

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## CARIBBEAN BASIN ECONOMIC RECOVERY ACT

### Questions and Replies

The contracting parties were invited (GATT/AIR/1872) to communicate to the secretariat any questions they might wish to put to the United States in connection with the examination in the Working Party of the United States request<sup>1</sup> for a waiver relating to the Caribbean Basin Economic Recovery Act. In response to this request, a number of questions were received and were transmitted to the United States. The following replies to these questions have been received. The attachments mentioned in the replies are available in the secretariat (Development Division, Room 2010) for consultation by delegations.

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<sup>1</sup>Sub-Title A of the Caribbean Basin Economic Recovery Act has been circulated in L/5577.

U.S. RESPONSE TO QUESTIONS SUBMITTED  
BY THE CONTRACTING PARTIES ON THE U.S. REQUEST FOR A WAIVER  
UNDER ARTICLE XXV:5 PERTAINING TO  
THE CARIBBEAN BASIN  
ECONOMIC RECOVERY ACT

The United States submits the following responses to questions by the Contracting Parties in relation to the request for a waiver under Article XXV:5 in connection with the Caribbean Basin Economic Recovery Act (CBERA) (L/5573).

**RESPONSES TO GENERAL QUESTIONS**

1. Which obligations does the United States request the CONTRACTING PARTIES to waive?

The United States requests that the Contracting Parties grant the United States a waiver from the provisions of paragraph 1 of Article I of the General Agreement, thereby authorizing the United States to provide duty-free treatment to eligible imports of Caribbean Basin countries benefitting from provisions of the Caribbean Basin Economic Recovery Act.

2. Does the United States consider that Title II of the Caribbean Basin Economic Recovery Act (CBERA) is consistent with all the provisions of the General Agreement and the other Decisions adopted by the CONTRACTING PARTIES with the exception of Article I of the General Agreement?

Yes. The trade-related element of the Caribbean Basin Initiative provides differential and more favorable treatment to developing nations in the Caribbean Basin through the provision of duty-free treatment. The United States believes that the CBERA is consistent with the provisions of the General Agreement with the exception of Article I.

3. In the United States request for a waiver (L/5573), mention is made of the intention of the United States authorities "to implement the Act in a manner which is consistent with the

requirements of the GATT." How will the United States justify the breach of the provisions of Article I resulting from the implementation of the Act without prior approval by the CONTRACTING PARTIES?

On October 3, 1983, the United States notified the CONTRACTING PARTIES that the trade element of the CBERA would be implemented on January 1, 1984. This notification was then followed by a request for a waiver from Article I in order that the program could be administered in a manner consistent with the provisions of the GATT. The Contracting Parties had previously been informed of the status of the legislation in the U.S. Congress, and were made aware of the importance the United States attached to expeditious implementation of program benefits. It is anticipated that the requested waiver will be fully consistent with the requirements of the GATT.

4. In view of the fact that the United States request for a waiver concerning the CBERA has not yet been approved by the CONTRACTING PARTIES, how can this situation be reconciled with the announcement of implementation of the CBERA as from 1 January 1984?

The United States is deeply concerned by the decline of economic activity throughout the Caribbean Basin. Accordingly, we wish to grant the benefits of the CBERA to eligible Caribbean nations promptly. We believe that the Contracting Parties will conclude that the CBERA waiver is justified under footnote 2 of paragraph 2 of the Enabling Clause.

5. The Decision of 28 November 1979 on "Differential and more favorable treatment, reciprocity and fuller participation of developing countries..." left it open for the CONTRACTING PARTIES "...to consider on an ad hoc basis under the GATT provisions for joint action any proposals for differential and more favorable treatment not falling within the scope of paragraph 2" of that Decision. In these circumstances, why does the United States consider it necessary to invoke the provisions of Article XXV:5 of the General Agreement, which are applicable "in exceptional circumstances"?

The United States has interpreted "the GATT provisions

for joint action" in footnote 2 of paragraph 2 of the Enabling Clause as referring to provisions of the GATT, including the general waiver provision contained in paragraph 5 of Article XXV which deals with joint action by Contracting Parties. It was for this reason that the United States cited both footnote 2 of paragraph 2 of the Enabling Clause and paragraph 5 of Article XXV in its waiver request.

6. Why has the United States sought a waiver under both Article XXV of the General Agreement and footnote 2 of paragraph 2 of the Enabling Clause when the latter is specifically designed for such cases of preferential treatment to developing countries not falling within the scope of paragraph 2?

Because footnote 2 does not itself grant new authority, but refers to action under other "GATT provisions for joint action."

7. What evidence or argument can the United States provide to justify the claim that the CBI preferential trading arrangements will not create any impediments to the reduction or elimination of tariffs or other restrictions to trade on a most-favored-nation basis?

Improved access for beneficiary country exports under the CBERA is granted unilaterally and for a limited duration with no commitment of any kind to maintain margins of preference. The United States has been and will continue to be a strong proponent of reciprocal trade liberalizing measures undertaken on a permanent and most-favored-nation basis. We advocated this policy throughout all previous GATT negotiating rounds. The United States continues to support liberalization of both tariff and non-tariff barriers, on an MFN basis, without regard to the existence of preferences.

8. Given that the CBERA is within the more global framework of the Caribbean Basin Initiative (CBI), which implicitly envisages a series of concessions on the part of beneficiary countries in the area of investment policies - which will tend to produce vertical partitioning of the foreign trade of Caribbean Basin countries - how can the United States contend that the proposed programs will have no trade-displacing effects by discouraging imports by beneficiary countries

of products originating in other contracting parties, in particular developing contracting parties?

The United States is urging the beneficiary countries to take appropriate steps to encourage inward investment. Improved access to the U.S. market is attracting investment to this region from countries throughout the world, both developed and developing. Moreover, the CBI beneficiaries are maintaining nondiscriminatory trade policies, which encourage sourcing of capital goods and materials from the most efficient supplier. The United States has neither requested nor is it receiving any preferential access for U.S. products or investment in any beneficiary country.

9. Can the United States give an assurance that the terms of any waiver granted will not be used to contravene or undermine the principle of non-discriminatory allocation of import quotas?

Yes, the U.S. does not intend to use the requested waiver as a means to contravene the principle of non-discriminatory allocation of import quotas.

10. Given that the Caribbean Basin Economic Recovery Act is a matter of unilateral action, and not the outcome of negotiations between the United States and the countries of the region, does the United States consider that its content fully responds to the interests of developing countries in Central America and the Caribbean region and that it represents a sound and equitable form of economic cooperation between developed and developing countries?

Before the United States began to articulate possible CBI program elements, the beneficiary nations -- their Governments, domestic private sectors, and labor organizations -- were consulted extensively. Their suggestions for measures to strengthen economic cooperation were taken fully into account in the preparation of the CBI program. We believe the program is in the interests of the beneficiary countries which have chosen to participate.

11. Taking into account the limited product coverage established by the initiative, as recognized furthermore by the United States in its request for a waiver, what concrete advantages

will the CBERA afford to beneficiary countries and what consequences does the United States Government hope for in terms of economic recovery of the region?

The CBERA provides duty-free treatment for all products presently exported or which might be exported during the life of the program, except the five product groups specifically listed in the legislation: a) textiles and apparel, b) petroleum and petroleum products, c) footwear and certain flat goods, d) canned tuna, e) watches and watch parts.

The CBERA thus creates new opportunities for traders and investors in beneficiary countries by a) eliminating tariff impediments on several hundred products currently exported from the region but not included under the Generalized System of Preferences; b) providing -- through tariff elimination -- incentives for production and export of dutiable goods not currently exported from the region; and c) improving access to the U.S. market for those goods currently eligible for the Generalized System of Preferences through the elimination of competitive need limitations and liberalized rules of origin requirements. (The tariff item listings which the U.S. has made available to the Contracting Parties through the GATT Secretariat provide additional detail.)

Because of the comprehensiveness, duration and simplicity of the arrangement, the U.S. believes that the program will provide significant new trade and investment opportunities and thereby promote the economic revitalization of the beneficiary countries.

12. Can you give a brief indication of the tariff rates currently applied to products covered by the CBI?

Tariffs on products which the U.S. imports from one or more CBI beneficiary countries range from 0.1 to 50.1 percent, ad valorem. In items where the cumulative trade of CBI beneficiaries was over 10 million dollars in 1982, tariffs ranged from 0.1 to 11.8 percent, ad valorem. The duties levied on more than half of the 1982 imports which will be duty-free under CBI, but which previously were dutiable, were below five percent, ad valorem.

13. Are there any products exported by CBI countries in a volume

that could exceed the limits fixed under the United States GSP scheme to leave free operation to competition? If so, would the GSP preferential rates continue to be applied even if those limits were exceeded by that country? Furthermore, in the event that an amendment of the GSP excludes certain products from the GSP, would these same products be taken over automatically by the CBI, in other words would they continue to enjoy duty-free treatment within the framework of the CBI?

Listed in attachment 1<sup>1</sup> are TSUS items with respect to which one or more CBI designated beneficiary countries were ineligible for duty-free treatment under the U.S. GSP scheme in 1982. The CBERA does not alter the GSP scheme in any way. CBERA designated beneficiaries remain eligible for the benefits of GSP. Beneficiary countries can thus choose, when exporting their products to the U.S., whether to claim duty-free treatment under GSP or the CBERA. If a beneficiary country chooses GSP treatment it will continue to be subject to all the GSP regulations. If a beneficiary country chooses to claim duty-free treatment under the CBERA, except for sugar, no competitive need limit or other limitation will be imposed. We, therefore believe that CBI designated beneficiaries will prefer the CBI program, which grants them duty-free access for all articles not specifically excluded under the CBERA, because the CBI program has neither competitive need limitations (sugar being the one exception) nor product graduation, and provides more liberal rules of origin.

14. How does the United States reconcile the assurance it has given in its request for a waiver that the GSP scheme will be preserved with its current "graduation" policy in the application of GSP treatment to certain countries?

The U.S. GSP Program is administered independently of the provisions of the CBERA. The current GSP scheme will expire on January 3, 1985. The President has proposed to the Congress a ten year renewal of the program, but the Congress has not yet acted on the proposed renewal legislation. The CBERA is designed to provide preferential treatment to a group of nations facing serious economic difficulties whose exports are at a very minimal stage of development. The program is designed to enable

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<sup>1</sup> Available in the secretariat for consultation.

nations in the Caribbean Basin to develop competitive export industries through a temporary grant of preferential treatment. This is consistent with the administration of the GSP and the policy of product-specific graduation.

15. The United States claims that the duty-free treatment to "beneficiary" Caribbean Basin countries is temporary, extending for a period of 11 years from 1 January 1984. Does this mean that the United States is seeking a waiver only to cover this period?

Yes, the United States is only seeking a waiver for the life of the CBERA which covers the period from January 1, 1984 to September 30, 1995.

16. Will the United States undertake to provide an opportunity, on the pattern of existing waivers under Article XXV, for consultation and taking into account representations from any Contracting Party whose interests are adversely affected by application of the CBI?

Yes, in conformity with the practice under existing Article XXV waivers, the United States would be willing to enter into consultations with any Contracting Party on issues related to the operation of the CBERA, and on the effect of the CBERA on trade between the United States and that Contracting Party.

17. Would the United States be prepared to present to the CONTRACTING PARTIES periodic reports, including an analysis of the social and economic repercussions of the Act on Caribbean Basin countries which are contracting parties to the General Agreement and have not been designated as beneficiaries?

The United States would be willing to provide periodic reports on the apparent effects of the trade-related elements of the CBERA on trade between the United States and designated beneficiary countries.

18. Will the United States, in addition to other requests or conditions expressed by the CONTRACTING PARTIES, make available the report on the economic impact of the CBI referred to in Section 215 of the Caribbean Basin Economic Recovery Act?



Yes, the United States will provide the CONTRACTING PARTIES with a copy of the report on the economic impact of the CBERA on U.S. industries and consumers to be prepared by the United States International Trade Commission pursuant to Section 215 of the CBERA.

#### BENEFICIARY COUNTRIES

19. Does the President of the United States have unlimited authority in respect of the designation and/or suspension of designation of beneficiary countries? If not, what are the responsibilities of the House of Representatives and the Senate in this regard?

Section 212 of the Act establishes the procedures to be followed in designating countries as eligible to receive duty-free treatment. Section 212 defines beneficiary countries as those designated by Presidential proclamation. Subsection (b) of section 212 lists those countries and territories which are eligible for designation. Prior to designation, the President must notify Congress of his intention to designate and give the basis for his decision. The statute imposes no time limits on the designation process. Designation can come at any time during the life of the Act. The President must notify the Congress of intent to designate. However, once a country has been designated, the President must notify Congress at least sixty days prior to withdrawing or suspending the designation of such country.

Section 212 establishes the parameters of the President's authority regarding country designation. First, the President can only designate countries or territories which appear on the list provided in subsection (b) of section 212. Second, the President can only designate those eligible countries which meet the seven mandatory designation criteria. The President does have the authority to waive the application of mandatory criteria relating to a Communist state; expropriation; enforcement of arbitral awards; and unauthorized rebroadcasting of U.S. copyrighted materials. In order to exercise this waiver authority, the President must determine that it is in the national economic or security interest of the United States and must notify Congress that he intends to use his waiver authority. If the laws,

policies or practices of a designated beneficiary country are inconsistent with any of the mandatory criteria and the inconsistency is not covered by a Presidential waiver, the President is required by law to withdraw or suspend the beneficiary status of that country.

There are eleven additional criteria which the President is required to take into account in deciding whether to designate a beneficiary country. The President retains the discretion to decide whether to withhold designation on the grounds that a country fails to meet one or more of these "non-mandatory" criteria. The President has the authority to withdraw or suspend the designation of a beneficiary country on the grounds that the country's laws, policies or practices are inconsistent with the purpose of the non-mandatory criteria.

As was previously indicated, the President is required to notify Congress prior to implementing any decision relating to designating a country or terminating designation. This notification requirement gives Congress the opportunity to comment on the President's proposed action. Under the provisions of the CBERA, Congress does not have the authority to veto a proposed designation decision. However, the President, prior to implementing a designation decision, would give serious consideration to any Congressional objections that might have been raised.

20. The United States has stated that the objectives of the Act are:

(a) to facilitate the economic revitalization and promote the economic and trade stability of the countries in the region;

(b) to facilitate and promote the trade of the developing countries in the region; and

(c) to encourage the expansion of their productive capacity in response to the opening of new markets.

In the light of these objectives, how does the United States justify the selective designation of beneficiary countries?

Designation of beneficiary countries is not "selective." The benefits may be provided to all of the 27 beneficiaries listed in Section 212(b), on an equal basis. The President is precluded from granting eligibility to a listed beneficiary if the beneficiary is engaged in certain activities or is pursuing certain policies which are specified in the Act. This includes policies or practices which would work against enhanced economic cooperation between the United States and the beneficiaries.

21. Taking into account the similarity existing between the economies of the countries in the region and in particular the structure of their exports, how would selective implementation of the Act affect the interests of countries in the region not designated as beneficiaries

(a) in the United States' market?

(b) in third markets?

The United States will not withhold the benefits of CBERA from any potential beneficiary whose laws, policies, and practices are consistent with the criteria of the Act. The purpose of the CBERA is to give additional impetus to the on-going efforts of Caribbean Basin countries to adjust their practices and policies in order to expand trade and investment, not only with the United States but with each other and with the rest of the world as well. Countries in the region which requested designation as beneficiaries have demonstrated their interest in taking advantage of the CBERA to increase trade and investment with the United States. Some Caribbean Basin countries have not expressed any interest in being designated as beneficiaries of the CBERA.

The United States is not in a position to assess the consequences of nondesignation in the abstract. The circumstances of the particular country would need to be known, as well as the reasons for nondesignation. However, by fostering economic growth among CBI beneficiary countries, there should be an indirect benefit for third countries in the longer term.

22. What would be the effect of discriminatory implementation of the Act as among the countries of the Central American Common Market on the economic integration agreements?

All member states of the Central American Common Market (CACM) are potentially eligible for CBERA benefits. All CACM members were consulted concerning the criteria for designation, and all were given the opportunity to show how their laws, policies, and practices were consistent with the intent of the CBERA designation criteria. As a general matter, the promotion of the economic growth of eligible beneficiary countries should help to strengthen CACM.

23. Among the "compulsory" criteria for designation as a "beneficiary country" included in sub-section 212(b), the first is that of not being a Communist country. What definition of the term "Communist" will the United States use for the designation of beneficiary countries?

The term "Communist country" is not specifically defined in U.S. statutes or regulations. However, in designating countries as beneficiaries of the Caribbean Basin Economic Recovery Act, the President will consider the following factors:

(1) The extent to which the country's government is totalitarian and dominated by a Communist party, in relation to the scope for independent action by private institutions not controlled by the government or the party;

(2) The degree to which the country's relations with the United States and other non-Communist nations is controlled by international Communism.

24. In the event that a country of the Caribbean Basin granted preferential treatment to another developed country in accordance with the provisions of Article I of the General Agreement, would the United States demand the elimination of such preferential treatment as a condition for designation as a beneficiary country? If so, would the United States consider the elimination of preferential treatment as being a reciprocal concession?

A country granting preferences can qualify for duty-free treatment under the CBERA if the President has received assurances that the preferences will be eliminated or that actions will be taken to eliminate the significant adverse effect of the preferences on U.S. commerce. The United States considers the elimination or reduction of reverse preferences granted by developing countries to developed countries to be removal of a discriminatory practice rather than a concession. No Caribbean Basin beneficiary is presently granting preferences to a developed country.

25. Additional clarifications are requested from the United States regarding the criteria for designation of beneficiary countries (section 212, subsection (c) of the CBI), in particular as regards the significance; (a) of the guarantee of equitable and reasonable access to markets and basic commodity resources of such countries (criterion No. 3, page 3 of document L/5577); (b) of the degree of export subsidization or of conditions deriving from national investment policies (criterion No. 5, page 4 of document L/5577).

a) Equitable and reasonable access means the avoidance of burdensome and discriminatory restrictions on access to foreign markets for goods, services, and for investment. In pursuing a program which has as one of its objectives the intensification of economic cooperation between the United States and the beneficiary countries, the United States is naturally concerned that U.S. traders and investors do not face unjustifiable and unreasonable restrictions barring access to the markets and resources of the beneficiaries.

b) Export subsidies and trade-related performance requirements can lead to distortions in trade and investment flows and to the uneconomic use of resources. This criteria is designed to discourage such distortive practices.

26. Designation criteria (section 212(c)):

(a) Point (2) mentions "the economic conditions", "the living standards" and "any economic factors:". What indicators will be applied? Have fixed criteria been established?

(b) Could the United States develop point (c)2 regarding the economic factors to be taken into consideration for designation as a beneficiary country?

Caribbean Basin countries differ widely in their economic structures and conditions. The Administration therefore has not devised any formulas or precise definitions of this criterion. Rather, the Administration looks at each economy in terms of its fundamental weaknesses and vulnerabilities, as well as its role in the development of the region as a whole. Among the factors considered are: living standards including, as one measure, GNP per capita; excessive dependence on a single or only a few export products; imbalance in the external account; narrowness of the productive base; trends in employment and underemployment; and sufficiency of basic infrastructure.

(c) In connection with point (c)3, does the United States not consider the assurance of access to the markets and basic resources of beneficiary countries as being a reciprocal concession?

(d) Point (3) mentions the extent to which a beneficiary country has assured the United States "reasonable access to the markets". Will negotiations about this take place with the countries in question?

The United States is seeking no tariff concessions or preferences in this criterion and instead is seeking the sort of reasonable and equitable treatment required under the GATT rules. Before designation of a beneficiary, the President is directed to take into account the extent to which the United States has been assured "equitable and reasonable access". If U.S. traders are being adversely affected by unreasonable and unjustifiable restrictions on their goods and services, the President could, consistent with our international obligations and the objectives of the CBI, withhold, withdraw or suspend beneficiary status.

The United States will not negotiate with beneficiary

countries in the context of CBERA designation for the granting of reciprocal trade or investment concessions, nor will it seek unilateral concessions.

(e) With reference to "equitable and reasonable access to the markets and basic commodity resources" of a beneficiary country, is this to be understood as forming part of the MFN regime of that country? Under this provision, is the United States hoping to obtain reciprocal preferences, or a least would it not exclude them?

The United States is and will be concerned with the application of beneficiary countries' laws, policies and practices which impact upon their trade with the United States. The beneficiary countries which have been designated all adhere to the most-favored-nation principle with respect to their trade relations with the United States. The United States will neither seek nor discuss the granting of concessions by beneficiary countries, either on an MFN or preferential basis, in the context of CBERA designation.

(f) Many of the countries listed in the CBERA are not contracting parties to the General Agreement, and the majority of them have not signed the trade agreements negotiated in the Tokyo Round. In these circumstances, what are the implications of point (c)4?

(g) According to point (4) account will be taken of the degree to which beneficiary countries follow the GATT. What criteria will be applied with regard to bindings, adhesion to MTN-codes, etc?

The United States has discussed with the beneficiaries their adherence to the accepted rules of international trade, embodied in the GATT and the MTN codes-of-conduct. We have urged all beneficiary countries to formally accede to the GATT instruments, and to become signatories to the codes-of-conduct. We have received official communications from certain designated beneficiaries that they intend to seek adherence to GATT, and will consider becoming signatories to the MTN codes. All designated beneficiaries have demonstrated to the satisfaction of the President that they adhere to the accepted rules of international trade.

(h) The provisions of Article XVI of the General Agreement and those of the Agreement on the Interpretation and Application

of Articles VI, XVI and XXIII of the General Agreement define the obligations of the contracting parties in regard to subsidies. In the view of the United States, is the wording of point (c)5 consistent with those obligations or does it broaden them?

We believe this criterion is fully consistent with the GATT and the Subsidies Code, both of which discourage the use of export subsidies. The Subsidies Code further encourages developing countries to make commitments to eliminate export subsidies inconsistent with their competitive and development needs.

(i) What criteria will the United States use to evaluate whether the trade policies of a country are contributing to the revitalization of the region?

(j) Point (6) discusses trade policies between beneficiary countries. What will be required?

The U.S. is seeking to encourage Caribbean Basin countries to expand trade opportunities among themselves. More open, market-oriented and outward-looking trade policies will provide more opportunities, and would enhance the effectiveness of economic integration in the region. We are urging the potential beneficiaries to maintain open and predictable trading regimes, and to continue to pursue regional integration that is outward-looking.

(k) What does the United States mean by "self-help measures" to promote national economic development, and what parameters will it use to evaluate such development?

The free trade provisions of the Caribbean Basin Economic Recovery Act provide beneficiaries with a set of opportunities. However, the actual benefits derived from those opportunities will vary from country to country according to whether its overall economic policies provide incentives to invest, produce, export and innovate, and do so with the least long-term distortion. The U.S. Government has underway a continuing dialogue with the potential beneficiaries. We are encouraging countries to 1) re-examine their policies to see how they can take fuller advantage of the CBI; 2) make a general commitment to more open and market-oriented



policies which provide greater opportunities for dynamic and productive private sector activities; and 3) undertake specific program and policy reforms incorporating this general commitment.

(1) Point (8) contains a "social clause". How will this clause be implemented? Will one, for example, take into consideration to what extent various countries have adhered to various ILO conventions?

The "social clause" in point (e)8 is "the degree to which workers in such country are afforded reasonable workplace conditions and enjoy the right to organize and bargain collectively." This criterion is one of a series of nonmandatory criteria provided to the President. The criterion will be implemented by examining the trade union rights and working conditions in each country. Information is collected from many sources including local trade unionists, ILO and OAS reports, and American trade unions.

The trade union rights and working conditions in each country are evaluated with reference to internationally recognized labor rights and protections.

The numerous ILO conventions and case law have been used as guidance in developing a U.S. interpretation of the CBI labor criterion. For any particular country, however, the ultimate disposition of an ILO case is not conclusive with respect to the CBERA criterion.

(m) With regard to point (c) 8, does the United States consider "reasonable workplace conditions" as being those consistent with the labor legislation established by the International Labor Organization?

In examining reasonable workplace conditions, the U.S. has used applicable ILO standards as a guide. Nevertheless, it is not the authority or responsibility of the U.S. to interpret or enforce ILO standards.

In determining what is "reasonable" for a country, the U.S. will take into account local circumstances and the progress a country is making toward better conditions.

## ELIGIBLE ARTICLES

27. Can the United States indicate every tariff item number and product coverage under the Tariff Schedules of the United States (TSUS) eligible for duty-free treatment under the Act including their current m.f.n. rates of duty?

The United States will deposit multiple copies of the 1984 Tariff Schedules of the United States with the Secretariat, which contains an explanatory note indicating how CBERA-eligible articles can be distinguished. We will also supply the Secretariat with a computer-generated report containing the desired information on duty rates and CBERA coverage, but with abbreviated product descriptions.

28. In connection with determination of the origin of goods, beneficiary countries are considered as one single customs territory and the cost or value of materials produced in the territory of the United States can be considered as part of the value-added of beneficiary countries.

(a) In the view of the United States, what would be the effects of the rules of origin established under subsection 213(a) in terms of trade creation and trade diversion?

The rules of origin as set forth in section 2 of the CBERA are: (1) that the article must be imported directly from a beneficiary country, and (2) it must contain at least 35 percent cumulative local value-added within the eligible Caribbean countries (including Puerto Rico and the Virgin Islands). Up to 15 percent of the 35 value-added may be of U.S. origin. This value-added percentage rule is the same as that required under the Generalized System of Preferences (GSP), except for the provisions allowing for cumulation of value and inclusion of U.S. value.

The rules-of-origin provided for in the CBERA will ensure that the benefits of the Act will go to the beneficiaries themselves because the rules discourage so-called pass-through operations, in which the work performed is of little economic benefit to the beneficiary. We doubt that changes in the exports of CBERA beneficiaries stemming from the CBERA will have a discernable effect

on third countries because of the small size of beneficiary economies.

(b) What effects would they have on investment by third countries?

Secure duty-free access to the U.S. market as provided by the CBERA should provide a significant incentive for investment from all countries. Moreover, the rules-of-origin permit up to sixty-five percent of the total appraised value of an article to be from non-beneficiary nations.

29. Eligible articles (section 213):

(a) Point (a)(1)(B) describes the possibility of cumulation. How will this be administered? What documentation will be required, etc?

With regard to the possibility of cumulation under Section 213(a)(1)(B), this provision will be administered so as to allow the addition of value in any one or more beneficiary countries (including the Commonwealth of Puerto Rico and the United States Virgin Islands) without restriction either as to the number of countries involved or as to the sequence for adding such value among different countries. This rule is essentially the same as in the case of an association of countries treated as one country for purposes of the GSP. The U.S. Customs Service will administer this provision as part of its responsibility for determining duty-free eligibility. The interim implementing regulations under the CBERA (Attachment 2)<sup>1</sup> require that the importer or consignee submit a declaration of the manufacturer or exporter setting forth the information necessary to demonstrate compliance with the country of origin criteria. The declaration is specifically designed to ensure the inclusion of details concerning value added in one or more beneficiary countries.

(b) The above-mentioned point also contains a rule about "donor country content". How will this rule be applied in practice? Will, for instance, American producers/exporters be required to present a certificate of origin?

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<sup>1</sup> Available in the secretariat for consultation.

The provision for "donor country content", which allows the cost or value of materials produced in the United States to be counted toward the value-added requirement in an amount up to 15 percent of the appraised value of the article, will be applied in respect of materials from the United States which are included in the article. Specific information in this regard is intended to be included in the declaration discussed in the answer to Question 29(a). The interim CBERA implementing regulations do not specifically require submission of a certificate of origin.

30. How does the United States intend to apply the provision regarding the appraised value, in particular, information with respect to "the direct costs of processing operations" (section 213(a)(1) and (3)? Could not a detailed declaration of costs reveal trade secrets, and consequently prevent undertakings from making use of preference under the CBI?

The interim CBERA implementing regulations set forth specific items which may be included as "direct costs of processing operations". These items are consistent with both the items listed in the CBERA and the items presently countable for purposes of the GSP. The details concerning direct costs of processing operations are required to be included on the declaration mentioned in the answer to Question 29(a). Since the declaration does not provide for the submission of such details in a case involving an article which is wholly the growth, product, or manufacture of a beneficiary country, there is no possibility for revealing trade secrets in such a case. However, in a case involving an article which is not wholly the growth, product, or manufacture of a beneficiary country, submission of details concerning such costs is required. Therefore, where the manufacturer or exporter in the beneficiary country and the importer or consignee in the United States are not the same party, or where different manufacturers are involved, the submission of this information could reveal trade secrets. Consideration will be given to the possibility of modifying the requirement in the final regulations in such a way that both the protection of trade secrets and the need to ensure compliance with the statutory requirements will be assured.

31. Does the wording of the exception in regard to "textile and apparel articles which are subject to textile agreements" (section 213(b)(1)) mean that certain textile and apparel articles are nevertheless covered by the CBERA? If so, which? Which are the agreements referred to?

The exception from duty-free treatment of "textile and apparel articles which are subject to textile agreements" includes all textile and apparel articles which are covered by the Arrangement Regarding International Trade in Textiles (the Multi-Fiber Arrangement or MFA). Therefore, if a textile or apparel article meets the definition of a textile item under Article 12 of the MFA, it will not receive duty-free treatment under the CBERA.

32. Given (1) that the United States trade regime in force for sugar is characterized by a strict quota limitation and (2) that there is no provision for any increase in total sugar imports by the United States, to what extent can the treatment envisaged by the CBERA for this product be considered conducive to trade liberalization?

The U.S. quotas on sugar imports are generally independent of the CBERA. Import quotas on sugar are influenced by market conditions and world price, and are not influenced by the CBERA. If and when U.S. quotas are increased or eliminated, imports of sugar can be increased from all sources. The CBERA has provided a benefit to certain beneficiaries by eliminating the duty on their exports of sugar to the United States (subject to an adjustable limitation applicable to certain major exporters).

33. How does the United States intend to regulate its sugar imports, having regard to the implementation of the CBERA and to its continual reiteration that domestic producer protection by import quotas is a temporary measure?

The CBERA will not affect the policy with respect to the sugar quotas nor will it affect the prospects for liberalization or elimination of such quotas. The U.S. monitors all imports of sugar as part of the U.S. sugar program. Quarterly reviews are held to assess market conditions that influence the U.S. sugar import program. Sugar coming in from CBERA beneficiaries will be monitored like

all other sugars. Sugar import quotas are frequently adjusted and can be eliminated.

34. Article 3(a) of the Enabling Clause stipulates that any differential and more favorable treatment accorded to developing countries must not raise barriers to or create undue difficulties for the trade of any other contracting parties. This safeguard is particularly applicable to developing third country suppliers. In this sense, and taking account of the fact that the preferential treatment accorded to some sugar-producing countries under the CBERA is not within the context of any overall increase in United States imports of the product, it would seem that the United States, by discriminating among developing countries, has not respected the provisions of Article 3(a) of the Enabling Clause.

We do not believe that the CBERA raises barriers or creates undue difficulties for other contracting parties. The three countries specifically cited in the sugar provision of the CBERA, the Dominican Republic, Guatemala, and Panama all have specific quantitative limits on the amount of sugar they can ship. If global quotas are substantially increased or eliminated, the three countries will probably still be subject to these quantitative limits while other countries will in effect have unlimited access.

35. Does the United States expect to increase the limits on duty-free access for sugar from the Dominican Republic, Guatemala and Panama (213(d)(2))? If so, under what circumstances would such action be taken?

No, we do not expect the President to use his authority to increase limits on duty-free access for sugar from the Dominican Republic, Guatemala and Panama.

36. How can the United States maintain that the duty-free treatment to be given under the Caribbean Basin Economic Recovery Act, in particular the duty-free treatment for sugar from the Dominican Republic, Guatemala and Panama will not create undue difficulties for trade from other contracting parties? The sugar exports of the Dominican Republic, Guatemala and Panama are subject to quantitative restrictions when a support program operates for sugar but if and when this support program is removed these restrictions

will be lifted. Duty-free treatment will be a further advantage to countries already favored by physical proximity to the United States market.

The Dominican Republic, Guatemala and Panama are currently restricted to shipping sugar well below the limits specified in the CBERA. If the present sugar quotas are increased or eliminated, these three countries will be able to ship duty-free up to the CBERA limits referred to above. At no time during the life of the CBERA would the three countries be likely to have unlimited access to the U.S. market.

37. As a condition for duty-free treatment of sugar and meat imports, beneficiary countries must present, within ninety days following the date of their designation, a Food Production Plan consistent with the criteria stipulated in the Act.

(a) In addition to the data mentioned in paragraph 1(b) of subsection 213 (c), what additional information could the President consider necessary?

(b) What does the United States mean by the monitoring system in respect of stable food production and the modalities of land use and land ownership?

(c) To what extent does the United States consider that a Government is bound by a Plan, and on what basis will the President determine the "good faith" of a country to implement that Plan?

The Stable Food Production Plans required under section 213(c) of the CBERA are intended to ensure that increased sugar and beef production will not displace production of necessary food crops. The submission of a Stable Food Production Plan is not a precondition to designation but it is necessary to retain duty-free treatment for sugar and beef. In submitting Stable Food Production Plans, designated beneficiary countries were asked to provide:

(a) Any information available to show that production of beef and sugar for export to the U.S. will not be done at the expense of domestic food needs. This could

include existing plans for production of staple crops and nutrition programs.

(b) Information to show how the government of the country concerned will enforce existing programs described above, or otherwise be sure that expansion of beef and sugar for export is not occurring at expense of domestic food needs.

The "Plan" refers to any acceptable program or procedure for achieving the objectives of this requirement, and the specific programs can change over time. The U.S. will review a country's sugar and beef exports under CBERA relative to their domestic food/nutrition situation on a biennial basis to determine whether a country is making a good faith effort to meet the objective of this criteria.

38. Can the United States study and assess the consequences resulting from the implementation of the Act of exports of ASEAN countries, particularly sugar, syrup, molasses and coffee?

Since coffee enters the U.S. duty-free, the CBERA will have no impact on coffee imports from any region. Sugar, syrup and molasses are classified under the same TSUS category and all are currently subject to quota. As noted, geographic proximity and duty free treatment can be advantages for CBERA beneficiaries if U.S. quotas are increased or eliminated. CBERA sugar producers remain subject to the quantitative limits, as long as there is a restrictive quota system in effect.

39. With the introduction of the sugar quota system in the United States, the application of surcharges and, now, implementation of the CBERA, a major supplier in the inter-American system will be the only one subject both to quotas and to payment of customs duties. It should be noted in this connection that the restrictions mentioned have together already caused the loss in 1982 of more than 50 percent of the country's total sugar exports to the United States in earlier years. How does the United States envisage compensating the injury thus caused?



This question pertains to the operation of the U.S. sugar program rather than the CBERA. The basic purpose of the CBERA is not the allocation of quotas under the global import quota system. The reduction in the volume of sugar exported in 1982 of course preceded enactment of the CBI.

40. Will the United States modify or if necessary, eliminate the duty-free treatment given to sugar supplied under the Caribbean Basin Economic Recovery Act if the trade of non-Caribbean suppliers begins to suffer?

As indicated above, we will be prepared to consult with any Contracting Party which believes that its trade is adversely affected by the CBERA. However, we do not expect the trade of non-Caribbean suppliers to suffer as a result of the CBERA. We do not foresee circumstances under which we would eliminate duty-free access.

41. Subsection 213(e) empowers the President to take emergency action on imports of any eligible producer in specified cases. In the case of action taken under section 203 of the Trade Act of 1974:

(a) Will the President be able to proclaim a tariff rate higher than that applied prior to the grant of duty-free treatment for articles coming from beneficiary countries?

Yes

(b) Will the President be able to proclaim that such action is not applicable to imports coming from beneficiary countries?

Yes

(c) Does the United States consider that the provisions of the Act with respect to safeguard measures are consistent with Article XIX of the General Agreement?

The waiver from the obligations of Article I with respect to tariffs would in our view permit preferential tariff treatment under Article XIX.

MEASURES FOR PUERTO RICO AND UNITED STATES INSULAR POSSESSIONS

42. The Provisions of subsection 214(c) regarding the amounts of taxes covered over into the Treasury of Puerto Rico create insecurity for potential rum exporters in beneficiary countries, who could at a given moment be faced with suspension of duty-free treatment. What compensatory measures would the United States adopt in favor of beneficiary countries in the event that the interests of those countries were affected by suspension of duty-free treatment on imports of rum?

The CBERA provides that compensatory measures shall be considered by the President if the sum of the amounts of taxes covered over into the Treasuries of Puerto Rico or the Virgin Islands is reduced below the amount that would have been covered over if the imported rum had been produced in Puerto Rico or the U.S. Virgin Islands. The President could, in these circumstances, withdraw duty-free treatment of rum under the CBERA. If withdrawal of duty-free treatment were carried out by the President, the President would consider how the effect of this action diminishes the effectiveness of the CBI, but the CBERA provides no authority for specific compensatory measures. The CBERA is a unilateral grant of benefits from which arises no obligation to compensate CBERA beneficiaries.

#### TRADE DATA

43. Can the United States submit a list of all products imported from the Caribbean countries and territories?

Materials and computer tapes will be deposited with the Secretariat to answer this question.

44. Will the United States list at tariff-line level the imports from (a) countries already participating in the CBI scheme and (b) potential participants, for the three most recent years for which statistics are available. In each case please state whether the product or product group was:

- (a) eligible for duty-free treatment under m.f.n.,
- (b) eligible for duty-free treatment under GSP,
- (c) Subject to duty and/or other forms of restriction.

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<sup>1</sup> A print-out of the computer tapes is available in the secretariat (Development Division, Room 2010) for consultation.

Materials and computer tapes will be deposited with the Secretariat to answer this question.

45. What percentage of total imports from the twenty-seven countries and territories listed in the Caribbean Basin Economic Recovery Act as possible beneficiaries is exempt from customs duties on the basis of the most-favored-nation clause?

23.3 percent

46. What percentage of imports from the countries mentioned in question 44 subject to customs duties on a m.f.n. basis is eligible for duty-free treatment under the Generalized System of Preferences?

10.6 percent

47. What percentage of imports from the countries mentioned in question 44 subject to customs duties on a m.f.n. basis would be excluded from duty-free treatment under subsection 213(b)?

80.7 percent (The exclusion of petroleum accounts for the bulk of trade making up this percentage.)

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<sup>1</sup>A print-out of the computer tapes is available in the secretariat (Development Division, Room 2010) for consultation.