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# Caribbean Basin Interim Trade Program: CBI/NAFTA Parity

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# Caribbean Basin Interim Trade Program: CBI/NAFTA Parity

## SUMMARY

The entry into force, on January 1, 1994, of the North American Free Trade Agreement (NAFTA) has eliminated the advantage that the beneficiaries of the Caribbean Basin Economic Recovery Act (CBERA) and related provisions of the Caribbean Basin Initiative (CBI) had enjoyed in trade with the United States relative to Mexico, and gave Mexico an increasingly significant competitive edge over the CBERA countries. The scheduled further implementation of the NAFTA would have resulted in a substantial advantage to Mexico over the CBERA countries and vitiate in part the purpose of the CBERA.

Beginning with the 103rd Congress, Congress considered legislation to provide, temporarily, to CBI beneficiary countries tariff and quota treatment equivalent to that accorded to Mexico under the NAFTA. The legislation also would set up mechanisms for the accession of such countries to the NAFTA or an equivalent bilateral agreements with the United States. Due to its controversial nature, based on the perceived adverse consequences for the U.S. textile industry and substantial estimated negative effect on the U.S. budget, however, the legislative process reached an impasse in mid-1995. Although favorably reported in several instances since then, the parity legislation was not enacted.

In the 105th Congress, parity provisions were added by the House to its budget reconciliation bill but omitted by the Senate and in conference. Parity provisions in a somewhat different language also were introduced in several other measures, of which a House and two Senate bills were reported favorably, but the House bill was defeated and the Senate measures did not come to vote.

Parity legislation was introduced again in both houses of the 106th Congress as free-standing measures or as part of broader legislation. Diverse versions of House and Senate parity legislation were eventually reconciled in the conference report on comprehensive trade legislation, passed by both houses and signed by the President May 18, 2000 (Caribbean Basin Trade Partnership Act - CBTPA; Title II, P.L. 106-200). The parity program has been established with respect to 24 countries by Presidential proclamation and implemented with respect to 14 of them by a determination by the USTR of their compliance with the statutory requirements.

Legislation enhancing and broadening the scope of the CBTPA preferential treatment, included in broader legislation introduced in the 107th Congress, was passed by the House but stricken in the Senate.

## MOST RECENT DEVELOPMENTS

*In the 106th Congress, CBI/NAFTA parity measures were included in two instances in legislation of broader scope, providing enhanced trade preferences and assistance to Central American and Caribbean countries affected by the Hurricanes Mitch and Georges: the Central American and Caribbean Relief Act and the Caribbean and Central America Relief and Economic Stabilization Act; also introduced were two freestanding measures, one in either chamber, eventually resulting in a conference version passed on May 4, 2000, by the House and on May 11 by the Senate; it was signed by the President May 18, 2000 (Caribbean Basin Trade Partnership Act - CBTPA; Title II, P.L. 106-200). Twenty-four countries have been designated by Presidential proclamation as prospective beneficiaries of the program, 14 of which have been determined by the USTR to be in compliance with the statutory customs requirements for participation in the CBTPA program and are its actual beneficiaries.*

*In the 107th Congress, legislative language passed by the House to enhance and broaden the scope of the CBTPA preference (H.R. 3009) was stricken by the Senate Finance Committee report (S.Rept. 107-126) on H.R. 3009.*

## BACKGROUND AND ANALYSIS

### Some Basics

In its fundamental elements, the U.S. trade and tariff policy has treated both the Caribbean Basin countries and Mexico, in many respects their competitor and a major U.S. trading partner, in an equal manner. Both are accorded most-favored-nation (nondiscriminatory) treatment, to both apply the general tariff advantages of the "production sharing" (also referred as "offshore assembly") provisions (and have been, in both cases, extensively used by U.S. firms), and, prior to the entry into force of the North American Free Trade Agreement (NAFTA), both were designated beneficiary countries (BDCs) of the U.S. generalized system of preferences (GSP). Until NAFTA, however, most Caribbean Basin countries had a significant advantage over Mexico because of their participation in the Caribbean Basin Initiative (CBI).

With the entry into force, on January 1, 1994, of the preferential tariff and quota provisions of the NAFTA, however, the earlier advantage of CBI countries over Mexico was totally eroded. Moreover, much of NAFTA's further staged implementation put CBI countries at a distinct competitive disadvantage compared to Mexico with respect to a substantial portion of U.S. imports from either area. The gap would become even wider with full implementation of NAFTA liberalization (by January 1, 2008). To mitigate, if not eliminate, the adverse effect of the advantages that Mexico already had gained and would continue to gain relative to CBI countries, legislation was introduced in the past three Congresses to authorize for imports from CBI countries tariff and quota treatment that is identical with or very similar to that accorded Mexico under NAFTA. This treatment would be of limited duration and, in some instances, with a specific view toward eventual accession of Caribbean Basin countries to the NAFTA or the proposed Free Trade Area of the Americas, or conclusion of an equivalent bilateral agreement with the United States.

To provide an idea of the nature and scope of changes in trade competitiveness between the CBERA countries and Mexico that have resulted from the implementation of the NAFTA, the relevant preferential or special tariff treatments, as applicable, are described below. The aspects of trade policy that apply generally to all (or most) U.S. trading partners (e.g., most-favored-nation/normal-trade-relations status, or production-sharing provisions) are not included in any detail.

## Caribbean Basin Preference

The Caribbean Basin trade preference is the centerpiece of the Caribbean Basin Initiative (CBI), proposed in February 1982 by President Reagan as a comprehensive but temporary program "to promote economic revitalization and facilitate expansion of economic opportunity in the Caribbean Basin region." The preference and some other less comprehensive benefits were enacted in 1983 by the Caribbean Basin Economic Recovery Act (CBERA) and put into effect as of January 1, 1984. The CBERA has been amended several times, most substantively by the Caribbean Basin Economic Recovery Expansion Act of 1990 ("CBI II"), which added several improvements and made the program permanent.

In its key provisions, the CBERA authorizes unilateral preferential treatment (either duty-free, or at duty rates lower than those applicable generally) for most articles imported from 24 Caribbean Basin countries designated as its beneficiaries (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago). Eligible for the duty-free preference under the CBERA are all otherwise dutiable products except import-sensitive articles: textiles and apparel subject to textile agreements, footwear ineligible for the GSP as of January 1, 1984, canned tuna, petroleum and its products, and watches and watch parts containing any material originating in countries denied the most-favored-nation status.

Certain import-sensitive leather articles, originally ineligible for duty-free treatment (handbags, luggage, flat goods, work gloves, and certain leather wearing apparel), have been accorded by the 1990 amendment preferential tariff treatment at reduced but still positive rates. This preference consists of a 20% cut in the regular (MFN) duty rates in effect at the end of 1991, phased-in through five stages beginning on January 1, 1992, and completed on January 1, 1996. The reduction, however, could not exceed 2.5% ad valorem or, for general rates reduced in the Uruguay Round, be 1% ad valorem greater than that reduction.

To be accorded the duty-free or reduced-rate preference, an eligible article must be a "product of" (as defined in the U.S. general rules of origin) a CBERA beneficiary country and imported directly from it, and at least 35% of the article's import value must have originated in one or more CBERA beneficiaries. In this context, Puerto Rico and the U.S. Virgin Islands are counted as CBERA beneficiaries, and up to 15% of the 35% of the article's qualifying import value may be accounted for by value originating in the U.S. customs territory (other than Puerto Rico).

Duty-free importation of sugar and beef products is subject to a special eligibility requirement that the beneficiary country submit and carry out a stable food production plan ensuring that increased production of sugar and beef will not adversely affect the overall food production of the country.

CBERA duty-free treatment may be suspended for any otherwise eligible article by Presidential proclamation implementing a remedial measure under the import-relief provision (Section 203) of the Trade Act of 1974 or the national-security provision (Section 232) of the Trade Expansion Act of 1962.

Not part of the CBERA but applicable only to CBERA beneficiaries is a provision under which any articles (other than textiles, apparel, and petroleum and its products) assembled or processed in a CBERA country entirely from components or ingredients made in the United States may be imported free of duty or quantitative restrictions.

Although textile apparel is ineligible under the CBERA for any type of tariff preference, a special access program (SAP) is in effect for apparel assembled in a CBERA country and imported under the "production sharing" tariff provision (i.e., with regular duty rates applied to a duty-base excluding the value of U.S. origin components) provided it is assembled from fabric formed as well as cut in the United States. Such apparel may be imported from CBERA countries in quantities above the regular import quotas up to the bilaterally agreed "guaranteed access levels" (GALs) (although with no reduction in the duty rate). GAL agreements are in force with Costa Rica, Dominican Republic, El Salvador, Guatemala, and Jamaica (but, in most instances, GAL imports have been replaced by those under the more favorable provisions of the parity legislation; see p. 9).

Most CBERA beneficiaries (except Aruba, Bahamas, Netherlands Antilles, and Nicaragua) also are beneficiaries of the GSP (described below), and may utilize its benefits alternatively to those of the Caribbean preference.

The overall statistical picture of U.S. imports from the 24 CBERA countries in the year 2000 (in parentheses, respectively, first 11 months of 2001) shows that out of the total value of $22,161.1 million ($19,186.4 million), $14,138.6 million; 63.8% ($13,931.7 million; 72.6%) was imported free of duty, of which $2,351.1 million; 10.6% ($2,404.8 million; 12.5%) under the CBERA preference and $202.1 million; 0.9% ($175.6 million; 0.9%) under the GSP; the remaining $11,428.4.0 million ($6,654.1 million ) (excluding duty-free imports under the CBTPA, for which see. p. 11) was duty-free under the regular rates or as the duty-free share of the production-sharing provisions. Including the value of imports subject to reduced rates, total U.S. imports under the CBERA program (duty-free and at reduced rates) amounted to $2,635.5 million ($2,484.2 million) (11.9%, resp. 12.9% of total U.S. imports from CBERA countries).

## Pre-NAFTA Special Tariff Treatment of Mexico

Before the NAFTA entered into force, Mexico was a designated beneficiary developing country (BDC) of the GSP and, as such, enjoyed certain benefits that were similar to, if somewhat less generous than those of the CBERA beneficiaries. While the GSP authorizes duty-free importation (but has no provisions for imports at reduced rates), the range of articles eligible for the preference is narrower than that of the CBERA. Generally ineligible by law under the GSP are textile and apparel articles subject to textile agreements; watches, except those that the President determines will not cause injury to U.S. domestic watch or watch band, strap, or bracelet manufacturing or assembly industry; import-sensitive electronic articles; import-sensitive steel articles; import-sensitive semimanufactured and manufactured glass products; footwear, handbags, luggage, flat goods, work gloves and leather wearing apparel; and any other articles determined by the President as import sensitive in the GSP context. The GSP also is of temporary duration and must be renewed periodically by enactment. The most recent renewal remains in effect through September 30, 2001.

GSP eligibility can be suspended for individual articles imported from individual countries, usually following a review of the specific situation; it is also suspended when such imports exceed specified statutory levels, a criterion referred to as the "competitive need limit." The latter suspension may be waived under specified conditions. Under these provisions, suspension of GSP eligibility was in effect prior to NAFTA for imports from Mexico falling within some 90 tariff items, mostly fresh vegetables, copper ore and primary copper, and sundry auto parts.

In a rule of origin similar to that of the CBERA, an eligible import qualifies for the GSP preference if it is a product of a BDC and imported directly from it, and at least 35% of the article's import value has originated in the country of export or in two or more countries that are members of the same association of countries (Andean Group, Association of South East Asian Nations, Caribbean Common Market, Southern Africa Development Community, and West African Economic and Monetary Union), of none of which, however, Mexico is a member. Unlike the CBERA, the GSP does not allow the value of the components of U.S.-, Puerto Rico-, or U.S. Virgin Islands-origin to count toward the required 35% BDC-origin value requirement.

A "special regime" arrangement for textile apparel, virtually identical to the CBI's special access program, also was in effect with Mexico prior to the entry into force of the NAFTA.

Total U.S. imports from Mexico in 1993, the last year before the onset of the implementation of NAFTA, amounted to (in millions) $38,667.7, of which $19,800.5 (51.2%) was duty free, further broken down into $4,498.1 (11.6%) under regular rates, $9,871.9 (25.5%) under the production sharing provisions and $5,430.5 (14.0%) under the GSP. Dutiable imports totaled (in millions) $18,867.2 (48.8%), of which $9,095.8 (23.5%) represented the dutiable portion of production-sharing products and $9,771.4 (25.3%) imports under regular duty rates.

A summary comparison of special trade benefits available to CBI countries with those available to Mexico before the entry into force of the NAFTA shows that CBI countries enjoyed a distinct advantage over Mexico because:

(a) The range of articles accorded preferential treatment under the CBERA is significantly broader than under the GSP because CBERA ineligibility applies only to those product categories specifically listed in the statute; under the GSP, however, not only is the range of articles excluded from the preference by statute broader, but additional discretionary and "competitive need" exclusions have been made.

(b) Under the "rule of origin" for the eligibility of a Mexican product for the GSP, its qualifying value could not include any value of U.S., Puerto Rican, or U.S. Virgin Islands origin, which is included under the CBERA.

(c) Import-sensitive articles eligible under CBERA for reduced-rate preference are excluded altogether from GSP eligibility.

(d) Duty- and quota-free treatment that applies to qualifying articles assembled or processed in a CBERA country entirely from components or ingredients originating on the United States did not apply to articles similarly processed in Mexico.

(e) The CBERA is a permanent program, whereas the GSP is authorized for a specific period of time and must be periodically reauthorized by legislation in order to remain in force.

## Mexico's Benefits under the NAFTA and Their Effect on CBERA Beneficiaries

When Mexico acceded to the NAFTA, its tariff position with the United States changed radically and improved substantially relative to that of the CBI countries as well as absolutely.

Although Mexico's GSP eligibility was revoked as of January 1, 1994—the date NAFTA went into effect—the earlier duty-free status of articles imported from Mexico under the GSP was continued in force under the NAFTA on a permanent basis (rather than being contingent on extensions of the GSP authority), although under the somewhat less favorable NAFTA rules of origin. Moreover, duty-free status was accorded for the first time to many previously dutiable articles, including most of the articles subject to the GSP competitive need limits or discretionary suspensions, and to many articles duty free under the CBERA but ineligible for the GSP, including handmade or folklore textile and apparel articles. These actions equalized Mexico's duty-free preferential status with that of CBI countries, thus eliminating their earlier advantages over Mexico.

Also on January 1, 1994, the first stage of reductions that eventually (at the latest by January 1, 2008) are to eliminate the pre-NAFTA tariffs in a specified number of annual cuts was implemented. Further staged tariff reductions have taken place on January 1 of every year since. This process created an initially still marginal actual advantage for Mexico—which eventually would become substantial— with respect to articles ineligible for the Caribbean Basin duty-free preference (e.g., textiles and textile apparel), which, under the NAFTA, are in the phase-in process toward eventual duty-free and quota-free status. Similarly, the NAFTA staged reductions have already resulted in the elimination of CBERA's erstwhile advantage over Mexico with respect to import-sensitive articles eligible for the CBERA 20%-reduced duty rates. The phasing-in of these NAFTA reductions (to zero) has been completed for most products as of January 1, 1999. By then, the duty rates subject to the longer of the two reduction schedules still being phased-in (to be completed by January 1, 2008) had been cut by 40% and those subject to the shorter schedule (to be completed by January 1, 2003) by 60%. At present, the respective cumulative cuts amount to 60% and

In the first 11 months of 2001, total U.S. imports from Mexico amounted to $121,221.2 million, $105,152.7 million (86.7%) of this free of duty, including $63,832.0 million (52.7%) under the NAFTA and the remainder under other tariff provisions. NAFTA imports of products whose duty rates are still in the process of being phased-out amounted to $11,486.1 million, for a total of imports under the NAFTA of $75,318.1 million (62.1% of all imports from Mexico).

Imports of articles ineligible for duty-free treatment under the CBERA in 2000 accounted for over one-half, by value, of all U.S. imports from the group (including the total value of partially nondutiable products of production sharing (see p. 3). The most crucial and potentially injurious to CBERA countries was the NAFTA treatment of textiles and apparel articles which, in addition to constituting the largest single category by far of U.S. imports from CBERA countries, do not qualify for that preference and are subject to relatively high duty rates. Some of the adverse effect of this NAFTA treatment on the CBERA countries was mitigated by the relatively long (6 or 10 annual stages, some even 15 stages) phasing-in period of the NAFTA duty elimination. Another mitigating factor was the extensive use by American firms in imports of apparel from CBERA countries of the production-sharing provision, where a portion of the value of the import already is duty free, which effectively reduces its duty cost to the U.S. importer. The same tariff treatment, however, is also available generally to similar imports from Mexico and that at decreasing duty rates.

Moreover, the NAFTA authorized eventual duty- and quota-free importation from Mexico of textile and apparel goods that had previously fallen under the “special regime” and of those that had not qualified for “special regime” (see p. 4) treatment because of additional processing, such as bleaching or dyeing, that was beyond mere assembly. In addition, reduced rates were authorized under NAFTA within an overall quota for imports of textile apparel and other articles assembled in Mexico from components cut in the United States from fabrics imported from any third country. Reduced rates also were authorized, within separate quotas, for textile and apparel articles of wool, cotton and man-made fiber assembled in a NAFTA country from components cut or made from fabric or yarn originating outside the NAFTA area.

Less crucial for the CBERA countries was the NAFTA treatment of petroleum and its products. Its adverse effect on the competitiveness of CBERA-origin petroleum was likely to be limited: petroleum products accounted for a relatively small share (by value) of total U.S. imports from the group, U.S. regular duty rates on products in this category are very low (equivalent to a fraction of or slightly over 1%) and would take 10 years to be eliminated under the NAFTA. Moreover, this action affects directly only the three CBERA petroleum exporting countries: Bahamas, Netherlands Antilles, and Trinidad and Tobago.

The adverse effect of the NAFTA on U.S. imports of footwear from the CBERA countries also was less serious: footwear accounts for a relatively small share of imports from either source and much of it is imported into the United States under the production-sharing provision. The NAFTA duty elimination is being phased-in in ten stages, thus mitigating the severity of the change.

The CBERA ineligibility of watches and watch parts containing any material originating in non-MFN countries was, in practice, irrelevant since no imports of such watches were taking place.

To recapitulate: the implementation of the NAFTA not only eliminated all earlier tariff advantages of the CBI countries over Mexico, but created actual—and increasing—advantages for Mexico over the CBERA countries, specifically with respect to articles ineligible for the CBERA preference. With the further phasing-in of the NAFTA reductions, the CBERA competitive disadvantage vs. Mexico would be increasing and eventually become quite serious.

On the other hand, although not directly related to the NAFTA problem, the overall advantages of the CBERA (as well as of the NAFTA) are being diluted in any event by the phasing-in of the implementation of concessions agreed to by the United States in the Uruguay Round of multilateral negotiations and applied to imports from virtually all countries.

## Parity Legislation and Action

Legislation intended to remedy the perceived most serious aspects of the NAFTA's adverse consequences for the CBERA countries—the actual advantages that Mexico had already gained, and would continue to gain, over the CBERA countries—was introduced in the 103rd and the 104th Congress, but saw no action beyond committee hearings.

The legislation was held back primarily because of its in practice inevitable focus on textiles and apparel, and that in two aspects: (1) textiles and apparel, the principal category of articles affected by the proposals, are considered highly import sensitive and there was concern that significant increases in their imports would be disruptive of the domestic textile industry, and (2) because of their relatively high import duty rates, their reduction and eventual elimination would entail a significant loss of customs (hence, budget) revenues.

The most important — and, in terms of affected trade, broadest — feature of CBI/NAFTA parity legislation would be the new preferential treatment of textiles or apparel imported from CBERA countries: articles that were subject to import quotas and were ineligible for the CBERA preference. In its main aspects, such treatment would consist of quota-free or at least increased-quota imports, subject to an identical progressive elimination of customs duties on imports from CBERA countries as would apply to such imports originating in Mexico; it would, however, also subject them to the somewhat stricter NAFTA-like rules of origin.

Opponents of parity legislation claimed early on that, since NAFTA's entry into force on January 1, 1994, imports from CBI countries of textiles and apparel, a product category that allegedly would be severely adversely affected by the implementation of the NAFTA, not only had not abated but had increased significantly. In view of the pay-as-you-go budget requirements, an additional important adverse consideration has been the projected decrease in customs revenues that gradual freeing of the still dutiable articles (mostly textiles and textile apparel, which are dutied at relatively high rates) would bring about. Customs duty losses resulting from the CBI/NAFTA parity legislation were initially (1995) estimated variously at $1.1 billion over 5 years and $1.7 billion over 10 years.

## 105th Congress

The Congressional Budget Office (CBO), as cited in S.Rept. 105-280, estimated that the CBI/NAFTA parity legislation in the proposed Trade and Tariff Act of 1998 (S. 2400) would result in revenue losses (by fiscal year, in millions of dollars) of $98 in 1999, $138 in 2000, $147 in 2001, and $26 in 2002; and an Administration estimate of the cost of its most recent proposal places it at $326 million in 2000 and $444 million in 2001. The latest projections by the CBO of reductions of federal revenues (S.Rept. 106-160) due to the CBI/NAFTA parity legislation estimate such losses (in millions) in FY2000 at $252, in FY2001 at $260, in FY2002 at $272, in FY2003 at $289, in FY2004 at $309, and in FY2005 at $83. In view of the projected termination of the program at the end of 2005, no losses have been projected for subsequent fiscal years.

Although several versions of CBI/NAFTA parity legislation were considered in the 105th Congress, none was enacted. The United States-Caribbean Trade Partnership Act, a subtitle of H.R. 2014 (Budget Reconciliation Act), was passed by the House, but omitted in its Senate, conference, and enacted versions. A freestanding measure with the same title and virtually identical operative provisions (H.R. 2644) was reported favorably in the House, but defeated in the floor vote. Two measures entitled United States-Caribbean Basin Trade Enhancement Act were reported favorably in the Senate but did not come to a vote: a freestanding bill (S. 1278), and a subtitle in the Trade and Tariff Act of 1998 (S. 2400), incorporating similar provisions.

## 106th Congress

In the 106th Congress, parity legislation was introduced in four different versions, of which only two received some legislative consideration. No action was taken on the **United States-Caribbean Basin Trade Enhancement Act** (Title I of the Central American and Caribbean Relief Act (**S. 371**)) or the Administration proposal (**H.R. 1834**), also named **United States-Caribbean Basin Trade Enhancement Act** (CBTPA).

The other two bills, the **United States-Caribbean Trade Partnership Act** (Title I of the Caribbean and Central America Relief and Economic Stabilization Act (**H.R. 984**)) and the **United States-Caribbean Basin Trade Enhancement Act (S. 1389)**, received some legislative action. H.R. 984 was reported favorably (H.Rept. 106-519, pt. 1) March 13, 2000, but not voted on. S. 1389 was reported favorably (S.Rept.106-160) September 16, 1999, and its language was added to H.R. 434. The language of these two measures was used as the basis for the eventual compromise language agreed to in conference on the final version of H.R. 434. (For a comparative survey of the principal provisions of these four by now obsolete bills, see CRS Report RS20174, *CBI/NAFTA Parity Proposals: A Comparison.)*

The language of S. 1389 as reported has been included in its entirety as **Title II (Trade Benefits for Caribbean Basin)** in S.Amdt. 2325 to an expanded **H.R. 434**, passed by the Senate (76-19) November 3, 1999. Reconciliation of the parity provisions of the House and Senate versions of H.R. 434, focusing primarily on the preferential treatment of textile products, took place in protracted informal consultations between the two houses.

A formal conference report on **H.R. 434** (H.Rept. 106-606) was filed May 4, 2000, passed the House that same day (309-110) and the Senate on May 11, 2000 (77-19). It was signed by the President May 18, 2000 (P.L. 106-200) (Trade and Development Act of 2000), but not yet implemented. Its implementation was authorized by Presidential proclamation 7351 of October 2, 2000 (65 F.R. 59329; October 4, 2000), but the preferential treatment provided by it was to become effective with respect to each of its individual beneficiary countries upon the determination by the U.S. Trade Representative, published in the *Federal Register*, that the country has satisfied the customs requirements for such treatment.

The key provisions of the **enacted version of the United States-Caribbean Basin Trade Partnership Act - CBTPA (Title II of P.L. 106-200)** reflect the policy, stated in the legislation, to offer to Caribbean Basin countries willing to prepare to become parties to a free-trade agreement with the United States treatment equivalent to that accorded to NAFTA countries, and to seek Caribbean Basin countries' participation in a free-trade agreement by 2005. The provisions focus primarily on the preferential treatment of textile products. The conference version has retained many provisions of the initial legislation and added others. It extended the transitional *period of preferential treatment* to run from October 1, 2000, through September 30, 2008, or, if earlier, the date a free-trade agreement between the United States and a CBTPA country enters into force.

Several *eligibility criteria* have been added (to those for the basic CBERA preference) specifically for a country's designation as a CBTPA beneficiary country for the transitional program with respect to the country's WTO obligations and accession to the FTAA, intellectual rights protection, worker rights, elimination of worst forms of child labor, counter-narcotics certification, participation in the Inter-American Convention Against Corruption, and government procurement.

With regard to *textile articles*, the enacted version has provided duty- and quota-free treatment as follows:

(1) Apparel assembled in a CBTPA beneficiary country from fabric made in the United States from U.S.-made yarn, and cut in the United States; or from fabric made in the United States from U.S.-made yarn, cut in the CBTPA country, and sewn together in a CBTPA country with U.S.-made thread.

(2) Apparel articles (except socks) knit-to-shape from U.S.-made yarn in a beneficiary country, or articles (other than non-underwear T-shirts) assembled from fabric knit in the United States or in a beneficiary country from U.S.-made yarn, and cut in a beneficiary country. Duty-free treatment of knit-to-shape articles applies to 250 million square meters equivalent (SME) for the year beginning October 1, 2000, with 16% annual increases through September 30, 2004, and, after that, through September 30, 2008, at the level for 2004, or in quantities set by law. The annual limit for non-underwear T-shirts has been set at 4.2 million dozen for the year beginning October 1, 2000, with 16% annual increases through September 30, 2004, and after that at the latter level, or in quantities set by law.

(3) Brassieres cut and assembled in the United States and/or one or more beneficiary countries during the six-year period beginning with October 1, 2001, if the cost of the U.S.-made fabric components used in their manufacture by their individual producer during the preceding year is at least 75% of their customs value; if the U.S.-component requirement is

not met in any year, the producer will not be eligible for the preference until the year following the year in which the value of U.S.-made fabric components is at least 85% of the customs value of the brassieres produced by the individual producer.

(4) Apparel articles assembled in a beneficiary country from fibers, fabric, or yarn not formed in the United States or a beneficiary country, that are not widely available in commercial quantities (as described in Annex 401 of the NAFTA). The President is authorized to proclaim, upon request and under specified procedure, this preference for other fibers, fabric, or yarn.

(5) Certified handloomed, handmade, and folklore articles.

(6) Preferential treatment is not denied to articles containing limited quantities of foreign-origin findings or interlinings, or *de minimis* quantities of fibers or yarns of non-U.S. or non-CBTPA origin, or nylon filament yarn made in a country with which the United States has a pre-January 1, 1995 free-trade agreement (Canada, Mexico, and Israel).

(7) Textile luggage assembled in a CBTPA beneficiary country from fabric made in the United States from U.S.-made yarn, and cut in the United States; or from fabric made in the United States from U.S.-made yarn, and cut in a CBTPA country.

Penalties are provided for exporters transshipping textile articles ineligible for the preference, and for countries not taking transshipment prevention measures; and NAFTA-like emergency action is provided to remedy or prevent injury to a U.S. industry by surges in imports.

Other *import-sensitive articles* (ineligible for CBERA duty-free treatment, but some of which are dutied at CBERA preferential reduced rates) are to be dutied at NAFTA-Mexico rates (if lower than CBERA rates).

The measure contains definitions of concepts used and a variety of administrative provisions: customs procedures are to be identical to those under NAFTA, and the Customs Service is to study and prepare a report, to be submitted to Congress by the U.S. Trade Representative by October 1, 2001, on cooperation by CBTPA countries in preventing quota circumvention.

The President is authorized to withdraw or suspend the designation of any country as a CBTPA beneficiary or withdraw, suspend, or limit the preferential treatment under the CBTPA of any article of any country, if its performance under the specific eligibility criteria for CBTPA preference is not satisfactory.

The measure changes several reporting requirements: beginning with December 31, 2001, the triennial USTR report on the overall operation of the CBERA is changed, for the duration of the transitional period, to a biennial report with added information on each CBTPA country's performance under the special eligibility criteria; and beginning with September 30, 2001, the annual report by the U.S. International Trade Commission to Congress and the President on the economic impact of the CBERA on U.S. industries and consumers (including those in Puerto Rico) is changed to a biennial report.

The measure provides, under specified conditions, CBERA-like duty-free treatment for spirituous beverages made in Canada with rum produced in the U.S. Virgin Islands or a CBERA beneficiary country.

The President is directed to convene a meeting of the USTR and trade ministers of the CBTPA countries for the purpose of reaching an agreement on initiating negotiations for CBTPA countries' entering into free-trade agreements with the United States.

- The *implementation* of the CBTPA was authorized by Presidential proclamation 7351 of October 2, 2000 (65 F.R. 59329; Oct, 4, 2000), designating 24 Caribbean Basin countries as beneficiaries of the program, and put into effect as of the same date with respect to 10 countries (Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, and Panama) by a USTR determination of their compliance with the statutory customs requirements (65 F.R. 60236; Oct. 1, 2000); Guyana was added to the list effective November 9, 2000 (65 F.R. 69988; Nov. 21, 2000), Trinidad and Tobago effective February 6, 2001 (66 F.R. 9888) and Barbados and Saint Lucia effective June 1, 2001 (66 F.R. 31272).

- Year 2000 imports under the CBTPA program alone (i.e., excluding imports under the basic CBERA), all taking place in December 2000 and duty-free, amounted to $157.0 million; in the first eleven months of 2001, they amounted to $5,093.7 million, all but $397.5 million duty-free. All duty-free imports from CBTPA countries in this period, including those under all applicable preferences and regular zero duties, amounted to $13,339.7 million (76.0% of total imports from the group–$17,540.1 million). Imports under the CBTPA (duty-free and reduced-rate) accounted for 29.0% of all imports from CBTPA beneficiaries.

## 107th Congress

Legislation to enhance the benefits of the CBTPA was introduced October 3, 2001 in the House as **Section 5 of the Andean Trade Promotion and Drug Eradication Act (H.R. 3009)** and passed by it with some changes. Initially, it merely specifically declared knit-to-shape apparel components formed in the United States as equivalent to cut-fabric components as qualifying for the CBTPA for preferential treatment, when assembled in a CBTPA beneficiary country. This provision was intended to reverse the U.S. Customs Service's ruling excluding knit-to-shape components from the definition of cut-fabric components. The amended version of H.R. 3009, reported November 14, 2001 by the Ways and Means Committee (H.Rept. 107-290) and passed by the House November 16, 2001, made eligible for the preference also apparel assembled in CBTPA beneficiaries with U.S.-made thread from components cut from U.S.-made fabric, or knit-to-shape, either in the United States or a CBTPA beneficiary. It also significantly increased the annual ceilings for the preferential treatment of knit-to-shape apparel (other than socks) and non-underwear T-shirts.

H.R. 3009 was reported by the Senate Finance Committee December 14, 2001 (S.Rept. 107-126), but omitting any CBTPA-related provisions. The omission was primarily triggered by the controversy over the denial of preferential treatment to CBTPA-assembled components of fabric "fully formed" in the United States that were not also dyed and finished in the United

States, which was strongly supported by certain sectors of the U.S. textile and apparel industry.

Legislation of limited scope also has been introduced, but not further considered: **S. 510**, introduced March 9, 2001, would provide CBTPA preferential treatment to certain cotton and man-made fiber bed linens, and **H.R. 1589**, introduced April 25, 2001, would do the same for socks and hosiery excluded by the present legislation.

## CHRONOLOGY

**12/14/01 —** H.R. 3009 reported by Senate Finance Committee (S.Rept. 107-126), omitting CBTPA provisions.

**11/16/01 —** H.R. 3009, including enhanced CBTPA provisions, passed by the House by voice vote.

**11/14/01 —** H.R. 3009 reported favorably by Ways and Means Committee (H.Rept. 107-290).

**10/03/01 —** H.R. 3009, in Sec. 5 providing for enhanced benefits under the

**06/01/01 —** Effective date for application of CBTPA benefits to Saint Lucia and Barbados upon USTR's determination of country's satisfactory compliance with statutory customs requirements (66 F.R. 31272: Feb. 12, 2001).

**04/25/01 —** H.R. 1589 introduced to provide CBTPA preferential treatment to socks and hosiery.

**03/09/01 —** S. 510 introduced to provide CBTPA preferential treatment to certain cotton and man-made bed linens.

**02/06/01 —** Effective date for application of CBTPA parity benefits to Trinidad and Tobago upon USTR's determination of country's satisfactory compliance with statutory customs requirements (66 F.R. 9888; Feb. 12, 2001).

**11/09/00 —** Effective date for application of CBTPA benefits to Guyana upon USTR's determination of country's satisfactory compliance with statutory customs requirements (65 F.R. 69988; Nov. 20, 2000).

**10/02/00 —** In Presidential proclamation 7351 (65 F.R. 59329; October 10, 2000), President Clinton authorized the implementation of the CBTPA by designating 24 countries as beneficiaries of the program, but delaying its effect with respect to each of its individual beneficiary countries until a determination is made by the USTR that the country has satisfied the customs requirements for such treatment.

— Effective date for application of CBTPA benefits to Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, and Panama upon USTR's determination of countries' compliance with customs requirements (65 F.R. 60236; Oct. 10, 2000).

**05/18/00 —** President Clinton signed H.R. 434 into law (Trade and Development Act of 2000), providing in Title II (United States-Caribbean Basin Trade Partnership Act - CBTPA) for Caribbean Basin countries preferential trade treatment in parity with that of the NAFTA.

**05/11/00** — Conference language of H.R. 434 passed by the Senate (77-19).

**05/04/00** — Conference report on H.R. 434 (Trade and Development Act of 2000) (H.Rept. 106-606), containing Title II - Trade Benefits for Caribbean Basin, filed after protracted informal consultations, reconciling the versions of parity provisions of H.R. 984 as reported by the House and H.R. 434 as amended by the Senate.

— House passed conference version of H.R. 434 (309-110).

**03/13/00** — H.R. 984 reported favorably by Ways and Means Committee (H.Rept. 106-519, Pt. 1).

**11/03/99** — H.R. 434, including Title II (United States-Caribbean Basin Trade Enhancement Act) as added by the Senate, passed by a vote of 76 ayes to 19 nays.

**10/27/99** — Language of S. 1389 as reported included as Title II in substitute Senate amendment SP 2325, proposed to an expanded H.R. 434, renamed the "Trade and Development Act of 1999."

**09/16/99** — S. 1389 (United States-Caribbean Basin Trade Enhancement Act), reported favorably with written report (S.Rept 106-160).

**07/16/99** — S. 1389 (United States-Caribbean Basin Trade Enhancement Act), an original Finance Committee bill, reported without written report.

**06/10/99** — H.R. 984 ordered to be reported amended by the Ways and Means Committee.

**05/18/99** — H.R. 1834 (United States-Caribbean Basin Trade Enhancement Act) introduced and referred to the Committee on Ways and Means.

**03/23/99** — House Ways and Means Trade Subcommittee held a hearing on H.R. 984.

**03/04/99** — H.R. 984, containing the "United States-Caribbean Trade Partnership Act" as Title I, introduced and referred to Committees on Ways and Means, International Relations, Banking and Finance Services, the Judiciary, and Armed Forces.

**02/04/99 —** S. 371, containing the "United States-Caribbean Trade Enhancement Act" as Title I, introduced and referred to the Committee on Finance.

## CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. Conference Committee. Trade and Development Act of 2000. Conference report (to accompany H.R. 434). Washington, U.S. Govt. Print, Off., May 4, 2000. 146 p. (At head of title: 106th Congress, 2d Session. H.Rept. 106-606).

U.S. Congress. House. Committee on Ways and Means. Andean Trade Promotion and Drug Eradication Act. Report together with additional and dissenting views (to accompany H.R. 3009). Washington, U.S. Govt. Print. Off., November 14, 2001. 43 p. (H.Rept 107-290).

—— Caribbean and Central America Relief and Economic Stabilization Act. Report together with additional and dissenting views (to accompany H.R. 984). Washington, U.S. Govt. Print. Off., March 13, 2000. 52 p. (H.Rept 106-519, Part 1).

U.S. Congress. Senate. Committee on Finance. Andean Trade Preference Expansion Act. Report (to accompany H.R. 3009). Washington, U.S. Govt. Print. Off.,. December 14, 2001. 56 p. (S.Rept. 107-125).

—— United States-Caribbean Basin Trade Enhancement Act; report (to accompany S. 1389). Washington, U.S. Govt. Print. Off., September 16, 1999. 29 p. (S.Rept. 106-160).

## FOR ADDITIONAL READING

### CRS Report

CRS Report RS20174, *CBI/NAFTA Parity Proposals: A Comparison*, by Vladimir N. Pregelj.