GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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WORKING PARTY ON UNITED STATES CARIBBEAN BASIN ECONOMIC RECOVERY ACT (CBERA)

Draft Report

1. The Working Party was established by the CONTRACTING PARTIES on 21 November 1983 with the following terms of reference: "To examine, in the light of the provisions of the General Agreement and relevant Decisions of the CONTRACTING PARTIES, the request by the United States in document L/5573 for a waiver under Article XXV:5, and to report to the Council".

2. The Working Party which was open to all contracting parties indicating their wish to serve on it and to CBERA eligible beneficiary countries not contracting parties wishing to participate in an observer capacity, met on 10 April, 17 May and 22 October 1984 under the Chairmanship of Ambassador K. Chiba (Japan). The terms of reference and membership of the Working Party appear in L/5590/Rev.2.[1]

3. The Working Party had before it the following documentation:

(i) United States request for a waiver (L/5573)

(ii) Statistical data provided by the United States (L/5573/Add.1)

(iii) Sub-Title A of the Caribbean Basin Economic Recovery Act (L/5577)

(iv) Questions and replies (L/5620 and Add.1)

(v) Print-out of the computerized trade data provided by the United States.*

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[1] The lists of representatives at the first and second meetings of the Working Party have been circulated in Spec(84)17 and Spec(84)28, respectively.

* Available in the secretariat for consultation (Development Division, Room 2010).

(vi) Interim implementing regulations under the CBERA*

(vii) TSUS items with respect to which one or more CBI designated beneficiary countries were ineligible for duty-free treatment under the US GSP scheme in 1982*

(viii) Tariff Schedules of the United States Annotated (1984)*

General observations

4. In an introductory statement the representative of the United States said that the Caribbean Basin Economic Recovery Act (CBERA) provided a combined programme of trade and tax benefits and increased foreign assistance to promote the economic and political stability of Caribbean Basin nations through the expansion of existing industries and by attracting new investments. The Caribbean Basin Initiative (CBI) was part of a major multilateral assistance effort which included the participation of Canada, Colombia, Mexico and Venezuela. The CBERA provided for the temporary extension of duty-free treatment for all products of beneficiary country origin, except the following: textiles and apparel articles as defined by the MFA; certain types of footwear and other articles of leather; certain gloves; crude and refined petroleum; and canned tunafish. There were also quantitative limits on the amount of sugar which could enter duty-free annually. The duty-free provisions of the CBI would not create barriers to trade with other trading partners nor impede the growth of imports from other developing countries. Only US$600 million of current Caribbean exports would enjoy lower duties as a result of the CBI as compared to more than US$7 billion duty-free imports by the United States in 1983 from non-CBI beneficiaries of the GSP. The displacement of non-CBI exports in the US market was not anticipated. The United States was prepared to consult with any contracting party which considered its trading interests impaired by the CBI. The CBI provided duty-free treatment unilaterally and would not impede the operation of the GSP or the reduction of tariffs on an m.f.n. basis. The CBI had been developed and was being implemented in a manner which was responsive to the trade, financial and development needs of the Caribbean Basin region.

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*Available in the secretariat for consultation (Development Division, Room 2010).

5. The United States representative added that his government had requested a waiver under Article XXV paragraph 5 with respect to its obligations under paragraph 1 of Article I of the General Agreement in order to implement the duty-free treatment provisions of the CBERA in a GATT consistent manner. The duration of the waiver would be eleven and three-quarter years. The United States request had been made in accordance with footnote 2 of paragraph 2 of the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, also known as the Enabling Clause, because the trade provisions of the Act did not fall within any of the categories of programmes authorized in paragraph 2 sections (a) to (d) of that Decision. The United States felt that the waiver deserved favourable action by the CONTRACTING PARTIES because the trade aspects of the CBERA met the criteria established in paragraph 3 of the Enabling Clause. In asking for a waiver, the United States did not mean to imply that this was the appropriate procedure in all cases. Each particular case had to be decided on the basis of the circumstances peculiar to it.

6. The representative of the United States also said that the implementation of the CBERA prior to the convening of the Working Party did not indicate a lack of concern for GATT procedures. The procedures for the consideration of waiver requests published in the BISD, 5th Supplement, page 25, had been observed and so far only two contracting parties had requested consultations with the United States. Up to the present time no contracting party had indicated opposition to the granting of the waiver requested with respect to CBERA. The United States considered that the request met the requirements of the Enabling Clause and of the GATT and it was prepared to give to the CONTRACTING PARTIES the necessary assurances with respect to the operation of the programme. Having regard to the importance of the CBI for the welfare of the beneficiary developing countries, and the undertaking by the United States government to implement the programme with sensitivity with respect to the rights as well as the development needs of other contracting parties, it was hoped that a waiver could be granted expeditiously by the CONTRACTING PARTIES.

7. The representatives of several beneficiary countries stressed that the CBI was aimed at granting temporary trade benefits to certain products of the beneficiary countries. While not a panacea for the complex problems of the region, the CBERA undoubtedly constituted a useful instrument to dynamize their economies. A programme such as CBERA which provided supplementary incentives to investments and the development of production, would by its very nature have significant effects only in the medium and long-terms. Projects for promotion of exports to the United States market would require time to be studied and developed.

8. These members noted that in terms of their development, financial and trade needs, the CBI appeared to offer valuable prospects of benefits for the trade of developing countries of the Caribbean Basin in line with the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries. The beneficiary countries had neither been asked to provide nor had offered preferential treatment to the products of the United States. Their governments supported the application for a waiver submitted by the United States because the CBERA would facilitate the access of their exports to the United States market and thus help to stimulate and strengthen their production and export capacities through enhanced trade opportunities. Finally, the hope was expressed that at the time of the review of the CBERA, the products excluded from the eligible articles might also be accorded duty-free treatment.

9. Several members of the Working Party recognized that the development objectives and principles underlying the CBERA deserved support and understanding in the light of the vulnerability of the economies of the region, their continuous trade deficits and well-known socio-economic problems. They expected that the CBERA would act as a stimulus to the economic strengthening of the Caribbean Basin region by expanding investment and production opportunities as well as increasing trade and foreign exchange earnings. Some members noted that the CBERA was in line with the objectives of the General Agreement including in particular Part IV thereof and the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.

10. While welcoming the objectives of the United States initiative in broad terms, a number of members stated that there were a number of questions which required careful consideration prior to adopting a decision on the request for a waiver. Some of the issues mentioned related to the motivation of the United States request and possible alternative instruments available in GATT to achieve the same objectives; the reasons for not including in the CBI all the developing countries of the region; the counterpart criteria applied in the Act to beneficiary countries, which included non-commercial considerations and appeared therefore to be questionable; the emergence in the CBI of a graduation criteria which was not in the interest of developing countries as a whole; the time-limit proposed which appeared to be excessively long if compared to the very stringent biennial examination requirements applied in the case of import measures adopted by developing countries in accordance with normal GATT procedures, etc. Some members noted that the focus of the examination of the CBERA in GATT had to be multilateralism and the m.f.n. principle which were the cornerstones of GATT. In the light of the provisions of Part IV and the Enabling Clause, these members considered that the introduction of certain non-commercial criteria by a contracting party as a prerequisite for granting trade benefits could have far reaching implications and had to be considered by the CONTRACTING PARTIES attentively. Moreover, these members considered that as a result of the CBERA, GSP beneficiaries would be discriminated against.

11. One member said that, in his opinion, the CBERA contained elements which discriminated against his country and other Central American countries and contravened provisions of the General Agreement. Eligibility for CBERA benefits was subject to conditions and requirements with respect to which the President of the United States had broad discretionary powers. Moreover, for certain countries the benefits provided in the CBERA were less advantageous than those provided in earlier US legislation such as the GSP which had established a multilateral, non-reciprocal, and non-discriminatory scheme subject to periodic review in a universal forum.

12. Another member said that the CBERA appeared to be politically motivated and contained elements which discriminated against some developing countries of the region. In the view of this member, the CBERA was inconsistent with the provisions of Article I and in particular

paragraphs 1(b), 2 and 4 of Article XXXVI of the General Agreement. The Act was also inconsistent with paragraph 7(iii) of the 1982 Ministerial Declaration and with paragraph 5 of the Enabling Clause. Noting that the CBERA benefits could be withdrawn or suspended by the United States President if a country's laws, policies or practices were not in conformity with the designation criteria, this member could not agree that the purpose of the Act was to promote the economic and political stability of the region. Due to the exclusion of a number of developing countries of the region, this member considered that the CBERA was not conducive but rather detrimental to the comprehensive development of the Caribbean region.

13. Some members noted that the CBERA provided a set of potentially powerful and mutually reinforcing economic instruments which could enable nearly all the countries of the Caribbean region to search for solutions to some of the general problems confronting developing countries in the areas of commodity prices and export earnings, import restrictions due to recessionary conditions, etc. It was also noted that the United States had stressed that the CBERA met the criteria provided in paragraph 3 of the Enabling Clause. If this were not to be the case, measures would have to be taken to contain or mitigate any trade prejudicial effects as well as for compensating interested contracting parties. In this respect, some members stressed their concern for the treatment of sugar in the CBERA and enquired how the United States would envisage compensating third countries for the anticipated losses in sugar exports.

14. Some other members said that the CBERA appeared to be a significant initiative and deserved careful consideration on its own merits. These members stated that, in addition to promoting the interests of the countries concerned, the formal trade links established by developed countries with developing countries should consider the interests of other developing countries and of contracting parties in general. The contractual approach which their countries had utilized to achieve objectives similar to the CBERA, appeared in their opinion to be preferable to the autonomous approach utilized in the CBERA as it excluded any excessive element of discretion or arbitrariness in the provision of benefits. Furthermore, in the opinion of these members, there were certain

inconsistencies in the position of the United States because the objectives of economic and political stability which were considered desirable for the Caribbean region had not been accepted as sufficient justification for action by other contracting parties in other regions of the world. It was also noted that thirteen out of the twenty-seven CBERA beneficiary countries participated in the Lome Convention.

15. One member said that the CBERA appeared to deviate from the multilateral approach in international trade relations traditionally promoted by the United States. The CBERA was evidently inspired by regional considerations but did not come under the provisions of Article XXIV of the General Agreement. This member was concerned by the distortions which might be caused by a regional approach and had doubts whether preferences applicable only to some developing countries should be accepted. In his view, the initiative should be examined in the light of GATT principles, in particular the m.f.n. clause. Another member, who had no expectation of compensation, expressed support for the CBERA as it had been proposed by the United States. This member was aware that certain important export products of interest to his country such as instant coffee and tobacco as well as the functioning of certain free trade zones and international convention facilities etc. might be affected by the CBERA. His country saw itself as a donor in the Caribbean region and only expected that its exports would not be subject to restrictive import measures in the United States.

16. The representatives of beneficiary countries also said that, in the light of the limited resources and production capacity of these countries, the duty-free treatment provided by the CBERA should not affect the interests of other contracting parties negatively. Referring to the question of eligibility, they noted that in the context of the GSP, donor countries applied certain selective criteria both for the designation of beneficiary countries and the determination of the product coverage of the schemes. In the case of the CBERA most of the mandatory criteria for eligibility and all of the discretionary criteria could be waived. Even though the CBERA might have initially constituted a unilateral mechanism, once interested beneficiaries in the exercise of their sovereign rights applied for participation in the programme it acquired, in some members' opinion, a bilateral character.

17. After the introductory statement by the United States, and general observations from some other members of the Working Party, members proceeded to a detailed examination of the provisions of the CBERA, taking into account the questions and replies circulated in document L/5620 and Addendum 1. Additional points relevant to the questions and replies made during the discussions in the Working Party are summarized in Annex II.

18. Having regard to the provisions of the Act and to the record of discussions reproduced in Annex II, members of the Working Party requested the United States representatives some further clarifications and carried out an in-depth examination with respect to the following matters: (i) trade impact of the CBERA; (ii) sugar provisions of the CBERA; (iii) GATT framework for the CBERA; (iv) terms and conditions of a possible waiver; and (v) other matters concerning the CBERA. The main points made by members of the Working Party in respect of these questions are summarized hereunder.

Trade impact of the CBERA

19. While welcoming the CBERA as a step towards accomodating the economic problems confronting the developing countries in the Caribbean region, some members reiterated that, in their view, the CBI constituted a move towards regionalism and a derogation from the principles of non-discrimination and most favoured nation treatment. This derogation could, moreover, cause injury to the economic and trade interests of non-beneficiary developing countries. Recalling the statements by the United States to the effect that the economies of the CBI countries were rather small and could not constitute a challenge to external markets and that significant negative effects for the trade of other contracting parties were not likely to occur, these members, nevertheless, stressed that any contracting party who considered that its trade interests were being or might be impaired as a result of the implementation of the CBERA, had the right to seek redress, particularly where trade diversion was resulting in impairment or nullification of tariff concessions. Reference was also made to the possible effects of the implementation of the CBERA on exports to the United States of sugar, cut flowers, instant coffee, tobacco and the provision of certain touristic services by non-beneficiary countries.

20. The representative of the United States reiterated that the volume of current trade that would be entitled to CBERA duty-free treatment was quite small. Thus, there should be no prejudicial effects for the trade interests of other contracting parties. He assured the members of the Working Party that the duty-free provisions of the CBERA would neither create new trade barriers nor impede the growth of imports from other developing countries. The CBERA would not be an obstacle to the reduction of tariffs on a most-favoured-nation basis. The duty-free treatment provided under the Act would not in any way impede the operation of the GSP programme. Having regard to the relevant constitutional procedures, the United States government was doing its best to ensure that the United States Congress renewed the GSP program for an additional ten-year period. Furthermore, the United States would administer the Act in a manner which did not cause damage to the trade of non-Caribbean suppliers.

21. The representatives of several beneficiary countries said that the CBERA was consistent with the basic objectives of trade expansion of the General Agreement. In the view of these representatives, small open economies already heavily dependent on international trade such as theirs were not likely to provoke any significant displacement of trade from non-beneficiary countries.

Sugar provisions of the CBERA

22. Several members of the Working Party expressed concern with respect to the treatment of sugar in the CBERA, and stressed that the trade interests of non-Caribbean sugar exporting countries should not be sacrificed or forgotten. Referring to the comments and assurances reproduced in paragraph 40 of Annex II, some members recorded the following understandings: (i) that the waiver would not be used to contravene the principle of non-discriminatory allocation of import quotas; (ii) that it was not expected that the United States President would use his authority to increase the limits on duty-free access for sugar for the three CBERA beneficiaries mentioned in Section 213(d)(2) of the Act; (iii) that it was not expected that the trade of non-Caribbean suppliers would suffer as a result of the CBERA. These members interpreted such assurances as an implicit undertaking that the United States would envisage remedying any adverse effects caused by the Act on the sugar trade of non-Caribbean suppliers.

23. Some members suggested that the preceding points be included among the terms and conditions of a possible waiver or decision that the Working Party might recommend to the CONTRACTING PARTIES for adoption.

24. One member said that sugar exports to the United States were subject to the quantitative limitations established in the sugar import programme, the competitive need limits of the GSP and the limitations contained in the Act itself. Referring to Section 213(d)(4) of the Act and to the reply to question 5 in L/5620/Addendum 1, he asked whether the sugar exports of the three countries referred to therein were still subject to the competitive need limits established in the GSP or were exempted. With reference to the stable food production plans described in Section 213(c)(1)(B) of the CBERA, this same member enquired what were the current levels of production and export of sugar as well as the expected increases thereof in the beneficiary countries.

25. In response to the questions and comments made by members, the representative of the United States said that Sub-Title C of the Act - Sense of the Congress Regarding Sugar Imports - would be made available to members of the Working Party.[1] Stable food production plans had been received on a confidential basis from twelve beneficiary countries and the United States had entered into consultations with them as required by the Act. Any request for information in this respect should be addressed to the beneficiary countries themselves. The three countries who had been allocated sugar quotas in the Act were not subject to GSP limits. Beneficiary countries were not subject to GSP limits as long as there was a headnote quota in effect for sugar. But these limits would go into effect if there was no headnote quota in effect except for the three countries listed in the Act. At any time, the more restrictive import quotas for sugar in effect applied. The beneficiary countries did not have unlimited access and, in accordance with the United States legislation, were subject to the quotas established under the headnote. The United States had no objections to the inclusion in the report of the Working Party of the statements reproduced in paragraph 40 of Annex II.

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[1]The text of Sub-Title C is available in the secretariat (Development Division, Room 2010).

GATT framework for the CBERA

26. Some members said that they shared and supported the economic and development objectives of the United States initiative. However, the autonomous approach to the development of trade relations chosen by the United States was at variance with the traditional contractual approach which these members had chosen in the past. Thus, in their opinion, it was essential to take account of the views of interested developing countries whether or not designated as beneficiaries, in order to find an equitable and fair way to bring the CBERA into conformity with the letter and spirit of the General Agreement. In their view, prior to reaching a decision on the request of the United States, collective reflection was required on the possible GATT framework for the CBERA including the consideration of whether or not a waiver was the only available or even the most appropriate approach in the circumstances. In theoretical terms, in addition to a waiver pursuant to Article XXV paragraph 5, there appeared to be the following options: (i) improvements in the GSP scheme; (ii) action under footnote 2 of paragraph 2 of the Enabling Clause in conjunction with either Article XXV paragraph 1 or XXXVIII of the General Agreement; (iii) the SPARTECA approach; (iv) Article XXIV of the General Agreement; (v) Article XXIV paragraph 10 of the General Agreement. It had to be admitted that some of these options may not be entirely realistic. The GSP approach might raise difficulties because of legislative conditions, scope of the duty-free treatment, competitive need requirements, rules of origin, etc. The footnote 2 of paragraph 2 of the Enabling Clause did not stand by itself but might be utilized in conjunction with Article XXV paragraph 1 or Article XXXVIII of the General Agreement. In the case of SPARTECA, the CONTRACTING PARTIES had taken note of the arrangement in the light of footnote 2 of paragraph 2 of the Enabling Clause and invited the contracting parties concerned to submit periodic reports on the operation of the arrangement. Resort to Article XXIV of the General Agreement appeared to be possible, at least in theoretical terms, because for the majority of the beneficiary countries the free trade arrangement would cover substantially all the trade with the United States. If the conditions in paragraphs 1 to 9 of Article XXIV of the General Agreement could not be fully met, it might be possible to have recourse to paragraph 10 of Article XXIV, at least at the individual country level.

27. These members added that they had a direct interest both in the United States market and in the preservation of their contractual links with some Caribbean countries in accordance with which the latter should accord them m.f.n. treatment. However, the provision of a legal framework in GATT for the CBERA was basically a matter of principle and policy. The United States initiative as such was positive and had to be encouraged. Even though up to now these members had opted for the contractual approach in their trade relations with developing countries, their position might evolve in the future.

28. Some members wondered whether footnote 2 of paragraph 2 of the Enabling Clause did not provide sufficient authority for the implementation of the CBERA without there being need for a waiver under Article XXV.

29. Some members stated that in their view the exceptional circumstances referred to in paragraph 5 of Article XXV had not been established. A deviation from the m.f.n. principle on the basis of geographical and non-economic considerations had to be well justified. These members considered that compliance with the criteria specified in paragraph 3 of the Enabling Clause was per se not sufficient to warrant the granting of a waiver. One member noted that the CONTRACTING PARTIES had not defined what constituted the exceptional circumstances referred to in Article XXV:5 and that each contracting party would consider the question individually when deciding how to vote on the proposed waiver. The representative of the United States said that the exceptional circumstances justifying the waiver were basically economic and legal: (i) the economic recovery of the fragile economies of the region required trade policies aimed at achieving sustained investment and growth rates, and (ii) the CBERA established a programme not covered by the provisions of the Enabling Clause, though consistent with its objectives, which required a GATT framework.

30. At the request of the Working Party, the representative of the secretariat described the secretariat's understanding of the meaning of footnote 2 of paragraph 2 of the Enabling Clause. In brief, the Enabling Clause provided authority or cover only for the kinds of preferential treatment described therein. Footnote 2 of paragraph 2 of the Enabling Clause recognized that there could be other situations involving preferential treatment not falling within the scope of paragraph 2 which

the CONTRACTING PARTIES might wish to cover under the GATT provisions for joint action. The provisions in question could not be those of Part IV, including Article XXXVIII thereof, as these did not provide authority for preferential treatment. The joint action envisaged had to be in terms of paragraph 5 of Article XXV irrespective of whether this was specifically mentioned or not.

31. Several members agreed that there were several possible approaches to provide GATT cover to the CBERA whose socio-economic and development objectives were consistent with the General Agreement. While willing to explore other available options with an open mind, these members supported the granting of a waiver as the best course of action in GATT terms. The waiver approach, it was felt, could provide adequate guarantees to all contracting parties that their rights would not be impaired. In supporting the waiver approach, one member noted that while the Lome Convention might be a contractual arrangement among the signatories, it had no such character from the standpoint of the General Agreement. However, a waiver with terms and conditions defined by the CONTRACTING PARTIES established a contractual link between the donor country and the CONTRACTING PARTIES.

32. Some other members noted that, in their view, the contractual link with the CONTRACTING PARTIES had been preserved in arrangements they had presented under Article XXIV.

33. The representatives of several beneficiary countries expressed support for the United States request and the hope that relevant action by the CONTRACTING PARTIES would proceed without delay. Some of the beneficiary countries stated that they were willing to cooperate in the administration of the arrangement in terms of the General Agreement, and would expect the United States also to consult with the beneficiary countries in order to ensure that the benefits provided by the Act were not impaired unilaterally. It was also suggested that other developed contracting parties might consider the implementation of similar initiatives in favour of developing countries.

34. In response to the comments made by members, the representative of the United States said that the CBERA was not a trade preference programme but a broader initiative involving trade preferences, investment, aid, etc.,

which as such could not and did not come under the scope of the GSP. In addition to a waiver under Article XXV:5, the only other option left to provide GATT cover to the CBERA was Article XXIV. The United States had examined the Article XXIV option and determined that this particular situation did not fit under the provisions of Article XXIV of the General Agreement because the United States did not intend to establish a free trade area and there was no interim plan to that effect. Moreover, the consideration of such a possibility did not come under the terms of reference of the Working Party. The United States believed that footnote 2 of paragraph 2 of the Enabling Clause required joint action by the CONTRACTING PARTIES under paragraph 5 of Article XXV. A waiver had been requested by the United States precisely in order to comply with its GATT obligations. Adherence to the waiver procedure would best protect the substantive provisions of the GATT and the interests of contracting parties. The United States recognized, nevertheless, that it was within the discretion of the CONTRACTING PARTIES to determine the proper legal framework within which to act on the request submitted by the United States.

Terms and conditions of a possible waiver

35. In commenting on the terms and conditions of a possible waiver, without prejudice to their final position on the request submitted by the United States, several members referred to the need for a time-limit, transparency in the implementation of the CBERA, regular reports on implementation of the CBERA by the United States and by other contracting parties, analyses of the trade consequences of the CBERA for other contracting parties, periodic reviews, provisions for a major review, provision for prompt consultations with interested contracting parties and with beneficiary countries, etc. Reference was also made to the following matters: non-discrimination among the countries of the Caribbean region; the waiver should not impede m.f.n. tariff reductions; the waiver should not impede the operation of the GSP; the waiver should not be extended to obligations under Articles XIX and XIII of the General Agreement; the waiver should include assurances with respect to imports of sugar by the United States; the compensation or remedy to third countries in the case of adverse trade effects, etc.

36. As to the scope and terms of the waiver, the representative of the United States noted that a waiver had been requested from the provisions of paragraph 1 of Article I of the General Agreement in order to implement the duty-free treatment provisions of the CBERA. The waiver had been requested for the life of the Act which would expire on 30 September 1995. The implementation of the CBERA would in no way involve the discriminatory allocation of any import quotas into the United States and the waiver was not intended to permit any discriminatory allocation of import quotas. The United States would be prepared to submit periodic reports on the operation of the CBERA and would agree to a complete review of the programme at some point during the life of the waiver. The United States would also agree to consult with any contracting party who considered that its trade might be adversely affected by the Act, as well as with the beneficiaries concerning the implementation of the Act.

37. With reference to the time-limit of the waiver, several members stated that they could agree with the time-limit proposed by the United States. The agreement of some members to the time limit was conditional upon the carrying out of a major review of the effects of the CBERA on the trade of third countries at some point during the life of the waiver as well as the carrying out of periodic reviews. It was also suggested that the United States as well as the beneficiary countries provide to the CONTRACTING PARTIES regular reports on the implementation of the CBERA which should include an analysis of its implications for the trade of non-Caribbean suppliers. Moreover, the United States should provide all interested contracting parties as well as beneficiary countries with the opportunity for prompt consultations with respect to any difficulty or matter that may arise in relation to the implementation of the CBERA.

38. Some members suggested that the waiver might also cover the question of remedy or compensation to contracting parties whose trade interests might be adversely affected by the implementation of the CBERA. The United States representative said that in such event contracting parties would always have recourse to GATT procedures. He added that his government would be prepared to include in the report of the Working Party a statement of the intention of the United States to administer the Act in a manner which would not damage the trade interests of non-Caribbean suppliers. Nevertheless, if the trade interests of contracting parties were affected

negatively there would be opportunity for immediate consultations. Even if the waiver was granted, a contracting party might seek redress under the relevant provisions the General Agreement. In this respect the possibility of compensation could not be ruled out but no particular compensatory mechanism could be set out in advance.

39. In referring to the provisions of Article XIX and to question 41 in L/5620, one member suggested that the waiver should in no way affect the integrity of the safeguard provisions of the General Agreement. In his opinion, the waiver should not permit discrimination against contracting parties in the case of the application of safeguard action by the United States. Another member said that all measures adopted by the United States under the waiver, other than the duty-free treatment provided in the CBERA, should comply with the principle of non-discrimination.

40. The representative of the United States reiterated that the waiver would not impede m.f.n. tariff reductions nor the operation of the GSP. With respect to suggestions concerning the ability of the United States to respond to justifiable GATT concerns by altering the CBERA programme, the United States representative said that legislative changes would be considered as a means of meeting justifiable and agreed GATT concerns. However, due to the constitutional process, in the United States the Administration could not guarantee what Congress would do.

41. One member said that the implementation of the CBERA would require not only a waiver with respect to Article I of the General Agreement but also with respect to paragraph 7(iii) of the 1982 Ministerial Declaration.

42. The representatives of some beneficiary countries said that provided the time limit was the eleven and three quarter years requested by the United States, they were open minded as to terms and conditions of the waiver.

Other matters concerning the CBERA

43. One member said that his government would not oppose any consensus which might emerge in the Working Party with respect to the request of the United States. His country even though in the eligible list had not been

designated a beneficiary country. Consequently, as a contracting party, this member would reserve his country's legal rights in respect of the CBERA. This member added that his authorities had to take exception with the statement by the United States that the CBERA would not impede the operation of the GSP. The request made by the Central American countries to the representatives of the United States with a view to maintaining cumulative origin for their exports in the context of the GSP had been denied because the United States preferred to put its relations with these countries in the context of the CBERA.

44. The representative of the United States said that the CBERA did not affect benefits under the GSP. He noted that all members of the CACM were potential beneficiaries under the CBERA which had more generous origin terms than the GSP. The request concerning CACM cumulative origin had been examined during the annual product review of the GSP and not granted by the President of the United States exercising discretionary powers.

45. One member enquired whether the beneficiary countries themselves would agree to submit an assessment of the benefits of the CBERA to the CONTRACTING PARTIES.

Conclusions

46. There was a large measure of support and understanding in the Working Party with respect to the objectives and purposes of the CBERA, particularly in regard to the objective of promoting economic development and raising the standard of living of the people in the region. These objectives, it was noted, were consistent with the objectives of the General Agreement. The Working Party noted that the United States and the beneficiary countries expected the CBERA to stimulate and strengthen the growth and stability of the economies in the Caribbean region by expanding investment and production opportunities and increasing trade and foreign exchange earnings.

47. With respect to the trade impact of the CBERA, the Working Party also noted that the United States and the beneficiary countries intended to continue to foster the growth of trade and economic relations with third countries including, in particular, other developing countries and to ensure that the implementation of the CBERA would not be detrimental to the

interests of other contracting parties. In this respect some members, however, expressed concern at the possibility that trade diversion might result from the implementation of the CBERA. In such event it was expected that the United States would take appropriate remedial action. Special reference was made to the CBERA provisions concerning sugar which, in the context of the United States import regime for sugar, placed third country suppliers to the United States market at an additional disadvantage vis-a-vis certain beneficiary countries who were granted both statutory quotas and duty-free treatment, and to the need to ensure that non-Caribbean suppliers received fair treatment in the United States market.

48. A number of members indicated that they continued to be in favour of the strengthening of the Generalized System of Preferences as the best approach for promoting the trade of developing countries generally. Some other members reaffirmed their attachment to the most-favoured- nation principle.

49. Some members of the Working Party made the point that the CBERA while presented as intended to promote the development of the Caribbean Basin countries did not extend beneficiary treatment to all countries in the region. These members were of the view that that the CBERA was not compatible with the provisions of Article I and Part IV of the General Agreement.

50. The Working Party took note of the expression of views by different delegations regarding the appropriate legal cover that might be sought under the GATT for the CBERA without pronouncing on the legal or other merits of the views held by individual delegations. In the light of the request of the United States and bearing in mind the explanations given by the United States and, in particular, the assurances that the Act would be administered in a manner which does not damage the trade of non-Caribbean suppliers, the Working Party prepared the draft waiver annexed to this report, for submission to the CONTRACTING PARTIES.

51. A number of members stated that the proposed waiver should not serve as a precedent in any respect.

52. It was also understood that the waiver would in no way be considered as affecting the legal rights of contracting parties under the General Agreement.

ANNEX I

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

DRAFT DECISION

Taking note of the request of the Government of the United States [for a waiver from its obligations under paragraph 1 of Article I of the General Agreement,] with respect to the establishment of duty-free treatment to imports of eligible articles into the United States from beneficiary Caribbean countries and territories, from 1 January 1984 until 30 September 1995, as provided in the Caribbean Basin Economic Recovery Act, P.L. No. 98-67 of 5 August 1983 (hereinafter referred to as "the Act");

Bearing in mind the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

Considering that the stated objective of the Act is to assist the trade and economic development of beneficiary developing countries and territories situated in the Caribbean Basin by encouraging the expansion of productive capacity in response to more liberal access and to new trading opportunities for Caribbean countries;

Considering also that the duty-free treatment provided under the Act is designed to promote the expansion of trade and economic development of beneficiaries in a manner consistent with the objectives of the General Agreement and with the trade, financial and development needs of the beneficiary countries and not to raise barriers or to create difficulties for the trade of other contracting parties;

Considering, moreover, that the duty-free treatment provided under the Act should not prejudice the interests of other contracting parties not benefitting from such treatment and that it is expected that the extension of such duty-free treatment will not cause a significant diversion of imports into the United States market of eligible articles originating in contracting parties who are not beneficiary countries;

[Having regard to the assurances that the Government of the United States does not envisage any action in pursuance of the Act which might cause adverse effect on the sugar trade of contracting parties who are not beneficiary countries;]

Considering that the duty-free treatment provided under the Act by the Government of the United States shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

Considering, furthermore, that the duty-free treatment provided under the Act by the Government of the United States shall not adversely affect the maintenance, operation and improvement of the Generalized System of Preferences of the United States;

Noting, furthermore, the assurances given by the Government of the United States that it will, upon request, promptly enter into consultations with any interested contracting party with respect to any difficulty or matter that may arise as a result of the implementation of the provisions of the Act;

[Having regard to the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956;]

The CONTRACTING PARTIES, acting pursuant to the provisions of paragraph 5 of Article XXV of the General Agreement,

Decide that:

1. Subject to the terms and conditions set out hereunder, [the provisions of paragraph 1 of Article I of the General Agreement shall be waived, [until 30 September 1995], to the extent necessary] to permit the Government of the United States to provide duty-free treatment to eligible imports of Caribbean Basin countries benefitting from the provisions of the Act, without being required to extend the same duty-free treatment to like products of any other contracting party.

2. Such duty-free treatment shall be designed not to raise barriers or create undue difficulties for the trade of other contracting parties.

3. The Government of the United States shall promptly notify the CONTRACTING PARTIES of any trade-related measure taken under the Act, in particular any changes in the designation of beneficiary countries, as well as any modifications being considered in the list of eligible articles and the duty-free treatment thereof, and shall furnish them with all the information they may deem appropriate relating to such action. Pursuant to the provisions of paragraphs 5 and 6, the United States Government shall consult with regard to any modifications being considered in the list of eligible articles.

[4. The Government of the United States shall ensure that the preferential arrangements for access to its market for sugar will not operate in a manner which results in beneficiary countries receiving a disproportionately greater share of United States sugar imports than they would obtain in the absence of CBERA.]

5. The Government of the United States will, upon request, promptly enter into consultations with any interested contracting party with respect to any difficulty or matter that may arise as a result of the implementation of the provisions of the Act; where a contracting party considers that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of such implementation, such consultations shall examine the possibility of action for a satisfactory adjustment of the matter in a manner consistent with the terms of the waiver.

6. Any contracting party which considers that the trade-related provisions of the Act are being applied inconsistently with this [waiver] or that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of the implementation of the provisions of the Act and that consultations have proved unsatisfactory, may bring the matter before the

CONTRACTING PARTIES, which will examine it promptly and will formulate any recommendations that they judge appropriate [including the termination of the waiver].

7. The Government of the United States will submit to the CONTRACTING PARTIES an annual report on the implementation of the trade-related provisions of the Act. The CONTRACTING PARTIES will, two years from the date when this [waiver] comes into force and, biennially thereafter, review its operation and consider if in the circumstances then prevailing any modifications to the provisions of the present [waiver] are required. [Furthermore, in the case of essential changes in the autonomous United States Generalized System of Preferences before 1995, it should be decided if the waiver can be continued].

8. This [waiver] shall not preclude the right of affected contracting parties to have recourse to Article XXIII of the General Agreement.

The following amendments to the CBERA Working Party draft Report (Spec(84)35/Rev.1) have been proposed by the delegations of the United States and the European Communities. Consequentially, square brackets in preambular paragraphs 1 and 10 and in operative paragraphs 1,6,7 and 8 of the draft waiver (Annex I of the draft Report) should be deleted. The revised text of the draft waiver is annexed hereto.

Suggested Amendment to CBERA Working Party Draft Report

(Spec(84)35/Rev.1)

Replace existing paragraphs 50-52 with the following:

50. The Working Party recognized that there are a number of different approaches within the GATT framework to the establishment of preferential schemes and that each case must be analyzed on the basis of all the circumstances peculiar to it. Having considered these alternative approaches in this case, a number of members of the Working Party concluded that the waiver procedure under paragraph 5 of Article XXV was the most appropriate alternative with respect to the CBERA. However, others were of the view that this was not the case. Notwithstanding these differing views, it was acknowledged that a decision on whether to request a waiver for the CBERA could only be made by the United States. The United States therefore requested that the draft waiver annexed to this report be submitted to the CONTRACTING PARTIES for a vote.

51. The Working Party took note of the expression of views by different delegations regarding the appropriate legal cover that might be sought under the GATT for the CBERA without pronouncing on the legal or other merits of the views held by individual delegations. A number of members stated that the proposed waiver should not serve as a precedent in any respect.

52. It was also understood that the waiver would in no way be considered as affecting the legal rights of contracting parties under the General Agreement.

53. In the light of the request of the United States and bearing in mind the explanation given by the United States and, in particular, the assurances that the Act would be administered in a manner which does not damage the trade of non-Caribbean suppliers, the Working Party prepared the draft waiver annexed to this report, for submission to the CONTRACTING PARTIES.

ANNEX I

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

DRAFT DECISION

Taking note of the request of the Government of the United States for a waiver from its obligations under paragraph 1 of Article I of the General Agreement, with respect to the establishment of duty-free treatment to imports of eligible articles into the United States from beneficiary Caribbean countries and territories, from 1 January 1984 until 30 September 1995, as provided in the Caribbean Basin Economic Recovery Act, P.L. No. 98-67 of 5 August 1983 (hereinafter referred to as "the Act");

Bearing in mind the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

Considering that the stated objective of the Act is to assist the trade and economic development of beneficiary developing countries and territories situated in the Caribbean Basin by encouraging the expansion of productive capacity in response to more liberal access and to new trading opportunities for Caribbean countries;

Considering also that the duty-free treatment provided under the Act is designed to promote the expansion of trade and economic development of beneficiaries in a manner consistent with the objectives of the General Agreement and with the trade, financial and development needs of the beneficiary countries and not to raise barriers or to create difficulties for the trade of other contracting parties;

Considering, moreover, that the duty-free treatment provided under the Act should not prejudice the interests of other contracting parties not benefitting from such treatment and that it is expected that the extension of such duty-free treatment will not cause a significant diversion of imports into the United States market of eligible articles originating in contracting parties who are not beneficiary countries;

[Having regard to the assurances that the Government of the United States does not envisage any action in pursuance of the Act which might cause adverse effect on the sugar trade of contracting parties who are not beneficiary countries;]

Considering that the duty-free treatment provided under the Act by the Government of the United States shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

Considering, furthermore, that the duty-free treatment provided under the Act by the Government of the United States shall not adversely affect the maintenance, operation and improvement of the Generalized System of Preferences of the United States;

Noting, furthermore, the assurances given by the Government of the United States that it will, upon request, promptly enter into consultations with any interested contracting party with respect to any difficulty or matter that may arise as a result of the implementation of the provisions of the Act;

Having regard to the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956;

The CONTRACTING PARTIES, acting pursuant to the provisions of paragraph 5 of Article XXV of the General Agreement,

Decide that:

1. Subject to the terms and conditions set out hereunder, the provisions of paragraph 1 of Article I of the General Agreement shall be waived, [until 30 September 1995], to the extent necessary to permit the Government of the United States to provide duty-free treatment to eligible imports of Caribbean Basin countries benefitting from the provisions of the Act, without being required to extend the same duty-free treatment to like products of any other contracting party.

2. Such duty-free treatment shall be designed not to raise barriers or create undue difficulties for the trade of other contracting parties.

3. The Government of the United States shall promptly notify the CONTRACTING PARTIES of any trade-related measure taken under the Act, in particular any changes in the designation of beneficiary countries, as well as any modifications being considered in the list of eligible articles and the duty-free treatment thereof, and shall furnish them with all the information they may deem appropriate relating to such action. Pursuant to the provisions of paragraphs 5 and 6, the United States Government shall consult with regard to any modifications being considered in the list of eligible articles.

[4. The Government of the United States shall ensure that the preferential arrangements for access to its market for sugar will not operate in a manner which results in beneficiary countries receiving a disproportionately greater share of United States sugar imports than they would obtain in the absence of CBERA.]

5. The Government of the United States will, upon request, promptly enter into consultations with any interested contracting party with respect to any difficulty or matter that may arise as a result of the implementation of the provisions of the Act; where a contracting party considers that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of such implementation, such consultations shall examine the possibility of action for a satisfactory adjustment of the matter in a manner consistent with the terms of the waiver.

6. Any contracting party which considers that the trade-related provisions of the Act are being applied inconsistently with this waiver or that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of the implementation of the provisions of the Act and that consultations have proved unsatisfactory, may bring the matter before the CONTRACTING PARTIES, which will examine it promptly and will formulate any recommendations that they judge appropriate [including the termination of the waiver].

7. The Government of the United States will submit to the CONTRACTING PARTIES an annual report on the implementation of the trade-related provisions of the Act. The CONTRACTING PARTIES will, two years from the date when this waiver comes into force and, biennially thereafter, review its operation and consider if in the circumstances then prevailing any modifications to the provisions of the present waiver are required. [Furthermore, in the case of essential changes in the autonomous United States Generalized System of Preferences before 1995, it should be decided if the waiver can be continued].

8. This waiver shall not preclude the right of affected contracting parties to have recourse to Article XXIII of the General Agreement.

ANNEX II[1]

WORKING PARTY ON UNITED STATES CARIBBEAN BASIN ECONOMIC RECOVERY ACT

Record by the Secretariat of Discussions at the Meeting on 10 April 1984

1. At the meeting of the Working Party on 10 April 1984, the United States as well as several members made general observations concerning the Caribbean Basin Economic Recovery Act (CBERA), various of its provisions and the United States request for a waiver. In addition, members asked a number of questions which together with the general observations have been reflected in the report of the Working Party. The replies of the United States representatives to the questions raised by members as well as outstanding questions and comments have been summarized hereunder and are related to the questions and replies reproduced in document L/5620 for easier reference.

GENERAL QUESTIONS
Questions 1-18
CBERA

2. In response to one member who had said that it would be desirable that the beneficiary countries make an assessment of the benefits provided by the Act, the representative of the United States noted that although trade was the cornerstone of the CBERA, the Caribbean Basin Initiative (CBI) programme included also investment incentives, increased aid and provisions for technical assistance. The CBI was designed to increase both domestic and foreign investment and to achieve reasonable levels of sustained growth in the region. The United States, other countries in the region and contracting parties generally would benefit from the economic development of the countries in the Caribbean Basin.

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[1]This annex was originally issued as Spec(84)23.

3. The representatives of some beneficiary countries expressed support for the CBERA and the trade benefits provided therein. One of these representatives said that the basic thrust of the CBI was to broaden the economic base of the countries in the region and to encourage trade and investment as part of an integrated approach with aid and technical assistance. The CBI would also benefit trading partners other than the United States because the rules of origin provided were quite generous.

4. One member said that on the question of benefits of the CBERA, his delegation deferred to the judgment of the beneficiary countries. Another member reiterated that the CBI was justified as an initiative aimed at promoting economic development in a region which had enormous needs. It was to be considered whether this kind of initiative should or should not become a precedent in GATT. In his view, the approach and presentation chosen by the United States were not very fortunate and it was desirable that the Act be applied in as flexible a manner as possible. Even though the CBI presentation appeared to be maladroit, the beneficiary countries had expresssed interest in the approval by the CONTRACTING PARTIES of the United States request for a waiver. This member said that his delegation would examine the trade data provided by the United States before adopting a position. The CBERA impact on trade and its potential effects should not be underestimated.

5. In response to some comments concerning possible amendments to the CBERA, the representative of the United States said that it was not customary to include in any legislation provisions with respect to future amendments. The question was asked whether improvements in the Act could be foreseen in the light of requests made by the beneficiary countries or suggestions made by other contracting parties. The representative of the United States said that he would not like to speculate as to what Congress might or might not do. As the Act itself called for a review by the International Trade Commission after two years, he did not rule out that lawmakers might wish to amend it in the future. However, trade legislation in the United States was very difficult to pass and to amend.

6. One member said that absolute transparency with regard to the implementation of the Act and its effects was the best way to counteract the unilateral character of the Act and to safeguard the trade interests of contracting parties which might be affected by the provisions of the CBERA.

This member suggested that the Working Party might reflect on the best method for achieving such transparency. The representative of the United States assured the Working Party that the Act would be administered in a transparent manner. It was expected that the transparency would include periodic reports on the operation of the Act by the United States and a major review by the CONTRACTING PARTIES after a few years of its operation.

Enabling Clause

7. One member asked how would the United States comply with paragraph 3 of the Enabling Clause which provides, inter alia, that differential and more favourable treatment under the Enabling Clause shall if necessary be modified to respond positively to the development, financial and trade needs of developing countries. The representative of the United States said that if any problems arose in this respect, it would be necessary to consider what action might be appropriate under the circumstances.

Question 2

8. In connection with the reply to question 2 in document L/5620, one member said that, in his opinion, the CBERA was inconsistent with the provisions of Part IV of the General Agreement, the Framework Agreement and the 1982 Ministerial Declaration.

Question 3

9. With reference to question 3 in document L/5620, one member stated that, in his view, the implementation of the Act without prior approval by the CONTRACTING PARTIES was a violation of the rules of the General Agreement. Moreover, in the light of the provisions of Article XI, the United States should also notify to GATT the "Sense of the Congress Regarding Sugar Imports" which appeared in Subtitle C of the CBERA.

Waiver
Questions 5 and 6

10. With reference to the answers to questions 5 and 6 in L/5620, the United States representative reaffirmed that a waiver had been requested

pursuant to footnote 2 of paragraph 2 of the Enabling Clause and paragraph 5 of Article XXV of the General Agreement because even though the CBI, as a programme to assist the economic growth of developing countries in the Caribbean region was consistent with the objectives of paragraph 3 of the Enabling Clause, the application of duty free treatment to eligible articles from beneficiary countries as provided in the Act was not specifically covered by paragraph 2 of the Enabling Clause. The fact that the CBI programme met the criteria of paragraph 3 of the Enabling Clause but was outside the scope of paragraph 2 gave rise to the exceptional circumstances which warranted the granting of a waiver under Article XXV paragraph 5.

11. The member who had asked this question said that compliance with the criteria in paragraph 3 of the Enabling Clause could not be construed as justifying the existence of exceptional circumstances and a departure from the principles of the General Agreement.

12. Another member said that he disagreed with the United States interpretation of footnote 2 of paragraph 2 of the Enabling Clause. This member said that his delegation interpreted the reference to "the GATT provisions for joint action" by the CONTRACTING PARTIES in footnote 2 of paragraph 2 as referring to Part IV in particular paragraphs 1 and 2 of Article XXXVIII of the General Agreement. He added that in this case the granting of a waiver from the provisions of Article I would allow the United States to discriminate against contracting parties for reasons which his delegation considered to be political.

13. In the view of the United States, the provisions for joint action in footnote 2 to paragraph 2 of the Enabling Clause did not cover joint action under Article XXXVIII: 1 and 2 or other provisions in Part IV of the General Agreement which referred to voluntary actions by the contracting parties and not to waivers under Article XXV.

14. One other member said that his delegation did not share the United States interpretation of footnote 2 of paragraph 2 of the Enabling Clause.

15. In response to a request for clarification, the Director of Legal Affairs pointed out that the interpretation of GATT provisions was not within the competence of the secretariat; only the CONTRACTING PARTIES

could give legally valid interpretations. On that understanding he said that, although in his opinion the words "the GATT provisions for joint action" in footnote 2 could be interpreted as referring to the provisions of Article XXV, paragraph 1, he had been assured that the drafters of the text had intended the phrase to refer to the waiver procedure in Article XXV, paragraph 5, as being appropriate to cover such special and differential treatment. He recalled, however, that the only agreement which had previously been notified with reference to the footnote, SPARTECA, had not been dealt with as a waiver case. He did not think that the footnote should be interpreted as referring to Article XXXVIII which did not contain any procedural provisions.

16. Another member noted that while it was laudable that the United States had requested a waiver to implement the CBERA, regrettably there was no reference to a waiver anywhere in the Act. In his view, the exercise of national sovereignty also had to consider international obligations.

Conditions of the waiver

17. The United States representative said that his authorities were willing to submit annual reports to the CONTRACTING PARTIES on the implementation of the Act and to carry out reviews of the effects of the Act on the trade interests of contracting parties on a periodic basis. In this connection one member said that if annual reviews were not seen as very productive by the United States, a major review mid-way in the time period of the waiver might be useful. The United States representative said that his authorities would also be ready to afford opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise in relation to the implementation of the Act.

Duration of the waiver

18. The representative of the United States said that the request for a waiver related to the period of duration of the CBERA which was 11 and 3/4 years. This time period was the maximum which the United States Congress would accept for the Act and was intended to coincide with the proposed termination of the extension of the validity of the GSP legislation currently under consideration in the United States Congress.

Question 7

19. With reference to question 7 in L/5620, one member asked whether the preferential duty free treatment provided by the Act could be considered as complementary to other trade liberalization efforts that might be carried out during the duration of the Act.

Questions 8 and 9

20. One member asked whether the United States could confirm the replies to questions 8 and 9 in document L/5620 to the effect that the United States had neither requested nor was receiving any preferential access for U.S. products or investments in any beneficiary country and did not intend to use the waiver requested as a means to contravene the principle of non-discriminatory allocation of import quotas and that this undertaking would continue to be observed in the future. The representative of the United States, in confirming the reply to question 8, noted that the CBI programme was limited in scope and time and that the United States had no intention of seeking trade concessions from the beneficiary Caribbean countries.

Question 10

21. With reference to question 10 in L/5620, one member said that eligible countries could only be granted beneficiary status on the basis of a decision by the President of the United States. The criteria applied by the President of the United States were in his opinion discriminatory and permitted arbitrariness. Furthermore, in his opinion the CBERA was of doubtful benefit for the CBI countries. The duty-free treatment related to only 8.7 per cent of trade. The existence of a safeguard clause created a degree of uncertainty to investors. There was no compensatory mechanism in the case of a reduction in the beneficiary countries' export income from primary products. The CBERA not only weakened the functioning of the CACM but also increased the dependence of the countries of the region on the United States.

Questions 11 and 12

22. With reference to questions 11 and 12 in L/5620 and the quantification of benefits accruing to beneficiary countries, one member

said that considering the data in the trade matrix provided by the secretariat, the five categories of products excluded from the CBI and the situation of sugar, it appeared that all that the beneficiary countries would get was a five per cent duty preference on a very limited number of products. Perhaps the CBI countries were looking for trade promotion measures rather than minimal margins of preference which might at the most attract limited investment opportunities. However, in terms of a cost/benefit analysis, the net benefits for the beneficiary countries appeared limited if compared to the damage to the principles of international trade.

23. The representative of the United States noted that existing trade covered by the CBERA was approximately US$600 million. Even though the trade aspect was the centerpiece of the CBERA, it was only one element of an expanded cooperation effort which included investment incentives, aid and technical assistance with the objective of reaching sustained growth by the countries in the region.

24. In response to a question raised by one member, the representative of the United States noted that all contracting parties would benefit from the expanded economy of the region and the additional investment opportunities created by the Act.

Question 16

25. One member noted that the set of instruments provided by the Act, trade, investment and aid possibilities which were mutually reinforcing and interacting might have a mixed impact on the interests of all concerned in terms of trade flows and investment flows and enquired whether the United States delegation had any comments in this respect.

26. With reference to question 16 in L/5620, one member noted that there might be some trade diversion to the detriment of his country's exports to the United States. In such case consultations might not be sufficient. He asked whether the United States had envisaged a mechanism for compensating affected contracting parties. A similar concern was expressed by another member who recalled the provisions of paragraph 3 of the Enabling Clause and said that in such situation mere consultations would not be adequate.

The representative of the United States stated that this was a very delicate issue and said that no compensatory mechanism had been envisaged. The economies of the CBI countries were rather small and could not constitute a challenge to external markets. The United States did not believe that there were likely to be any significant negative effects on the trade of other countries as a result of the implementation of the Act. Nevertheless, transparency would be insured and consultations would take place as necessary. The member who had raised this issue said that the consultations should be linked to some form of action in case there were negative effects for contracting parties.

27. Another member referring to the question of compensation raised by some members said that, in his view, a donor country could not be expected to pay twice for the benefits accorded to some countries. If the trade interests of some contracting parties were affected negatively by preferential arrangements of this kind, he thought that the donor country might be expected to review the manner of application of the preferences in question to avoid causing further injury to the interests of third countries. In his opinion, it would not be realistic for third countries to expect compensation in this situation.

BENEFICIARY COUNTRIES
Questions 19-26

28. Some members enquired why the list of beneficiary countries had not included all the countries and territories in the region. Noting that a purpose of the CBERA was to promote the economic and political stability of the region, the rationale for establishing eligibility conditions was questioned. In response, the representative of the United States said that the United States Congress had determined the list of beneficiary countries and given no discretion to the President in this respect. Certain countries in the Caribbean Basin such as Colombia, Mexico and Venezuela, which had been excluded were envisaged as possible donor countries. The French overseas departments had been left out because they had not wished to be included. The beneficiary countries had geographical and historical ties of long standing with the United States.

29. The representative of the United States added that the mandatory requirements concerning eligibility had been determined by the United States Congress and were similar to the requirements established in the GSP legislation with the addition of one requirement concerning the protection of United States copyright. These requirements were preconditions for the designation of a country as a beneficiary country under the Act and not commitments required from the beneficiary countries. Eligible countries were designated as beneficiaries only if they applied for such status. Up to the present time, twenty out of the twenty-seven countries that could be designated as beneficiaries had requested beneficiary status.

Question 19

30. With reference to paragraph 3 of the reply to question 19 in L/5620 concerning the President's discretion to designate beneficiary countries, one member said that the reply of the United States was not satisfactory. In his view, these provisions of the CBERA were inconsistent with the principle of non-discrimination and Part IV of the General Agreement.

Question 26(f)

31. With reference to the reply to question 26(f) in L/5620, one member enquired whether beneficiary countries which did not accede to GATT or to MTN Agreements would be excluded from the CBERA. In his view non-participation in the MTN Agreements should not be an obstacle to be designated as a beneficiary country. The representative of the United States said that non membership of the beneficiary countries in the GATT or the MTN Codes did not have any effect on their beneficiary status.

Question 26(g)

32. Referring to GATT's rights and obligations one member noted that many beneficiary countries were not contracting parties. He enquired what was the status of GATT rights and obligations between the United States and these beneficiary countries in terms of the CBI. He also asked what was the position of these countries and the United States on the question of terms of accession to GATT and the MTN Agreements. Would these countries get special and preferential treatment when acceding to the MTN Codes or would they be subject to the same criteria and level of commitments

expected from other developing countries? The representative of one beneficiary country which is a contracting party said that in this connection no effects negative or otherwise were anticipated from the CBI for countries which were members of GATT. The CBI did not modify the rights and obligations of contracting parties. The representative of the United States said that nothing in the CBI would prejudice the process of accession to GATT or the MTN Codes. Beneficiary countries when acceding would be expected to undertake similar obligations to those undertaken by other contracting parties at similar levels of development.

ELIGIBLE ARTICLES
Questions 27-41
Question 28

33. One member said that the rules of origin referred to in question 28 of L/5620 would cause trade diversion in favour of the United States and to the detriment of third countries. The representative of the United States replied that what was anticipated from the CBERA was trade creation and not a displacement of trade from some countries.

Sugar
Questions 32-40

34. One member referring to the United States import regime for sugar which established quotas and to the improbability of an increase of sugar imports, requested that the United States justify the statement that the treatment for sugar in the CBERA was conducive to trade liberalization.

35. In referring to the replies to questions 32,34,36 and 38 concerning the treatment of sugar in the CBERA, one member said that the use of expressions such as: "If and when U.S. quotas are increased or eliminated,...the three countries will probably still be subject to these quantitative limits..., at no time...would the three countries be likely to have unlimited access..., CBERA sugar producers remain subject to the quantitative limits as long as there is a restrictive quota system in effect" were ambiguous with respect to the situation where global sugar quotas might be increased over the current levels. Referring to question 36, another member expressed concern that if and when the United States support system for sugar was removed, the Dominican Republic, Guatemala and

Panama would be able to ship duty-free sugar to the United States in excess of their traditional levels of exports. These countries would enjoy guaranteed duty-free access in a shrinking market. This member requested explicit guarantees from the United States that the interests of third suppliers would be safeguarded. Another member asked whether section 213(d)(4) of the CBERA referred to the quota system applied by the United States to sugar imports.

Question 36

36. With reference to the reply to question 36 in L/5620, one member said that in accordance with paragraph (g) of the proclamation, sugar quotas for each fiscal year (1.10 to 30.9) would not exceed 6.9 million short tons. He enquired whether these quotas would only be distributed pursuant to current criteria of market share and share in the United States market. Another member asked about the meaning of the expression not "likely to have unlimited access" in the reply to question 36.

37. In response to several questions concerning the treatment of sugar and the CBERA, the representative of the United States said that the restraint system on sugar imports was entirely separate from the CBI. Quotas were not set or affected by the CBI legislation but under another authority. Under the GSP sugar was imported duty-free from a number of countries but the quantitative limits were set by the sugar headnote and the relevant legislation. Sugar was not a key or major element in the CBI from the point of view of the United States and the beneficiary countries. One of the major objectives of the CBERA preferences was the diversification of exports away from dependency on one or a few commodities.

38. The representative of the United States then proceeded to describe the sugar import regime of the United States. Sugar imports which were classified under tariff item 15520 and syrup and molasses under tariff item 15530 were subject to quantitative limits, to fees and to duties. In addition, sugar was covered by the GSP and CBI programmes. With respect to quantitative limits, the United States sugar imports were subject to limits set by Presidential proclamation pursuant to headnote 2 Subpart A of Part 10 Schedule 1 of the Tariff Schedules. The quotas under headnote 2 were allocated on a country by country basis. Quotas were not set under the CBI. The duties applied to sugar imports were also set pursuant to the

authority of headnote 2. The current tariff rate of 2.8125 cents per pound was the maximum duty allowable. Under headnote 2 the President retained the authority to reduce duties to as low as 0.625 cents per pound. In addition to the quotas and the tariff under headnote 2, United States sugar imports were also subject to fees pursuant to section 22 of the Agricultural Adjustment Act. Currently such fees had been set at zero but they were reviewed quarterly. Under this authority the President could impose fees or quotas to protect the sugar price support programme but he could not impose both fees and quotas simultaneously under section 22. At the current time, sugar imports were subject to quotas allocated by countries and to a tariff under the headnote. Sugar imports under the GSP were subject to both the section 22 fees which were currently zero and the headnote 2 country quotas. The quotas were lower than the competitive need limits and thus duty-free treatment under the GSP was limited to the quota level established by the headnote. Sugar imports under the CBERA were also subject to section 22 fees which were currently zero and like the GSP entered duty free up to the headnote 2 country quota levels. Under the CBI the quotas set by the headnote determined the duty-free entry the same as in the case of the GSP.

39. The representative of the United States referred then to possible changes in the sugar import regime. If there were no quotas imposed under headnote 2 but there was a Presidential proclamation imposing either a fee or a quota under section 22 in order to protect the domestic sugar price support, CBI sugar imports would enter duty-free up to the competitive need limit unless it was higher than the quota established under section 22. If there were more restrictive quotas in effect, CBI duty-free imports would be covered by such quotas. In this situation, the Dominican Republic, Guatemala and Panama would be entitled to duty-free entry up to the quota levels specified in the CBERA assuming that these levels did not exceed the section 22 quota levels. If there was no section 22 proclamation in effect and no headnote 2 quotas in effect, CBI sugar imports would enter the United States duty-free subject only to the rules of origin, safeguards, food plan requirements and other provisions of the Act. As indicated in the reply to question 36, it was unlikely that these three countries would have unlimited access to the United States market. Under the CBERA the most severe quota in effect would be applied. That was the meaning of section 213 (d)(4) of the CBERA. The United States could reaffirm the response to question 9 in L/5620 that it did not intend to use the waiver

as a means to contravene the principle of non-discriminatory allocation of import quotas. The provisions for imports of sugar under the CBI did not preclude future liberalization of sugar imports by the United States.

40. With respect to sugar one member noted and welcomed the following comments and assurances given by the United States: (i) that the waiver would not be used to contravene the principle of non-discriminatory allocation of import quotas (question 9); (ii) that it was not expected that the United States President would use his authority to increase the limits on duty-free access for sugar from the Dominican Republic, Guatemala and Panama (question 35); (iii) that it was not expected that the trade of non-Caribbean suppliers would suffer as a result of the CBERA (question 40). This member interpreted these assurances as an implicit undertaking that the United States would envisage remedying any adverse effects caused by the Act on the sugar trade of non-Caribbean suppliers. The preceding comments and assurances were determinant for this member's position on the waiver request and it was expected that they would be fully observed throughout the life of the Act.

41. In response to some additional comments, the representative of the United States noted that the International Sugar Agreement was under renegotiation. The United States would meet any commitments which it might undertake under a renegotiated ISA. Returning to question 36, he reiterated that if there were no restrictions under the sugar programme either under the headnote or a proclamation by the President under section 22, the three countries would have duty-free access to the United States market. However, there were limitations to the volume of exports because of their limited production capacity and the need to observe a food plan which ensured that production would not be diverted from food into other areas such as sugar. One member noted that the Dominican Republic was the largest exporter of sugar to the United States market.

42. In response to a further question relating to the basic allocation of the United States sugar quotas under headnote 2, the representative of the United States said that the CBI had no effect on the setting of the quotas. The CBI only allowed duty-free access within certain limits. However, for any given country, the most limiting quota in effect took precedence over quotas established under the CBI.

Emergency action

Question 41

43. With reference to section 213(e) of the CBERA which authorizes the President to suspend the duty-free treatment with respect to eligible articles, one member enquired how would safeguard action under the CBERA affect duty-free imports of that same item under the GSP. The representative of the United States said that the provisions were the same except in one case: for certain specified perishable products the CBI established a special emergency safeguard procedure with short time limits for examination of a request for emergency relief by the Secretary of Agriculture and determination by the President. Emergency relief under this procedure remained in effect until the ongoing section 201 procedure was concluded or the President determined that emergency relief was no longer warranted.

44. One member noted that the GSP had competitive need limitations which did not exist in the CBI. If exports increased to the point of threatening the United States industry, under section 213(e)(1) the President could suspend the duty-free treatment provided by the CBERA. He enquired what would be the effect of such situation on GSP beneficiaries.

45. The representative of the United States said that the CBI legislation excluded import sensitive items while in the case of the GSP the President had more discretionary authority. The notion of competitive need limits was tied to the notion of graduation on a product specific basis. Except for the case of sugar, this factor was not relevant to CBI because of the low stage of development of the beneficiary countries. It would not be inconsistent with Article XIX of the General Agreement if the President were to take a tariff action in the context of an escape clause. This kind of action would be covered by a waiver from the m.f.n. provisions of paragraph 1 of Article I. It would be for the CONTRACTING PARTIES to decide what conditions should apply to any other action. The President did not have the intention of invoking the authority in section 213(e)(1) in any pending section 201 cases.

46. The representative of the United States added that in all cases of safeguard action there had to be an injury test. This was basic to the safeguard procedures in the United States. Under the CBERA, the President

had the authority to modify or terminate the relief with respect to CBI imports at an earlier date than was provided for in the proclamation itself.

47. One member reserved his position and rights with respect to the response of the United States on this matter and reserved his rights concerning the answer to question 41(c) in document L/5620. Another member said that safeguard measures created instability for investors. Article XIX of the General Agreement did not permit discriminatory safeguard action. Consequently, the response of the United States was not satisfactory.

TRADE DATA
Questions 43- 44

48. With reference to question 44 in L/5620, one member reiterated that in addition to the questions of principle his delegation attached great importance to the trade consequences of the Act and would examine in detail the printouts and computer tapes deposited with the secretariat. The representative of the United States said that in order to respond in an efficient manner to the requests for information submitted by contracting parties, a trade data tape had been provided with complete data collected, catalogued and cross-referenced in such a way that the secretariat could produce any data on trade of the region with the United States which might be required. Any member desiring a particular tabulation could obtain from the secretariat the information required.