country from U.S.-origin component parts is not assessed any duty on the value of such component parts, but is assessed import duty at the regular rate on the remainder of its value. For the purpose of textile apparel, a component part (fabric pattern cut to shape ready for assembly) is considered of U.S. origin even though it is merely cut in the United States from imported fabric.

(c) articles certified as hand-loomed, handmade, folklore articles (as defined);

(2) H.R. 984 and S. 371, to apparel knit-to-shape in beneficiary (partnership) country from wholly US-formed yarns;

(3) H.R. 984, to articles made in a partnership country from fabric knit in a partnership country from wholly U.S.-formed yarns;

(4) S. 371 and S. 1389, to textile luggage
(a) assembled from fabrics wholly formed and cut in the United States from wholly U.S.-made yarns, and entered under HTSUS 9802.00.80; and
(b) assembled from fabric cut in a beneficiary country from fabric wholly U.S.-formed from wholly U.S.-formed yarn, if assembled with U.S.-formed thread.

(5) S. 371, to non-U.S.-origin findings and trimmings (as defined) incorporated in an assembled textile or apparel article, provided their value does not exceed 25% of the cost of the components of the article.

Under H.R. 1834, duty reductions of up to 100% could be proclaimed by the President for articles:

(1) assembled from fabrics wholly formed and cut in the U.S. from U.S.-formed yarns ("yarn-forward" articles) and entered under HTSUS subheading 9802.00.80, or under chapter 61, 62, or 63, which would normally qualify for HTSUS 9802.00.80 status except for certain additional marginal operations (cf. 1(a) above);

(2) cut in a beneficiary country from fabrics wholly formed in the United States from yarns wholly formed in the United States, and assembled with U.S.-made thread;

(3) identified under the prescribed procedure as handloomed, handmade, or folklore articles.

*No quantitative restrictions (import quotas)* would apply under any proposal to any articles qualifying for duty-free or reduced-duty treatment, except to those subject to import quotas under H.R. 984 as "nonoriginating."

All four proposals provide for bilateral emergency action (import relief) by the President in case of serious injury, or threat thereof, to a U.S. domestic industry, by imports from a CBERA beneficiary country, under the same rules and conditions as apply to imports from Mexico under the NAFTA. All four authorize tariff action (imposition of or increase in duty rate, tariff quotas); H.R. 984 and H.R. 1834 also provide for quantitative restrictions.

*Penalties for transshipment* differ among the proposals.

(1) H.R. 984, S. 371, and S.1389 provide a penalty for the exporter or any successor for willful illegal transshipment or willful customs fraud, by denying all CBERA benefits for two years.

(2) Under S. 371 and S. 1389, a country not taking measures to prevent transshipment may be penalized by a reduction of its textile and apparel quota by three times the quantity of the transshipped articles.

(3) H.R. 1834 provides for a reduction of a transshipping country's existing import quotas by an amount determined by the President, and also defines "transshipment" as: providing material false information concerning the country of origin, manufacture, processing, or assembly of the article in question or any of its components.

**Preferences for other import-sensitive articles**, ineligible for basic CBERA preferences (zero, or reduced duty rate)[4], are included in two proposals.

(1) H.R. 984 and S. 1389 authorize, for any originating import-sensitive article, tariff treatment equivalent to that which applies under the NAFTA to identical articles imported from Mexico; in instances where the NAFTA duty rate would still be in the process of being reduced in annual stages to zero and the CBERA reduced rate would be lower than the current NAFTA rate, the CBERA rate would apply.

(2) Under H.R. 1834 and S. 1389, the President would be authorized to proclaim reductions of duties on imports from CBTEA beneficiaries up to the entire difference between the applicable regular CBERA rate and the NAFTA/Mexico rate.

In all three cases (H.R. 984, H.R. 1834, and S. 1389), the reduction based on the NAFTA rate would not apply to any article already accorded duty free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTSUS.[5] S. 371 contains no provisions dealing with the duty rates on "other" import-sensitive articles, but such articles continue to benefit from the duty-free treatment under U.S. Note 2(b) (see preceding paragraph).

**Modification of preferential treatment** is provided for in three proposals.

(1) Under H.R. 984, the President may withdraw, suspend, or limit, upon a 60-day notice and explanation to Congress, the parity preference for any article of a partnership country, if he determines on the basis of his triennial CBERA report to Congress (see below: Reporting requirements) the appropriateness of such action.

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[4] As mentioned above, these are defined in Section 213(b)(B)-(F) of the CBERA as footwear ineligible for duty-free status under the GSP; tuna in airtight containers; petroleum or petroleum products; watches and watch parts containing material produced in a non-MFN country; and articles subject to reduced (rather than zero) duty rates (handbags, luggage, flat goods, work gloves, and leather wearing apparel ineligible for GSP duty-free treatment). Duty rates on such articles have been reduced by 20% (but no more than 2.5% ad valorem) below those applied on December 31, 1991.

[5] This provision authorizes duty-free importation of *any* article (except a textile or apparel article, or petroleum or petroleum product) assembled or processed in a CBERA beneficiary country wholly from U.S.-produced components, materials, or ingredients, and imported directly from the country of manufacture.

(2) H.R. 1834 and S. 1389 authorize the President, under similar notification conditions as above, to (1) withdraw or suspend any country's designation as a beneficiary of the parity preference, or (2) withdraw, suspend, modify, or limit the parity preference with respect to any article of any country, if he determines such action appropriate upon an evaluation of the criteria for the designation of a beneficiary country. It also requires the President to modify (withdraw, suspend, etc.) a country's eligibility for the basic CBERA preference in the same manner in which he modifies (withdraws, suspends, etc.) the country's eligibility for the GSP for failure to comply with one or more eligibility criteria common to both programs.

**Customs procedures** (including the requirement for certificates of origin) for imports under all four proposals are identical and must be similar "in all material respects" to the procedures applicable to imports under the NAFTA. An article's qualification for parity preferential treatment is, indeed, contingent on a Presidential determination that the beneficiary country from which it is exported and/or in which materials used in its production originate or undergo production, follows or is making substantial progress toward implementing the relevant customs procedures of the NAFTA.

All proposals contain **reporting requirements** of varying frequency and scope.

(1) H.R. 984 requires a **one-time report**, based on a U.S. Customs Service study, on the cooperation of other countries concerning circumvention (transshipment), to be submitted by the U.S. Trade Representative to Congress by October 1, 1999.

(2) **Periodic reports**:

(a) by the President to Congress,

(i) under H.R. 984, a triennial (at present, annual) report on the operation of the CBERA, requiring detailed information on various specific points, beginning no later than one year after the enactment of the proposal; and

(ii) under H.R. 1834, by December 1, 2000, and every 3 years thereafter, reports on each beneficiary country's performance under the criteria required for its designation as a beneficiary country;

(b) by the U.S. Trade Representative to Congress, under S. 1389, by December 31, 2001, and every 2 years thereafter, reports on each beneficiary country's performance under the criteria required for its designation as a beneficiary country;

(c) by the U.S. International Trade Commission to Congress and the President,

(i) under S. 371, a biennial (at present, annual) report on the economic impact of the CBERA on U.S. industries and consumers, beginning September 30 of the year following the year parity legislation has been enacted; no reports are required after September 30, 2006;

(ii) under S. 1389, a similar biennial report beginning September 30, 2001; and

(iii) under H.R. 1834, a similar triennial report, beginning December 1, 2000;

(d) by the Secretary of Labor to Congress, under H.R. 1834, triennial (at present, annual) reports on the impact of CBERA on U.S. labor, beginning on September 1, 2000.

All proposals also contain definitions of relevant if somewhat different terms.