Calendar No. 207

105TH CONGRESS, *1st Session* | SENATE | REPORT 105–105

UNITED STATES-CARIBBEAN BASIN TRADE ENHANCEMENT ACT

OCTOBER 9, 1997.—Ordered to be printed

Mr. ROTH, from the Committee on Finance, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1278]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, having considered legislation to expand the trade preferences available to beneficiary countries designated under the Caribbean Basin Economic Recovery Act, reports favorably thereon and refers the bill to the full Senate with a recommendation that the bill do pass.

I. BACKGROUND

Congress enacted the Caribbean Basin Economic Recovery Act ("CBERA") in 1983 to respond to an economic crisis in Central America and the Caribbean. The principal U.S. response to that crisis under CBERA was a broad grant of unilateral tariff preferences to qualifying beneficiary countries.

In order to qualify, the beneficiary country had to request the opportunity to participate. The President then determined whether the country was eligible based on a variety of factors, including, among others, the country's commitment to afford the United States reciprocal market access, the country's participation (at the time) in the General Agreement on Tariffs and Trade (GATT), its willingness to accept subsidy disciplines, the extent to which the

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country afforded adequate intellectual property protection, whether or not the country had taken steps to afford internationally recognized worker rights, and the extent to which the country's economic policies would contribute to the goals of the Caribbean Basin Initiative, or "CBI" as it is widely known.

The original grant of preferences was limited to a period of 12 years. It covered virtually all trade with the CBI countries with the exception of textiles and apparel, canned tuna, petroleum and petroleum products, and certain watches and watch parts, handbags, luggage, flat goods such as wallets, change purses and key and eyeglass cases, work gloves and leather wearing apparel.

The current CBI beneficiaries include Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and the British Virgin Islands.

In 1990, Congress passed the Caribbean Basin Economic Recovery Expansion Act of 1990, the so-called "CBI II." That Act made the unilateral grant of preferences permanent. It also expanded the tariff preferences. CBI II permitted the President to proclaim a tariff reduction of 20 percent (but not more than 2.5 percent ad valorem on any article) in tariffs applicable to a subset of the previously excluded products—handbags, luggage, flat goods, work gloves, and leather wearing apparel. CBI II also allowed for duty-free treatment on articles, other than textiles and petroleum-based products, if made from U.S. fabricated components.

In 1993, the United States, Canada, and Mexico signed the North American Free Trade Agreement (NAFTA). Among the commitments made by the United States to Mexico were the sharp reduction in duties and quantitative limits applicable to products ineligible for CBI treatment, including textiles and apparel. The Committee's bill is intended to afford CBI beneficiaries treatment akin to that afforded Mexican products in order to avoid undermining investment in the Caribbean Basin based on preferences previously available under the CBI.

Like the CBI II, enacted in 1990, the Committee's bill would expand the existing CBI by providing for additional tariff preferences on a number of products not previously covered by the program. Those benefits, however, are conditioned on the eligible beneficiary countries' trade policies, their participation and cooperation in the Free Trade Area of the Americas (FTAA) and other trade initiatives, as well as certain non-trade factors provided for in the bill.

II. General Description of the Bill

What follows is a section-by-section description of the bill.

Section 1: Short Title

Section 1 provides that, if enacted, the measure would be cited as the "United States-Caribbean Basin Trade Enhancement Act."

Section 2: Findings and Policy

The findings contained in section 2 of the Chairman's proposal set out the underlying rationale for expansion of the CBI program.

The over-arching purpose of the bill is to provide opportunities that will enhance the beneficiary countries' economic development and integration into the international trading system, while providing expanded export opportunities for U.S. goods as a result of the increased trade and economic growth that the enhanced CBI program is designed to foster. The findings underscore that point, as well as emphasize the United States' commitment to encouraging the development of strong democratic governments and revitalized economies throughout the region.

The policy provisions of section 2 reflect the policy of the United States to encourage CBI beneficiaries to become a party to the FTAA or a comparable trade agreement at the earliest possible date. The provisions make the preferences afforded under the Committee's bill expressly contingent on a CBI beneficiary country's willingness to join the United States in those initiatives.

Section 3: Definitions

Section 3 provides certain definitions applicable to the provisions of the bill, including definitions of "beneficiary country," "CBTEA," "NAFTA," "NAFTA country," "WTO," and "WTO member."

Section 4: Temporary Provisions to Provide Additional Trade Benefits to Certain Beneficiary Countries

The Committee's bill would amend subsection 213(b) of the CBERA to provide a tariff preference to imports from the Caribbean Basin of products previously excluded from the CBI, including certain textile and apparel products, footwear, canned tuna, petroleum and derivatives, watches and watch parts. The bill would establish a "transition period" of three years (from January 1, 1998 through December 31, 2000) during which additional tariff preferences could be made available on certain of those items.

Eligibility for the program is left in the discretion of the President, but the proposal would provide very specific guidance as to the criteria the President should apply in making that determination. The starting point under the Committee's bill is compliance with the eligibility criteria set out in the original CBERA. The bill would add certain trade-related criteria, such as the extent to which the beneficiary country fully implements the various Uruguay Round agreements, whether the beneficiary country affords adequate intellectual property protection and protection to U.S. investors, and the extent to which the country applies internationally accepted rules on government procurement and customs valuation.

The proposal also adds other criteria that reflect important U.S. initiatives. They include, among others, the extent to which the country has become a party to the Inter-American Convention Against Corruption, is or becomes a party to a convention regarding the extradition of its nationals, satisfies the criteria for counternarcotics certification under section 490 of the Foreign Assistance Act of 1961, and provides internationally recognized worker rights.

The Committee's bill would impose two reporting requirements. The first obliges the President to report at the outset of the program and at the end of the three-year transition period on the performance of each beneficiary country in meeting the applicable criteria. Before submitting such report, the United States Trade Rep-

resentative must seek public comment. The second reporting requirement obliges the United States International Trade Commission to assess the impact of the various CBI programs on U.S. industries and consumers.

The preferences offered under the Committee's bill are divided between those made available for imports of certain textile and apparel products and those available for all other products covered by the legislation.

Textiles

With respect to textiles, the Committee's bill adopts an approach consistent with that of the CBI II—one that will both provide expanded benefits to the CBI beneficiaries' apparel industry while affording new opportunities for U.S. textile, yarn, and thread producers. The Committee's bill would extend immediate duty-free and quota-free treatment to the following products—

- apparel articles assembled in an eligible CBI beneficiary country from U.S. fabrics wholly formed from U.S. yarns and cut in the United States that would enter the United States under Harmonized Tariff Schedule (HTS) item number 9802.00.80 (a provision that otherwise allows an importer to pay duty solely on the value-added abroad when U.S. components are shipped abroad for assembly);
- apparel articles entered under chapters 61 and 62 of the HTS where they would have qualified for HTS 9802.00.80 treatment but for the fact that the articles were subjected to certain types of washing and finishing;
- apparel articles cut and assembled in the eligible CBI country from U.S. fabric formed from U.S. yarn and sewn in the Caribbean with U.S. thread; and
- handloomed, handmade and folklore articles originating in the CBI beneficiary country.

With respect to the fourth category, the bill provides that the President, in consultation with the relevant beneficiary country, will determine which, if any, particular textile and apparel articles are to be treated as handloomed, handmade or folklore goods eligible for trade preferences under this program. The Committee expects that only genuinely handcrafted articles, normally produced in limited quantities, will be designated as eligible; this provision is not intended to benefit large-scale, industrial production of textile or apparel articles.

The Committee's bill would allow for the snapback of the tariff preferences provided under this bill in the event of surges in imports that could cause serious damage to the U.S. industry producing a like product in the United States. To ensure that the preferences made available under the Committee's bill do not lead to the transshipment of textile and apparel products from other countries where the goods would be subject to U.S. quotas, the bill includes two provisions penalizing such actions. First, the bill would penalize exporters found, on the basis of sufficient evidence, to have engaged in transshipment—all benefits under the program would be denied for a period of two years. Second, any country that was found, on the basis of sufficient evidence, to have failed to take action to prevent transshipment after a specific request for assist-

ance in that regard from the President would have its exports reduced by three times the quantities found to have been transshipped. The Committee intends the "sufficient evidence" standard used here to be the same as that applied under Article 5:4 of the Agreement on Textiles and Clothing administered by the World Trade Organization (WTO).

Other Products

On all other products covered by the Committee's bill (footwear, canned tuna, petroleum and derivatives, and watches and watch parts, and certain leather goods), the program would provide an immediate reduction in tariffs equal to 50 percent of the preference Mexican products enjoy under NAFTA relative to imports of the same articles from CBI beneficiaries. In other words, the applicable duty paid by importers on such goods would be equal to the duty applicable to the same good if entered from Mexico, plus one-half of the difference between the duty rate afforded Mexico on that product and the duty rate that would otherwise apply to the product if imported from the CBI beneficiary country but for the enactment of this bill. The Committee's bill allows for additional reductions over the duration of the program if the President determines that eligible CBI beneficiary countries are making progress toward fulfilling the criteria set out in the eligibility criteria set out in the bill.

In order for their products to qualify for the preferences afforded under the Committee's bill, whether applied to textiles and apparel or other products, the beneficiary country must comply with customs procedures equivalent to those required under the NAFTA.

Section 5: Adequate and Effective Protection for Intellectual Property Rights

Section 5 of the Committee's bill clarifies that, for purposes of assessing whether a CBI beneficiary is offering adequate intellectual property protection, compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property is not determinative.

Section 6: Fees for Certain Customs Services

Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) establishes a $5 fee on passengers arriving in the United States from abroad on commercial vessels or aircraft. COBRA section 13031(b), as initially enacted, provided that passengers arriving from Mexico, Canada, Caribbean nations and U.S. territories (other than Puerto Rico) were exempt from the fee. Section 521 of the North American Free Trade Agreement Implementation Act temporarily increased the fee to $6.50 and applied it as well to passengers previously exempt from the fee. These modifications terminated on September 30, 1997. Section 9 provides that the current fee (which reverted to $5 on October 1, 1997) will apply to passengers arriving from Mexico, Canada, the Caribbean and the territories through March 31, 2000. The revenue thus generated is sufficient to offset the estimated reduction in revenue attributable to the reduced duties the Treasury will collect as a result of the preferences afforded by the Committee's bill.

The Committee notes that the amendments to COBRA section 13031 by section 38 of the Miscellaneous Trade and Technical Corrections Act of 1996, Pub. L. No. 104–295, 110 Stat. 3514, 3539, continue to apply. Specifically, these amendments provided that the Customs Service may collect passenger processing fees only one time for each passenger aboard a commercial vessel in the course of a single voyage involving two or more U.S. ports.

IV. CONGRESSIONAL ACTION

On September 17, 1997, the Committee held a hearing on the President's proposal for enhanced trade benefits for CBI beneficiary countries, which was transmitted to the Congress on June 17, 1997. On October 1, 1997, the Committee considered and approved an original bill proposed by Mr. Roth.

V. VOTE OF THE COMMITTEE

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that the legislation was ordered favorably reported by voice vote on October 1, 1997.

VI. BUDGETARY IMPACT

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office on the budgetary impact of the bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 9, 1997

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the United States-Caribbean Basin Trade Enhancement Act, as ordered reported by the Senate Committee Finance on October 1, 1997.

Sincerely,

JUNE E. O'NEILL, DIRECTOR.

SUMMARY

The Congressional Budget Office has reviewed the United States-Caribbean Basin Trade Enhancement Act, as ordered reported on October 1, 1997, by the Senate Committee on Finance. This bill offers temporary NAFTA-parity benefits to Caribbean Basin countries in order to enhance trade between the United States and this region. The bill would also extend a customs user fee established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). CBO estimates that the bill would decrease receipts by $80 million in fiscal year 1998 and by $362 million over the l998–2002 period, and would reduce outlays by $86 million and by $371

million over those years. Because enacting the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

The bill contains no new private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), and would not impose any costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the bill is shown in the following table.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	1998–2002
OUTLAYS						
Extension of COBRA Customs User Fee	−86	−154	−131	0	0	−371
RECEIPTS						
CBI NAFTA Parity	−80	−118	−132	33	0	−362

BASIS OF ESTIMATE

Revenues

Under current law, the United States offers duty-free treatment to products of 24 countries in the region through the Caribbean Basin Initiative (CBI)—a preferential trade program that extends duty-free treatment to a wide range of products imported from beneficiary countries. The CBI excludes the following products from such treatment: textile and apparel articles, luggage and handbags, certain leather goods, footwear, tuna, petroleum, and watches and watch parts.

This bill would provide tariff quota treatment equivalent to that accorded to products under the North American Free Trade Agreement (NAFTA) to the excluded products of CBI beneficiaries. NAFTA parity would begin January 1, 1998, and would terminate on December 31, 2000. The bill would encourage the United States Trade Representative to seek the accession of these beneficiary counties to NAFTA or a comparable free trade agreement at the earliest possible date, with the goal of achieving full participation by all beneficiary countries by no later than January 1, 2005.

The estimate of revenue loss is based on 1996 trade data. Tariff reductions follow the staged rate reductions that are stipulated in NAFTA, under which the President proclaims a rate of duty that is equal to the lesser of the current duty at the time of importation or the rate of duty that applies to a like article of Mexico under NAFTA. Further reductions may be proclaimed if the President determines that the performance of the country is satisfactory under specific criteria. CBO's estimate assumes a three-year phasein for these NAFTA-parity reductions. This bill would also extend immediate duty-free and quota-free treatment to apparel articles assembled in an eligible CBI beneficiary country from U.S. fabric, articles subjected to certain types of washing and finishing, articles cut and assembled in CBI countries from U.S. fabric sewn with Caribbean thread, and handloomed, handmade, and folklore articles originating in CBI beneficiary countries. Textile and apparel tariff

reductions account for about 97 percent of the revenue loss; petroleum and footwear tariff reductions account for the remainder of the decrease.

Outlays

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) established a schedule of flat fees for processing conveyances and passengers entering the United States. This bill would direct the Customs Service to collect a passenger processing fee of $5 from persons arriving by commercial vessel or aircraft from Mexico, Canada, and certain other areas. This fee would be collected through March 31, 2000. CBO estimates that this provision would result in additional offsetting receipts of about $86 million in fiscal year 1998 and $371 million over the 1998–2002 period.

The Reciprocal Trade Agreements Act of 1997, as ordered reported by the Senate Committee on Finance on October 1, 1997, would extend the same fee through August 31, 1998.

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The projected changes in direct spending through 2007 are shown in the following table. For purposes of enforcing pay-as-you-go procedures, however, only the effects in the budget year and the succeeding four years are counted.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2007
Changes in Outlays	−86	−154	−131	0	0	0	0	0	0	0	−371
Changes in Receipts	−80	−118	−132	−33	0	0	0	0	0	0	−362

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The bill contains no new private-sector or intergovernmental mandates as defined in UMRA and would not impose any costs on state, tribal, or local governments.

VII. REGULATORY IMPACT

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

VIII. Additional Views of Senator Frank H. Murkowski

I am compelled to file additional views regarding the funding provisions of the United States-Caribbean Basin Trade Enhancement Act. While I support expansion of the Caribbean Basin Economic Recovery Act, I believe that the way the Committee funded this initiative is inappropriate. Under section 6 of this bill, passengers arriving from Mexico, Canada, Caribbean nations and U.S. territories aboard commercial vessels or aircraft are once again being forced to pick up the tab for this program unrelated to customs or any other service associated with their travel. Furthermore, these Americans (of the four million cruise passengers last year, over 90 percent were Americans) are being asked to pay again for customs services for which they already pay, both directly and indirectly, through income taxes, and other customs fees.

I believe that the Committee should have turned to spending cuts, not new user fees or taxes to pay for legislation to expand a trade preference program.

In 1985, Congress specifically did not impose a fee on passengers arriving from Mexico, Canada, Caribbean nations and U.S. territories aboard commercial vessels or aircraft as part of Section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). To offset the costs of the North American Free Trade Agreement (NAFTA), however, Section 521 of the NAFTA Implementation Act imposed a fee on these previously exempt passengers. This fee was intended to be temporary, and, in fact, did terminate on September 30, 1997. But the very next day, October 1, 1997, the Committee reimposed the fee to pay for changes to the Caribbean Basin Initiative.

I find it especially disheartening that the Committee would impose a burden on an industry that supports 500,000 U.S. jobs, and already pays over $8 billion in the form of 64 different taxes and fees to 12 different government agencies.

I do note my satisfaction that the Committee makes clear that the amendment I offered to COBRA section 13031 by section 38 of the Miscellaneous Trade and Technical Corrections Act of 1996 continues to apply. This section directs that the Customs Service may collect passenger processing fees only one time for each passenger aboard a commercial vessel in the course of a single voyage involving two or more U.S. ports. This will prevent the unfortunate interpretation by the Customs Service that a fee could be extracted, for example, at every Alaskan port of call when the vessel simply sailed outside the customs territory of the United States on its voyage, without stopping at a foreign port.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

Caribbean Basin Economic Recovery Act

Subtitle A—Duty-Free Treatment

SEC. 211. AUTHORITY TO GRANT DUTY-FREE TREATMENT.

The President may proclaim duty-free treatment *(or other preferential treatment)* for all eligible articles from any beneficiary country in accordance with the provisions of this title.

SEC. 212. BENEFICIARY COUNTRY.

(a)(1) For purposes of this title—

(A) The term "beneficiary country" means any country listed in subsection (b) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title. Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(B) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(C) The term "HTS" means Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(D) The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(E) The terms "WTO" and "WTO member" have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

* * * * * * *

(c) In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

* * * * * * *

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

* * * * * * *

Notwithstanding any other provision of law, the President may determine that a country is not providing adequate and effective protection of intellectual property rights under paragraph (9), even if the country is in compliance with the country's obligations under the Agreement on Trade-Related Aspects of Intellectual Property

Rights described in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)).

* * * * * * *

(e)(1)*(A)* The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met—

[(A)**]***(i)* withdraw or suspend the designation of any country as a beneficiary country, or

[(B)**]***(ii)* withdraw, suspend, or limit the application of duty-free treatment under this subtitle to any article of any country,

if, after such designation, the President determines that as a result of changed circumstances such country **[**would be barred from designation as a beneficiary country under subsection (b).**]** *no longer satisfies one or more of the conditions for designation as a beneficiary country set forth in subsection (b) or such country fails adequately to meet one or more of the criteria set forth in subsection (c).*

(B) The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as a CBTEA beneficiary country, or

(ii) withdraw, suspend, or limit the application of preferential treatment under section 213(b) (2) and (3) to any article of any country, if, after such designation, the President determines that as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 213(b)(5)(B).

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days prior to taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action—

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(3) If preferential treatment under section 213(b) (2) and (3) is withdrawn, suspended, or limited with respect to a CBTEA beneficiary country, such country shall not be deemed to be a "party" for the purposes of applying section 213(b)(5)(C) to imports of articles for which preferential treatment has been withdrawn, suspended, or limited with respect to such country.

* * * * * * *

[(f) On or before October 1, 1993, and the close of each 3-year period thereafter, the President shall submit to the Congress a complete report regarding the operation of this title, including the results of a general review of beneficiary countries based on the considerations described in subsections (b) and (c).**]**

(f) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Not later than December 31, 1997, and at the end of each 3-year period thereafter, the President shall submit to Congress a report regarding the operation of this title, including—

(A) with respect to subsections (b) and (c), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

(B) the performance of each beneficiary country or CBTEA beneficiary country, as the case may be, under the criteria set forth in section 213(b)(5)(B)(ii).

(2) PUBLIC COMMENT.—Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 213(b)(5)(B)(i), and on the performance of each beneficiary country or CBTEA beneficiary country, as the case may be, with respect to the criteria listed in section 213(b)(5)(B)(ii).

SEC. 213. ELIGIBLE ARTICLES.

(a)(1) Unless otherwise excluded from eligibility by this title, and subject to section 423 of the Tax Reform Act of 1986, *and except as provided in subsection (b) (2) and (3),* the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of.the appraised value of such article at the time it is entered.

* * * * * * *

[(b) The duty-free treatment provided under this title shall not apply to—

[(1) textile and apparel articles which are subject to textile agreements;

[(2) footwear not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

[(3) tuna, prepared or preserved in any manner, in airtight containers;

[(4) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States;

[(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply; or

[(6) articles to which reduced rates of duty apply under subsection (h).**]**

(b) IMPORT-SENSITIVE ARTICLES.—

(1) IN GENERAL.—Subject to paragraphs (2) through (5), the duty-free treatment provided under this title does not apply to—

(A) textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on that date;

(B) footwear not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

(C) tuna, prepared or preserved in any manner, in airtight containers;

(D) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(E) watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply; or

(F) articles to which reduced rates of duty apply under subsection (h).

(2) TRANSITION PERIOD TREATMENT OF CERTAIN TEXTILE AND APPAREL ARTICLES.—

(A) PRODUCTS COVERED.—During the transition period, the preferential treatment described in subparagraph (B) shall apply to the following products:

(i) APPAREL ARTICLES ASSEMBLED IN A CBTEA BENEFICIARY COUNTRY.—Apparel articles assembled in a CBTEA beneficiary country from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States that are—

(I) entered under subheading 9802.00.80 of the HTS; or

(II) entered under chapter 61 or 62 of the HTS, if, after such assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTS but for the fact that the articles were subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, or other similar processes.

(ii) APPAREL ARTICLES CUT AND ASSEMBLED IN A CBTEA BENEFICIARY COUNTRY.—Apparel articles cut in a CBTEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States, if such articles are assembled in such country with thread formed in the United States.

(iii) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—A handloomed, handmade, or folklore article of a CBTEA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

(B) PREFERENTIAL TREATMENT.—Except as provided in subparagraph (E), during the transition period, the articles

described in subparagraph (A) shall enter the United States free of duty and free of any quantitative limitations.

(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES DEFINED.—For purposes of subparagraph (A)(iii), the President, after consultation with the CBTEA beneficiary country concerned, shall determine which, if any, particular textile and apparel goods of the country shall be treated as being handloomed, handmade, or folklore goods of a kind described in section 2.3 (a), (b), or (c) or Appendix 3.1.B.11 of the Annex.

(D) PENALTIES FOR TRANSSHIPMENTS.—

(i) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile or apparel products from a CBTEA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years.

(ii) PENALTIES FOR COUNTRIES.—Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the CBTEA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3.

(iii) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this subparagraph has occurred when preferential treatment for a textile or apparel article under subparagraph (B) has been claimed on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (B).

(E) BILATERAL EMERGENCY ACTIONS.—

(i) IN GENERAL.—The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from a CBTEA beneficiary country if the application of tariff treatment under subparagraph (B) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

(II) the term "transition period" in section 4 of the Annex shall have the meaning given that term in paragraph (5)(D) of this subsection; and

(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the beneficiary country in question and the country does not agree to consult within the time period specified under section 4.

(3) PREFERENTIAL TARIFF TREATMENT OF CERTAIN OTHER ARTICLES ORIGINATING IN CBTEA BENEFICIARY COUNTRIES.—

(A) IN GENERAL.—During the transition period, the President shall proclaim a rate of duty, with respect to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that is a CBTEA originating good, equal to the lesser of—

(i) "x", or

(ii) the amount determined by using the formula ".5(x−y)+y".

For purposes of the preceding sentence, the terms "x" and "y" have the meanings given such terms in subparagraph (C).

(B) ADDITIONAL REDUCTIONS.—

(i) IN GENERAL.—The President may proclaim further reductions in the rate of duty for any article described in subparagraph (A) in accordance with this subparagraph if the President determines that the performance of the country is satisfactory under the criteria listed in paragraph (5)(B)(ii).

(ii) RATE OF DUTY.—The rate of duty proclaimed by the President under this subparagraph shall be no less than the lesser of—

(I) the rate of duty that would apply to the article at the time of importation from the country but for the enactment of the CBTEA, or

(II) the rate of duty that applies to a like article of Mexico under Annex 302.2 of NAFTA as implemented pursuant to United States law.

(C) CERTAIN DEFINITIONS.—For purposes of subparagraph (A), the term "x" means the rate of duty described in subparagraph (B)(ii)(I) and the term "y" means the rate of duty described in subparagraph (B)(ii)(II).

(D) EXCEPTION.—Subparagraphs (A) and (B) do not apply to any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS.

(E) RELATIONSHIP TO DUTY REDUCTIONS UNDER SUBSECTION (h).—If at any time during the transition period the rate of duty that would (but for action taken under subparagraph (A) or (B)) apply with respect to any article under subsection (h) is a rate of duty that is lower than the

rate of duty resulting from such action, then such lower rate of duty shall be applied.

(4) CUSTOMS PROCEDURES.—

(A) IN GENERAL.—

(i) REGULATIONS.—Any importer that claims preferential treatment under paragraph (2) or (3) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(ii) DETERMINATION.—

(I) IN GENERAL.—In order to qualify for the preferential treatment under paragraph (2) or (3) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II)—

(aa) has implemented and follows, or

(bb) is making substantial progress toward implementing and following,

procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(II) COUNTRY DESCRIBED.—A country is described in this subclause if it is a CBTEA beneficiary country—

(aa) from which the article is exported, or

(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment.

(B) CERTIFICATE OF ORIGIN.—The Certificate of Origin that otherwise would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraph (2) or (3) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) ANNEX.—The term "the Annex" means Annex 300–B of the NAFTA.

(B) CBTEA BENEFICIARY COUNTRY.—

(i) IN GENERAL.—The term "CBTEA beneficiary country" means any "beneficiary country", as defined by section 212(a)(1)(A) of this title, which the President determines has demonstrated a commitment to—

(I) undertake its obligations under the WTO on or ahead of schedule;

(II) participate in negotiations toward the completion of the FTAA or a comparable trade agreement; and

(III) undertake other steps necessary for that country to become a party to the FTAA or a comparable trade agreement.

(ii) CRITERIA FOR DETERMINATION.—In making the determination under clause (i), the President may consider the criteria in sections 212 (b) and (c) and other appropriate criteria, including—

(I) the extent to which the country follows accepted rules of international trade provided for under the agreements listed in section 101(d) of the Uruguay Round Agreements Act;

(II) the extent to which the country provides protection of intellectual property rights—

(aa) in accordance with standards established in the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act;

(bb) in accordance with standards established in chapter 17 of the NAFTA; and

(cc) by granting the holders of copyrights the ability to control the importation and sale of products that embody copyrighted works, extending the period set forth in Article 1711(6) of NAFTA for protecting test data for agricultural chemicals to 10 years, protecting trademarks regardless of their subsequent designation as geographic indications, and providing enforcement against the importation of infringing products at the border;

(III) the extent to which the country provides protections to investors and investments of the United States substantially equivalent to those set forth in chapter 11 of the NAFTA;

(IV) the extent to which the country provides the United States and other WTO members nondiscriminatory, equitable, and reasonable market access with respect to the products for which benefits are provided under paragraphs (2) and (3), and in other relevant product sectors as determined by the President;

(V) the extent to which the country provides internationally recognized worker rights, including—

(aa) the right of association,

(bb) the right to organize and bargain collectively,

(cc) prohibition on the use of any form of coerced or compulsory labor,

(dd) a minimum age for the employment of children, and

(ee) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(VI) whether the country has met the counternarcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance;

(VII) the extent to which the country becomes a party to and implements the Inter-American Convention Against Corruption, and becomes party to a convention regarding the extradition of its nationals;

(VIII) the extent to which the country—

(aa) supports the multilateral and regional objectives of the United States with respect to government procurement, including the negotiation of government procurement provisions as part of the FTAA and conclusion of a WTO transparency agreement as provided in the declaration of the WTO Ministerial Conference held in Singapore on December 9 through 13, 1996, and

(bb) applies transparent and competitive procedures in government procurement equivalent to those contained in the WTO Agreement on Government Procurement (described in section 101(d)(17) of the Uruguay Round Agreements Act);

(IX) the extent to which the country follows the rules on customs valuation set forth in the WTO Agreement on Implementation of Article VII of the GATT 1994 (described in section 101(d)(8) of the Uruguay Round Agreements Act);

(X) the extent to which the country affords to products of the United States which the President determines to be of commercial importance to the United States with respect to such country, and on a nondiscriminatory basis to like products of other WTO members, tariff treatment that is no less favorable than the most favorable tariff treatment provided by the country to any other country pursuant to any free trade agreement to which such country is a party, other than the Central American Common Market or the Caribbean Community and Common Market.

(C) CBTEA ORIGINATING GOOD.—

(i) IN GENERAL.—The term "CBTEA originating good" means a good that meets the rules of origin for a good set forth in chapter 4 of the NAFTA as implemented pursuant to United States law.

(ii) APPLICATION OF CHAPTER 4.—In applying chapter 4 with respect to a CBTEA beneficiary country for purposes of this subsection—

(I) no country other than the United States and a CBTEA beneficiary country may be treated as being a party to the NAFTA;

(II) any reference to trade between the United States and Mexico shall be deemed to refer to trade between the United States and a CBTEA beneficiary country;

(III) any reference to a party shall be deemed to refer to a CBTEA beneficiary country or the United States; and

(IV) any reference to parties shall be deemed to refer to any combination of CBTEA beneficiary countries or to the United States and a CBTEA beneficiary country (or any combination thereof).

(D) TRANSITION PERIOD.—The term "transition period" means, with respect to a CBTEA beneficiary country, the period that begins on January 1, 1998, and ends on the earlier of—

(i) December 31, 2000, or

(ii) the date on which the FTAA or a comparable trade agreement enters into force with respect to the United States and the CBTEA beneficiary country.

(E) CBTEA.—The term "CBTEA" means the United States-Caribbean Basin Trade Enhancement Act.

(F) FTAA.—The term "FTAA" means the Free Trade Area of the Americas.

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SEC. 215. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THIS ACT.

[(a) The United States International Trade Commission (hereinafter in this section referred to as the "Commission") shall prepare, and submit to the Congress and to the President, a report regarding the economic impact of this Act on United States industries and consumers during-

[(1) the twenty-four-month period beginning with the date of enactment of this Act, and

[(2) each calendar year occuring thereafter until duty-free treatment under this title is terminated under section 216(b). For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.]

(a) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The United States International Trade Commission (in this section referred to as the "Commission") shall submit to Congress and the President, biennial reports regarding the economic impact of this title on United States industries and consumers.

(2) FIRST REPORT.—The first report shall be submitted not later than September 30 of the year following the year in which the United States-Caribbean Basin Trade Enhancement Act is enacted. No report shall be required under this section after September 30, 2005.

(3) TREATMENT OF PUERTO RICO, ETC.—For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States are considered to be United States industries.

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Consolidated Omnibus Budget Reconciliation Act of 1985

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SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

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(b) LIMITATIONS ON FEES.—(1)(A) No fee may be charged under subsection (a) of this section for customs services provided in connection with—

(i) the arrival of any passenger whose journey—

(I) originated in—

(aa) Canada,

(bb) Mexico,

(cc) a territory or possession of the United States, or

(dd) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 101(b)(5))), or

(II) originated in the United States and was limited to—

(aa) Canada

(bb) Mexico,

(cc) territories and possessions of the United States, and

(dd) such adjacent islands;

(ii) the arrival of any railroad car the journey of which originates and terminates in the same country, but only if no passengers board or disembark from the train and no cargo is loaded or unloaded from such car while the car is within any country other than the country in which such car originates and terminates;

(iii) the arrival of any ferry; or

(iv) the arrival of any passenger on board a commercial vessel traveling only between ports which are within the customs territory of the United States.

(B) The exemption provided for in subparagraph (A) shall not apply in the case of the arrival of any passenger on board a commercial vessel whose journey originates and terminates at the same place in the United States if there are no intervening stops.

(C) The exemption provided for in subparagraph (A)(i) shall not apply [to fiscal years 1994, 1995, 1996, and 1997] *before April 1, 2000*.

(2) No fee may be charged under subsection (a)(2) for the arrival of a commercial truck during any calendar year after a total of

$100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such commercial truck during such calendar year.

(3) No fee may be charged under subsection (a)(3) for the arrival of a railroad car whether passenger or freight during any calendar year after a total of $100 in fees has been paid to the Secretary

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Andean Trade Preference Act

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SEC. 206. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THE ANDEAN TRADE PREFERENCE ACT.

[(a) IN GENERAL.—The United States International Trade Commission (hereinafter in this section referred to as the "Commission") shall prepare, and submit to the Congress, a report regarding the economic impact of this title on United States industries and consumers, and, in conjunction with other agencies, the effectiveness of this title in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries, during—

[(1) and 24-month period beginning with the date of enactment of this title; and

[(2) each calendar year occurring thereafter until duty-free treatment under this title is terminated under section 208(b).

[For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.]

(a) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—The United States International Trade Commission (in this section referred to as the "Commission") shall submit to Congress and the President, biennial reports regarding the economic impact of this title on United States industries and consumers, and, in conjunction with other agencies, the effectiveness of this title in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries.

(2) SUBMISSION.—During the period that this title is in effect, the report required by paragraph (1) shall be submitted on September 30 of each year that the report required by section 215 of the Caribbean Basin Economic Recovery Act is not submitted.

(3) TREATMENT OF PUERTO RICO, ETC.—For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States are considered to be United States industries.

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