

7-1-1989

CBI II: Will United States Protectionist Tendencies Yield to Economic Development in the Caribbean Basin?

Gema M. Piñon

Raúl Javier Sánchez

Follow this and additional works at: <http://repository.law.miami.edu/umialr>



Part of the [International Trade Commons](#)

Recommended Citation

Gema M. Piñon and Raúl Javier Sánchez, *CBI II: Will United States Protectionist Tendencies Yield to Economic Development in the Caribbean Basin?*, 20 U. Miami Inter-Am. L. Rev. 615 (1989)

Available at: <http://repository.law.miami.edu/umialr/vol20/iss3/5>

COMMENTS

CBI II: WILL UNITED STATES PROTECTIONIST TENDENCIES YIELD TO ECONOMIC DEVELOPMENT IN THE CARIBBEAN BASIN?

I. INTRODUCTION	616
II. THE CARIBBEAN BASIN	619
III. HISTORY OF THE CBI	620
A. <i>Classification Criteria</i>	621
B. <i>Rule-of-Origin Standard</i>	623
C. <i>Ordinary and Necessary Business Expense Allowance</i>	623
IV. EFFECTIVENESS OF THE CBI	623
V. CRITICISMS OF CBI	627
VI. COMPARISON OF CBI TO OTHER TRADE PROGRAMS	629
A. <i>Generalized System of Preferences (GSP)</i>	629
1. GSP Country-of-Origin Requirements	630
2. Designation	630
3. GSP Compared to CBI	631
B. <i>Most Favored Nation (MFN)</i>	631
C. <i>807 and Super 807</i>	632
VII. ECONOMIC EFFECTIVENESS	633
VIII. PROPOSED CHANGES UNDER CBI II	634
A. <i>Rule-of-Origin</i>	635
B. <i>Product Eligibility</i>	636

C. <i>Injury Determination</i>	637
D. <i>Changes in Sugar Quotas</i>	638
IX. OBSERVATIONS.....	638
X. CONCLUSION.....	642

I. INTRODUCTION

During a meeting of the General Assembly of the Organization of American States, on February 24, 1982, President Ronald Reagan responded to the economic crisis destabilizing Latin America by proposing “. . . [an] economic program that integrates trade, aid and investment—a program that represents a long term commitment to the countries of the Caribbean and Central America”¹ This proposal, commonly called the Caribbean Basin Initiative (CBI), was passed by Congress and signed into law by President Reagan on August 5, 1983, as the Caribbean Basin Economic Recovery Act.² Congress described the program as “[consisting] of integrated, mutually reinforcing measures in the fields of trade, investment, and financial assistance to address both emergency problems and long range economic development.”³

The Reagan Administration’s CBI proposal in 1982 attempted to address a socio-economic crisis in Latin America which at that time had been compared to the situation in post-World War II Europe.⁴ In 1981, estimates of the amount of financial assistance that would be necessary for the region through the end of the 1980s ran as high as twenty billion dollars.⁵ Some have referred to the CBI as a “Basin Marshall Plan,” analogizing it to then Secretary of State John Marshall’s plan established to assist Europe in its post war recovery.⁶

1. Remarks on the Caribbean Basin Initiative to the Permanent Council of the Organization of American States, PUB. PAPERS 210 (Feb. 24, 1982).

2. Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983) (codified at 19 U.S.C. § 2701 (1983)) [hereinafter CBI].

3. H.R. REP. No. 266, 98th Cong., 1st Sess., reprinted in 1983 U.S. CODE CONG. & ADMIN. NEWS, 635, 644 [hereinafter CBI REPORT].

4. Street, A “Basin” Marshall Plan, N.Y. Times, Mar. 3, 1982, at A27, col. 1.

5. Dickey, *Caribbean Initiative Reported Stalled in Mire of Troubles*, Wash. Post, Oct. 11, 1981, at A22, col. 1.

6. “The Marshall Plan was a comprehensive program for reconstruction and development, in which private efforts and public assistance were effectively combined to repair the ravages of war, cope with inflation and payments problems, and promote Western Europe’s long range development. Similar circumstances prevail in Central America, on a smaller

Like post-war Europe, Latin America and the Caribbean were suffering from inflation, unemployment, balance of payment problems and liquidity problems at the time President Reagan proposed the CBI. The region found itself in the midst of a socio-economic and political revolution, including guerilla warfare in El Salvador and Nicaragua. Not only were these two countries in turmoil, but they threatened their bordering neighbors' political, social, and economic stability as well. More important, from an economic perspective, the CBI nations were spending a large part of their gross national product on oil than in previous years, fueling an ever increasing and spiraling inflation rate.⁷ For example, in 1984, the Dominican Republic experienced an inflation rate of twenty-seven percent; in 1985, Costa Rica and Jamaica experienced inflation rates of fifteen percent and 23.1 percent respectively; and in 1986, El Salvador experienced an inflation rate of thirty-two percent.⁸

On August 5, 1987, Congressman Samuel Gibbons of Florida introduced the Caribbean Basin Economic Recovery Act of 1987 ("CBI II") in the House of Representatives.⁹ The purpose of this proposed amendment was "to improve the operation of the Caribbean Basin Economic Recovery Act."¹⁰ During the hearings in the

scale and at an earlier stage of development." Street, *supra* note 4.

7. See CBI REPORT, *supra* note 3, at 644. Accompanying the passage of the CBI, the following considerations were highlighted:

The Caribbean Basin countries have been seriously affected by the escalating cost of imported oil and declining prices for their major exports (*e.g.*, sugar, coffee, bauxite). This has exacerbated their deep-rooted structural problems and caused serious inflation, high unemployment, declining gross domestic product growth, enormous balance-of-payments deficits, and a pressing liquidity crisis. This economic crisis threatens political and social stability throughout the region and creates conditions which Cuba and others seek to exploit through terrorism and subversion.

Id.

8. See generally BUREAU OF PUBLIC AFFAIRS, UNITED STATES DEPARTMENT OF STATE BACKGROUND NOTE, EL SALVADOR, NOVEMBER 1987 (1987); BUREAU OF PUBLIC AFFAIRS, UNITED STATES DEPARTMENT OF STATE BACKGROUND NOTE, JAMAICA, JANUARY 1987 (1987); BUREAU OF PUBLIC AFFAIRS, UNITED STATES DEPARTMENT OF STATE BACKGROUND NOTE, COSTA RICA, MAY 1986 (1986); WORLD ALMANAC AND BOOK OF FACTS 1987 at 565 (M. Hoffman ed. 1987) [hereinafter WORLD ALMANAC].

9. H.R. 3101, 100th Cong., 1st Sess. (1987).

10. *Id.* A similar bill, S. 1594, 100th Cong., 1st Sess. (1987), was introduced by Sen. Robert Graham (D-Fla.) in August 1987. As of the end of the 100th Congress in October, 1988, CBI II had not passed.

The bill was reintroduced in the 101st Congress, as H.R. 1233, 101st Cong., 1st Sess. (1989) (The Caribbean Basin Economic Recovery Act of 1989) with certain changes. An identical bill was introduced in the Senate as S. 504, 101st Cong., 1st Sess. (1989). For a

House of Representatives, then United States Trade Representative Clayton Yeuter expressed the Reagan Administration's conditional support of the legislation.¹¹ The Administration's reservations regarding CBI II included opposition to "provisions that would give special preferences to apparel and textile imports from distressed Eastern Caribbean nations and ones that called for raising U.S. sugar import quotas."¹² Notwithstanding the Reagan Administration's measured response to the bill, Yeuter stated that "[a] fortified CBI would contribute importantly to greater prosperity and economic stability in the Caribbean Basin."¹³

An inquiry into the effectiveness of the CBI and the proposed CBI II amendment must address the following concerns: 1) whether the CBI generated positive and productive economic revitalization for the Caribbean Basin; 2) whether the Reagan Administration's motive for the proposal possessed strong foreign policy objectives and national security undertones that adversely affected the results of the CBI; and 3) if not, what further political, economic and/or social measures, either in a unilateral or multilateral approach, can improve the program?

In addressing these concerns, the scope of this comment is limited to a study of the history and effectiveness of the CBI, a description of its existing provisions, its strengths and its weaknesses, the fundamental changes CBI II envisions, the degree to which CBI II will deal with the problems which were not addressed or which were not solved by implementation of the CBI, and finally some suggestions for solving these problems.

In order to understand the CBI and its economic impact on the Caribbean and Central American region, one must first understand the political, economic, and social intricacies and shared characteristics of the nations in the region. To accurately assess the success or failure of the program, the CBI must be compared to other trade programs including the General Agreement on Tariffs and Trade (GATT), the Generalized System of Preferences (GSP), Most Favored Nation (MFN), and Tariff Schedules of the United States items 807 and Super 807.¹⁴

discussion of the specific differences between the two House bills, see *infra* note 167.

11. Whitefield, *Backers Hope to Revive CBI Bill*, Miami Herald, Oct. 17, 1988, at 11 (Bus. Monday).

12. *Id.*

13. *Id.*

14. For a brief discussion of these trade programs, see *infra* notes 88-121 and accompa-

II. THE CARIBBEAN BASIN

The Caribbean nations are located in a geographic area of strategic importance to the United States.¹⁵ The United States has shown a greater interest in promoting economic development in the region over the last decade. Due to the proximity of the Caribbean nations, the United States has considered both the economic and political climate of the area a matter of national security.¹⁶ The United States' concern was especially evident during President Reagan's administration. Although the Carter administration approached the area's problems by balancing national interests and values, the Reagan administration demonstrated its concern by not wavering "in its singleminded policy of anticommunism."¹⁷ President Reagan defended the Caribbean Basin Initiative by stating that "new Cubas will arise from the ruins of today's conflicts. We will face more totalitarian regimes tied militarily to the Soviet Union, more regimes exporting subversion, more regimes so incompetent yet so totalitarian"¹⁸

The Caribbean region, including the nations on the rim of the Caribbean, is comprised of twenty independent nations and nine territories.¹⁹ Each nation has unique characteristics in almost every area, including linguistics, culture, history, and political diversity. Undoubtedly, establishing an economic program that promotes the building and maintenance of these nations' infrastructures is a very complex task.

nying text.

15. See generally Zorn & Mayerson, *The Caribbean Basin Initiative: A Windfall for the Private Sector*, 14 LAW. AM. 523, 543 (1984).

16. Whether these are legitimate concerns is beyond the scope of this comment. However, it should be noted that scholars have been critical of the Reagan administration's purported long-term commitment to the countries of the Caribbean and Central America. Two leading commentators, Zorn and Mayerson, have stated that:

[t]he CBI has two primary purposes: first, to assist private enterprise, particularly United States businesses, by making the Caribbean region open to and safe for foreign and domestic private investment; and, second, to ensure the economic and military security of the United States by preserving its predominance in the Western Hemisphere.

Id. at 524.

17. Pastor, *Sinking in the Caribbean Basin*, 60 FOREIGN AFF. 1038, 1042 (1981).

18. *Id.* at 1042, 1043.

19. WORLD ALMANAC, *supra* note 8, at 545.

III. HISTORY OF THE CBI

The CBI was the response of the United States government to a July, 1981 meeting held in the Bahamas between the United States, Canada, Mexico, and Venezuela.²⁰ The meeting's agenda was to develop and sponsor a program for multinational assistance to the region. The original version of the bill proposed to Congress by the President contained four major provisions: 1) duty free treatment for products from the CBI nations; 2) an investment tax credit of up to ten percent of fixed asset investment by United States entrepreneurs in the region; 3) increased foreign aid; and 4) private sector training, technical assistance and other similar benefits.²¹ The bill, as passed by Congress and signed by President Reagan, contains only one of the original proposals: the duty free treatment of certain goods from CBI designated nations.²²

The CBI exempts certain products from duty free entry into the United States.²³ These exempted products are: textile and apparel goods, footwear, handbags, luggage, flat goods, work gloves and leather wearing apparel, tuna, petroleum, or petroleum derived products, watches and watch parts, sugar and molasses. Most of the beneficiary countries under the CBI have a substantial market in the production of some of these items (*e.g.*, the Dominican Republic—textile and apparel goods; the Eastern Caribbean—petroleum or petroleum derived products; Honduras—handbags and luggage; the Dominican Republic, Panama and Guatemala—sugar and molasses).²⁴ Under the CBI, sugar exports of these countries which were not eligible for duty free import under Section 504(c) of the Trade Act of 1974,²⁵ remain ineligible for such treatment.

20. See Clasen, *The Caribbean Basin Economic Recovery Act and its Implication for Foreign Private Investment*, 16 N.Y.U. J. INT'L L. & POL. 715, 718 (1984).

21. President's Message to Congress on the Caribbean Basin Initiative, 18 WEEKLY COMP. PRES. DOC. 323 (Mar. 22, 1982). The bill was introduced in the House as H.R. 5900 and was referred to the Committee on Ways and Means and the Committee on Foreign Affairs, 128 CONG. REC. 991 (1982). The bill was introduced in the Senate as S. 2237 and referred to the Committee on Finance and the Foreign Relations Committee, 128 CONG. REC. 2422 (1982). H.R. 5900 was reported to the entire House on July 16, 1982, with amendments. H.R. REP. NO. 665, 97th Cong., 2d Sess. (1982).

22. See CBI, *supra* note 2; 19 U.S.C. § 2701 (1983).

23. See 19 U.S.C. § 2703(b) (1983) (articles to which duty free treatment does not apply).

24. See generally *supra* note 8.

25. Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (1974) (codified at 19 U.S.C. § 2464(c) (1983)). The Trade Act of 1974 established GSP. For further discussion, see *infra* notes 89-99 and accompanying text.

However, quotas are established which allowed limited entry of these products into the United States.²⁶ These rules are intended to assure that duty free imports from CBI beneficiary countries will not interfere with the U.S. price support system for sugar mandated by Congress.

A. Classification Criteria

To obtain classification as a CBI beneficiary country,²⁷ the bill established the following specific criteria which must be met: 1) a non-Communist government; 2) no expropriation of any property belonging to either the United States or any United States nationals; 3) cooperation with the United States Drug Enforcement Agency; 4) adequate protection of patents, copyright and trademark rights; 5) recognition of collective bargaining rights of workers; and 6) establishment of self-help measures.²⁸ The statute grants the President the power to proclaim a nation a beneficiary country.²⁹ In addition, it outlines specific factors which the President may consider when designating a nation as a beneficiary³⁰ (some commentators have identified this provision as a leading example of the overt political motivation behind the CBI).³¹ These

26. *Supra* note 25, § 2464(d)(2).

27. CBI, *supra* note 2, subsec. (b)(1)-(7).

Section (b) of the CBI named the following nations as potential beneficiary countries: Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Cayman Islands, Montserrat, Netherlands Antilles, Saint Christopher-Nevis, Turks and Caicos Islands and the British Virgin Islands.

Since adoption of the CBI, Aruba has been named a potential beneficiary nation. See *infra* note 42.

28. CBI, *supra* note 2, subsecs. (b),(c).

29. See CBI, *supra* note 2.

30. *Id.* subsec. (c).

31. Clasen, *supra* note 20. In the section of the article dealing with designation of beneficiary nations, the author illustrates how the President can use these provisions to advance his political or foreign policy objectives in a manner not contemplated by the Act.

Specifically, the author identifies four reasons for asserting the manipulative implications of this provision: first, the mandatory conditions and discretionary considerations are broadly worded and thus subject to interpretation; second, the commitments that the President may require as a condition to designation; third, the fact that the mandatory conditions and discretionary considerations appear to be designed less to encourage economic growth and development than to foster a favorable environment for U.S. investment; and last, by authorizing the President to terminate the beneficiary designation of any country upon sixty days prior notice, the Act creates the same sense of insecurity which its proponents sought to terminate. *Id.* at 726-28.

factors include the economic policies of the beneficiary host nations such as: the strength of the country's assurances to the United States that it will provide equitable and reasonable access to its markets and basic commodity resources; the commitment of the country to the principles of the GATT;³² the degree to which the country uses export subsidies or imposes export performance and local content requirements which distort international trade; degree to which the trade policies of the country, as they relate to other countries, contribute to the revitalization of the regions; and the willingness of the country to undertake self-help measures which promote its economic development.

32. GATT, the General Agreement on Tariffs and Trade, is the result of a major conference held in Geneva, Switzerland, in 1947 to negotiate reciprocal multilateral tariff reductions and to negotiate the Charter for an International Trade Organization ("ITO"). The GATT was to be presented to participating signatory nations in conjunction with the ITO Charter. The Geneva Conference of 1947 was unable to complete the latter document and a Convention was scheduled for Havana, Cuba, in 1948 for that purpose.

During the negotiations for the ITO Charter, the U.S. negotiators realized that Congress would not approve the Charter. In an effort to implement the provisions of GATT without the ITO Charter, the signatory nations adopted the Protocol of Provisional Application. This agreement implemented GATT as an international legal norm. There are several differences between the Protocol and GATT. The most significant of these differences relates to Part Two of GATT which includes the code of conduct and the measures of national treatment, anti-dumping, countervailing duty, measures of subsidies, state trading and quantitative restrictions.

The Protocol states that those clauses in GATT would be implemented only to the extent not inconsistent with prior legislation. The ITO was never adopted and thus GATT is still provisionally applied subject to these clauses. See Jackson, *GATT and Recent International Trade Problems*, 11 MD. J. INT'L L. & TRADE 1, 9 (1987). However, with the passing of time and the implementation of legislation of member countries, the Protocol has become an increasingly less important limitation on GATT.

GATT was updated in 1957 and is currently the central body of substantive international law regarding the trade policies of the ninety full and one provisional member. Additionally, thirty-one other nations apply GATT to their trade relations on a *de facto* basis. In 1966, Part IV dealing with trade with developing nations was added to the agreement.

A significant development in the evolution of GATT law has been the growth of special agreements negotiated at a formal GATT round. These agreements address emerging trade problems or elaborate upon rules in the original GATT. Although the General Agreements failed to establish an organizational structure to administer its provisions, a permanent Secretariat headed by a Director-General has been established. A Council of Representatives was established to address issues that arise between sessions. See A. Swan, *The Regulation of International Business and Economic Relations* (March 1989) (unpublished manuscript available at the offices of University of Miami Inter-American Law Review); see also ATLANTIC COUNCIL OF THE UNITED STATES, *GATT PLUS-A PROPOSAL FOR TRADE REFORM WITH THE TEXT OF THE GENERAL AGREEMENT* (1975).

B. *Rule-of-Origin Standard*

The first major provision of the CBI, which affects products not wholly manufactured in a beneficiary country, provides that all products from those countries designated as beneficiaries under Section 212 of the Act are entitled to duty free entry into the United States, provided they meet the requirements of the rule-of-origin standard set out in Section 213(a) of the Act.³³ The provision also requires that the product be imported directly from a beneficiary country into the United States Custom Territory.³⁴ Not less than thirty-five percent of the appraised value of the goods must be composed of materials produced or processed in one or more beneficiary countries, including Puerto Rico and the U.S. Virgin Islands.³⁵ The act provides that United States materials may count for up to fifteen percent of the appraised value to be counted in reaching the thirty-five percent minimum.³⁶

C. *Ordinary and Necessary Business Expense Allowance*

The second major provision allows the U.S. taxpayer to deduct ordinary and necessary business expenses incurred while attending business or investment conventions located in designated beneficiary countries which have entered into special information exchange tax treaties with the United States.³⁷ The Act thus provides the U.S. government with means for acquiring information regarding banking activities by U.S. taxpayers in offshore banking centers such as Panama, the Bahamas, the Turks and Caicos, and the Cayman Islands.

IV. EFFECTIVENESS OF THE CBI

Currently, twenty-two of the eligible nations in the Caribbean Region have been designated "beneficiary nations" by the President of the United States.³⁸ Six nations, Anguilla, the Cayman Is-

33. CBI, *supra* note 2, § 213(a)(1).

34. United States Customs Territory is defined as "the States, the District of Columbia and Puerto Rico." 19 U.S.C. § 1641 (1983).

35. CBI, *supra* note 2, § 212(c).

36. *Id.*

37. *Id.* § 222. Section 222 of the CBI Act provides for this new section amending subsection (h) of Section 274 of the Internal Revenue Code of 1954 (relating to business expenses including attendance at conventions, etc.).

38. See generally U.S. INT'L TRADE COMM., ANNUAL REPORT ON THE IMPACT OF THE CAR-

lands, Guyana, Nicaragua, Suriname, and the Turks and Caicos Islands remain undesignated eligible countries.³⁹ The Bahamas gained designation in March 1985 and, after severing its ties with the Netherlands Antilles, Aruba became a designated eligible country.⁴⁰

Despite the preferential treatment offered to the beneficiary countries under the Act, there has been a consistent decline in the value of U.S. imports from beneficiary countries.⁴¹ By contrast, the level of U.S. exports to these same countries has remained steady.⁴² According to the United States International Trade Commission:

In 1986 for the first time in a number of years, the United States had a small surplus with the Caribbean countries collectively, making the Basin one of the few areas of the world with which no U.S. trade deficit was recorded. This was the result of a significant decline in U.S. imports from the Caribbean basin, from \$9.0 billion in 1983 to \$6.2 billion in 1986, while U.S. exports to the area remained approximately the same, fluctuating around \$6.0 billion.⁴³

United States imports from the CBI countries reached an all time high in 1983, the year of its enactment.⁴⁴ Between 1983 and 1986, imports from the CBI countries declined a total of thirty-one percent.⁴⁵ In 1986 such imports represented only 1.7 percent of the total U.S. trade market,⁴⁶ while U.S. exports to the Caribbean area represented three percent of the entire U.S. export market.⁴⁷

IBBEAN BASIN ECONOMIC RECOVERY ACT ON U.S. INDUSTRIES AND CONSUMERS, THIRD REPORT 1987 at ix (September 1988) [hereinafter THIRD ANNUAL REPORT]. For a list of the eligible nations, see *supra* note 27. Currently, Guyana and Suriname are being considered for designation. See also *House Trade Panel's Gibbons Says He Hopes CBI Expansion Legislation Will Pass in 1988*, Int'l Trade Rep. (BNA) No. 13, at 464 (Mar. 30, 1988); *Administration Generally Supports CBI II, Further Action May be Possible This Year*, Int'l Trade Rep. (BNA) No. 37, at 1273 (Sept. 21, 1988).

39. See THIRD ANNUAL REPORT, *supra* note 38.

40. *Id.* In April, 1986, Aruba became a beneficiary country under the CBI retroactive to January 1, 1986, the date on which it severed ties to the Netherlands Antilles, thus becoming an autonomous member of the Netherlands.

41. *Id.* at 1-1.

42. U.S. INT'L TRADE COMM., ANNUAL REPORT ON THE IMPACT OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT ON U.S. INDUSTRIES AND CONSUMERS, SECOND REPORT 1986 at 1 (Sept. 1987) [hereinafter SECOND ANNUAL REPORT].

43. *Id.*

44. *Id.* at 6.

45. *Id.* at 8.

46. *Id.* at 1.

47. *Id.*

The decline in U.S. imports has been due in part to the decline in the value of imports from oil refining countries.⁴⁸ Overall, total imports from non-oil refining activity actually rose twenty-five percent for the years 1983 through 1986.⁴⁹ The major non-oil imports from the Caribbean basin include coffee, fresh bananas, shellfish, sugar, derived oil products, analgesics, beef and veal, electronic and electronic articles, and a wide range of clothing apparel.⁵⁰

By comparison, U.S. trade with Central American and Caribbean nondesignated countries dropped dramatically. Nondesignated countries include the Cayman Islands, Guyana, Nicaragua, Suriname, and the Turks and Caicos Islands.⁵¹ For example, in 1983, imports from Nicaragua reached \$99 million.⁵² By 1986, this level had declined to almost zero, primarily due to the tense political climate between the United States and Nicaragua, including the trade embargo imposed by President Reagan.⁵³ Overall, U.S. imports from nondesignated countries in the Caribbean area dropped to less than two percent of total U.S. imports from the Caribbean area.⁵⁴

An examination of the results of the CBI in different designated countries reveals some interesting facts. Between 1982 and 1986, the percentage of customs-valued U.S. imports from the so-called Caribbean Basin nations increased by ninety-one percent, for Central Caribbean nations by eighty-three percent, and for Eastern Caribbean nations by seventy-eight percent.⁵⁵ By contrast, the level of customs-valued imports decreased for the oil refining countries by fifty-four percent.⁵⁶

48. *Id.* Oil refining nations of the CBI are: Aruba, the Bahamas, Netherlands Antilles, and Trinidad and Tobago. *See infra* note 56.

49. SECOND ANNUAL REPORT, *supra* note 42, at 3.

50. *Id.* at 5.

51. *Id.* at 3.

52. *Id.*

53. In March, 1987, the United States embargoed virtually all trade with Nicaragua. *See* Proclamation No. 5617, 52 Fed. Reg. 7,265 (1987).

54. SECOND ANNUAL REPORT, *supra* note 42, at 3.

55. *Id.* at 5.

56. *Id.* For purposes of this comment, the authors have adopted the country classifications used by the United States International Trade Commission report. The CBI nations are divided into four groups: Central America, Eastern Caribbean, Central Caribbean and Oil Refining Nations. The countries are then classified as follows: Central America—Belize, Costa Rica, El Salvador, Guatemala, Honduras, Panama; Eastern Caribbean—Anguilla, Antigua, Barbados, Dominica, Grenada, Montserrat, St. Christopher-Nevis, St. Lucia, St. Vincent and the Grenadines; Central Caribbean—British Virgin Islands, Haiti, the Dominican

In 1983, four CBI designated beneficiary oil refining nations were responsible for sixty-percent of all U.S. imports from the twenty-four eligible nations.⁵⁷ A steep decline in 1984, 1985 and 1986 in imports from these oil refining nations was responsible for the overall decline in U.S. imports from the area.⁵⁸ While total imports from non-oil refining countries increased twenty-five percent between 1983 through 1986, total imports from the area during the same period, declined by thirty-one percent.⁵⁹

In absolute terms, total U.S. imports for consumption from the Caribbean nations increased seventy-eight percent from 1983 to 1986.⁶⁰ Among Eastern Caribbean nations, only imports from Barbados accounted for more than one percent of the total. The rest of the Eastern Caribbean nations accounted for anywhere from 0.05 percent by Grenada to 0.37 percent by St. Christopher-Nevis-Anguilla.⁶¹ Clearly, these Eastern Caribbean nations have benefited the least from the CBI.⁶²

Of the CBI designated beneficiary countries that accounted for more than ten percent of the total United States imports from the region, the three nations that benefited the most and their respective percentage increases in exports to the United States are: Costa Rica, 151 percent; Jamaica, 118 percent; Dominican Republic, 105 percent.⁶³ The Dominican Republic and Costa Rica continue to be the leading beneficiaries of the program. In 1984 their share of total U.S. imports from CBI nations was fifty percent.⁶⁴ By 1987, however, this figure had dropped to thirty-seven percent.⁶⁵ The Dominican Republic, Costa Rica, and Jamaica are the top three nations in the number of investment projects registered in 1987.⁶⁶ St. Lucia had the largest number of investment projects among the smaller nations.⁶⁷ Excluding the oil refining countries, three na-

Republican and Jamaica; Oil refining—Aruba, the Bahamas, Netherlands Antilles, and Trinidad and Tobago.

57. *Id.* at 5.

58. *Id.*

59. *Id.* at 3.

60. *Id.* at 5.

61. *Id.*

62. For further discussion on the problems with Eastern Caribbean nations see *infra* notes 116-18 and accompanying text.

63. THIRD ANNUAL REPORT, *supra* note 38, at 1.5.

64. *Id.* at vi.

65. *Id.*

66. *Id.*

67. *Id.*

tions encountered the largest percentage decrease in the total U.S. imports for consumption during the period between 1983 to 1987: the Bahamas (seventy-seven percent); Barbados (seventy percent); and Trinidad and Tobago (thirty-nine percent).⁶⁸

According to the International Trade Commission's *Third Annual Report*, the Central Caribbean Region's share of U.S. imports from CBI has continued to rise and accounted for thirty-two percent of the total in 1987.⁶⁹ Rapid growth in United States imports from the Dominican Republic, Jamaica, and Haiti was responsible for this increase. However, the Eastern Caribbean Region's share declined to 2.4 percent of the total in 1987, down from a peak of 4.4 percent in 1985.⁷⁰

A noticeable increase in trade from the Caribbean region has resulted from the manufacture and exportation of textiles and apparel in Caribbean countries.⁷¹ In 1983 textiles and apparel accounted for 4.5 percent of total U.S. imports from the region.⁷² In 1987, this figure had risen to nineteen percent.⁷³ This emerging economic revitalization in the area is not attributable to the CBI. These items, textiles and apparel, are expressly excluded from the provisions of the program.⁷⁴

V. CRITICISMS OF CBI

The strongest criticisms leveled against the CBI have focused on the Reagan administration's emphasis on foreign policy objectives which harmed the economic strength of the program. The criticisms are based on the fact that Cuba is not an eligible designated country;⁷⁵ that Nicaragua has not been designated a beneficiary;⁷⁶ that El Salvador receives a disproportional amount of aid;⁷⁷

68. *Id.* at 1-2.

69. *Id.* at 1-3.

70. *Id.* The report attributes the loss in share of the Eastern Caribbean nations to consistent and rapid falling imports from Barbados, the largest country in the group, as reflected by the closing of a number of electronic assembly plants.

71. *Id.*

72. *Id.*

73. *Id.*

74. 19 U.S.C. § 2702(b) (1983).

75. Mexico, one of the original participants of the "Nassau Four," refused to attend a meeting of the foreign ministers from the CBI nations because Cuba would not be designated a beneficiary country. Clasen, *supra* note 20, at 718.

76. For a list of eligible nations see *supra* note 27.

77. Dickey, *supra* note 5.

and that the United States requires CBI nations to accommodate its economic and political interests.⁷⁸

The critics profess that the CBI reflects the administration's interest in military security, political loyalty, and advantages for U.S. firms, rather than U.S. concerns for the region's long-term development.⁷⁹ One critic stated:

The Central American and Caribbean policy of the United States has seldom grown out of the needs or interests of those countries; it has always been a response to the larger strategic concerns of the United States. . . . The CBI attempts to achieve three interrelated ends: first, it promotes expanded economic linkages between the United States and countries in the region, increasing their dependency on the United States; second, it proffers economic rewards to those Caribbean Basin countries that have supported the United States policies, insuring their continuing support; and third, it isolates from economic benefits those countries that are considered threats to United States security, weakening their economies and, the administration hopes, their governments.⁸⁰

The argument regarding the program's disproportional economic aid carries the most weight. For example, of the \$350 million in supplemental economic aid that was passed in conjunction with the CBI, El Salvador received more than one third.⁸¹ Specifically, \$243 million or sixty-nine percent of the supplemental aid to CBI nations, was destined for Central America in general, and \$128 million, a startling thirty-seven percent, for El Salvador alone.⁸² Ironically, Honduras and Haiti, two of the poorest nations in Central America⁸³ and the Caribbean,⁸⁴ received substantially less supplemental economic aid than El Salvador.⁸⁵ At the time, El Salvador was in the midst of a civil war between the rebel forces supported by Nicaragua and Cuba and the ruling government supported by

78. Zorn & Mayerson, *supra* note 15; see also Clasen, *supra* note 20, at 727.

79. Lowenthal, *Misplaced Emphasis*, 47 FOREIGN POL'Y 114, 115 (1982).

80. Zorn & Mayerson, *supra* note 15, at 545-46.

81. Dickey, *supra* note 5.

82. *Id.* See also Zorn & Mayerson, *supra* note 15, at 547-48.

83. WORLD ALMANAC, *supra* note 8, at 567-68.

84. *Id.* Per capita income of the seven Central American countries are as follows: Belize—\$1,000 (1984), Costa Rica—\$2,238 (1981), El Salvador—\$854 (1984), Guatemala—\$1,085 (1984), Honduras—\$590 (1982), Nicaragua—\$804 (1980), Panama—\$1,116 (1978). *Id.* at 551, 562, 567, 575, 577, 599 & 602.

85. Zorn & Mayerson, *supra* note 15, at 548.

the United States.⁸⁶

VI. COMPARISON OF CBI TO OTHER TRADE PROGRAMS

According to the House Report on the passage of the CBI, in 1981, twenty-seven percent of the exports from the region entered the United States duty free under the Generalized System of Preferences or under permanent MFN duty free treatment.⁸⁷

Although the scope of this comment does not permit a thorough analysis of all existing U.S. trade programs, a brief description of these programs is required for a comprehensive comparison with CBI.

A. *Generalized System of Preferences (GSP)*

The GSP is a unilateral grant of duty free customs treatment for less developed countries.⁸⁸ The original ten year program was contained in the Trade Act of 1974⁸⁹ and was extended and renewed for an additional eight and one-half year period by the Generalized System of Preferences Renewal Act of 1984.⁹⁰ The eligible articles under the GSP are textile based apparel; import sensitive steel, glass and electronic products; footwear; leather wearing apparel; baggage, handbags, flat goods; work gloves; and watches.⁹¹

Under the GSP, a country is automatically disqualified for specific product categories if its total exports to the United States exceed \$57 million in a calendar year, or if they account for fifty percent of total United States imports of the product.⁹² Certain countries are designated as least developed and do not have these limits placed upon them.⁹³ Beginning in 1987, the President may

86. *Who's Who in the Region*, U.S. NEWS & WORLD REP., Mar. 24, 1986, at 17.

87. CBI REPORT, *supra* note 3, at 644. For a brief discussion of MFN, see *infra* notes 108-10 and accompanying text. For a general discussion of GSP, see A. Swan, *supra* note 32, at 121.

88. 19 U.S.C. §§ 2101-2495 (1974). Under the GSP, the eligible countries are designated in four groups: 1) independent beneficiary developing countries; 2) non-independent beneficiary countries and territories; 3) associations of countries treated as one; and 4) least developed beneficiary developing countries. None of the industrialized nations or country members of the European Community are eligible.

89. 19 U.S.C. § 2101 (1974).

90. 19 U.S.C. § 2464 (1984).

91. 19 U.S.C. § 2463 (a)-(c) (1984).

92. See also *supra* note 90.

93. *Id.* subsecs. (a), (c).

waive the limits entirely or reduce the limit to \$25 million or twenty-five percent of total imports.⁹⁴ In deciding on these limits, the President may consider country competitiveness, the country's treatment of U.S. exports of goods and services and U.S. property rights.⁹⁵

1. GSP Country-of-Origin Requirements

There are three requirements that must be met to obtain the benefits of the GSP under the country-of-origin rule: 1) the product must be imported from the beneficiary country-of-origin; 2) thirty-five percent of the import value must be derived from a combination of Beneficiary Developing Countries ("BDC") origin materials plus the direct costs of manufacturing performed in the BDC; and 3) the BDC must have substantially transformed the foreign components into new articles of commerce.⁹⁶

The GSP scheme contains a graduation program under which a country is permanently disqualified from the program if its annual per capita GNP exceeds \$8,500.⁹⁷ Some of the most developed countries in Asia, countries that have enjoyed the greatest benefits from the GSP program, have reached this plane. By Executive Proclamation, the President declared that Korea, Singapore and Taiwan, among others, graduated from the program effective January 1, 1989.⁹⁸

2. Designation

The manner in which a nation is designated as a beneficiary under the GSP and CBI programs is essentially the same.⁹⁹ The President has the authority, subject to certain limitations, to desig-

94. *Supra* note 90, § 2464 (c)(2)-(3).

95. *Id.*

96. 19 U.S.C. § 2463(b) (1984).

97. 19 U.S.C. § 2464(f) (1984). This figure along with the percentages for specific product disqualifications are all indexed to inflation, using 1984 as the base year.

98. Proclamation No. 5805, 53 Fed. Reg. 15,785 (1988) states that effective January 1, 1989, Hong Kong, the Republic of Korea, Singapore, and Taiwan will graduate from the GSP "[b]ecause these countries are sufficiently advanced in economic development and their recent improvements in trade competitiveness that continued preferential treatment under the GSP is not warranted." In addition, Presidential Memorandum dated May 19, 1987, 52 Fed. Reg. 19,271 (1988) declared that Bahrain, Bermuda, Brunei Darussalam, and Nauru will also graduate from the program effective July 1, 1988.

99. For information regarding classification criteria, see *supra* notes 26-35 and accompanying text.

nate a country as beneficiary.¹⁰⁰ However, in the GSP, the President may designate not only the country as a BDC, but also the articles for which the preference is to be granted.¹⁰¹ Under the CBI, once a country is designated as a beneficiary under the program, all of the articles which are eligible for duty free treatment under the Act may enter tax free.¹⁰²

3. GSP Compared to CBI

There are significant differences between the CBI and GSP. One is the determination of the rule-of-origin requirement, specifically, the thirty-five percent minimum allowed value added in the beneficiary country.¹⁰³

Whereas the CBI allows for a maximum of fifteen percent to be accounted for from U.S. Virgins Islands or Puerto Rican manufacture or origin,¹⁰⁴ GSP specifically requires that the thirty-five percent be from BDC manufacture or origin exclusively.¹⁰⁵ Another difference is that the CBI abrogates the competitive need test established under GSP.¹⁰⁶ Lastly, certain classifications of products are allowed entry through the CBI which are not permitted under GSP.¹⁰⁷

B. Most Favored Nation (MFN)

The Most Favored Nation (MFN) concept embodies the principle of non-discrimination. It outlaws most non-tariff barriers to trade and subjects tariff barriers to negotiated reductions through concepts of reciprocity and national treatment.¹⁰⁸

100. See *supra* note 27.

101. See *supra* note 2.

102. 19 U.S.C. § 2703(a) (1984) states that any article which is the growth, product or manufacture of a beneficiary country is eligible for duty free treatment. However, 19 U.S.C. § 2703(b) (1984) exempts from duty free entry the following goods: textile and apparel, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, tuna, petroleum, watches, and watch parts.

103. CBI, *supra* note 2, § 212(c).

104. 19 U.S.C. § 2703(a)(1) (1984).

105. See *supra* note 96.

106. For a complete description of the competitive need test, see 19 U.S.C. § 2464(c) (1984).

107. See 19 U.S.C. § 2703(b) (1984) (exempting from duty free treatment items specifically enumerated). These products include electronics, steel, glass, and baseball equipment. *Id.*

108. See A. Swan, *supra* note 32, at 30.

Countries confer upon one another favored nation treatment status under bilateral and multilateral agreements reached under GATT.¹⁰⁹ In broadest terms, MFN ties each contracting party's treatment of the other's commerce to the other's treatment of its trade.¹¹⁰ As one commentator explained, "under conditional MFN, if country A grants a concession to country B in exchange for a given concession, A extends the concession to another country, C, only if C grants a corresponding concession. Under unconditional MFN, C obtains the concession without granting one of its own."¹¹¹

C. 807 and Super 807

Under Tariff Schedules of the United States (TSUS) item 807.00, importers are exempt from paying duties on the U.S. content of items assembled from U.S.-fabricated components.¹¹² In 1986, President Reagan announced a "special access program," referred to as 807-A or "Super 807," which provides incentives to beneficiaries for exporting garments.¹¹³ Under Super 807, countries in the region have been invited to enter into guaranteed access levels (GAL) through bilateral agreements with the United States which would allow for exports of qualifying textile and apparel products.¹¹⁴

Super 807 allows the beneficiary nations to increase their level of exports to the United States significantly faster than non-CBI beneficiaries.¹¹⁵ In 1987, this program resulted in \$79 million in

109. Charney, *International Agreements and the Development of Customary Law*, 61 WASH. L. REV. 971, 980 (1986) states "Generalized principles relating to most favored nation treatment, prohibitions on indirect barriers to imports, subsidies and countervailing duties, and dumping are found within the GATT and are implemented through a widespread network of international agreements among large number of states."

110. For an example of the application of this concept in a multilateral setting, see *Whitney v. Robertson*, 124 U.S. 190 (1888), cited in A. Swan, *supra* note 32, at 31.

111. Cline, "Reciprocity": A New Approach to World Trade Policy?, 2 INST. FOR INT'L ECON. 16, n.21 (1982). MFN clauses generally take one of two forms: conditional or unconditional. Conditional clauses are employed by parties to restrict MFN treatment to existing concessions. To secure MFN treatment as to new concessions, the grantee must reciprocate with compensating concessions of its own. Through the use of unconditional clauses, the grantor confers MFN status as to both existing and future concessions. Lansing & Rose, *The Granting and Suspension of Most Favored Nation Status for Non-Market Economy States: Policy and Consequences*, 25 HARV. INT'L L.J. 329 (1984).

112. THIRD ANNUAL REPORT, *supra* note 38, at 1-9.

113. *Id.*

114. *Id.* These GAL quotas are separate from the Multifiber Arrangement applicable to other textile and apparel products. *Id.*

115. *Id.*

textile and apparel imports from the three countries, Haiti, the Dominican Republic, and Jamaica, that have entered into bilateral agreements.¹¹⁶

VII. ECONOMIC EFFECTIVENESS

Most of the CBI beneficiary nations in the Caribbean Basin are agricultural economies, historically relying on one or two basic cash crops. For example, the Dominican Republic's economy is strongly dependent on its sugar exports as a source of foreign reserves.¹¹⁷ As enacted, the CBI sets quotas on the amount of sugar that may enter the United States duty free.¹¹⁸ The Dominican Republic, as well as Guatemala and Panama, are limited by these quota requirements on the export of their major cash producing crop to the United States.¹¹⁹ Clearly, this restriction is not in line with an economic policy that attempts to revitalize and strengthen the local economies through a system of trade liberalization. Instead, it evinces an economic program that can not effectively compete with the United States sugar industry. These quotas and restrictions provide further evidence that the CBI was not a well thought out program and could not possibly encourage economic growth in the Caribbean area.

Congressman Gibbons, commenting during the hearings, stated that the CBI did not "go far enough in terms of liberalizing trade. We must say we gave with one hand but took away with a bushel basket in another."¹²⁰ On the sugar trade issue, the Congressman stated that "two-thirds of the Caribbean sugar sales to the United States were lost after CBI became law."¹²¹ Another proponent of the amendments proposed under CBI II, Rep. Bill Frenzel (R-Minn.), referred to the CBI as "a skeleton," adding, "[W]e're about to hang some meat on that skeleton."¹²²

However, the CBI is not the only U.S. trade program which

116. *Id.*

117. *See generally supra* note 8.

118. 19 U.S.C. § 2703(d) (1984). The quantity of sugar, syrups and molasses which may enter each year free of duty is limited to metric tons: Dominican Republic 780,000, Guatemala 210,000 and Panama 160,000.

119. *Id.*

120. *Legislation to Expand Trade Preferences for CBI Beneficiaries Introduced in the House*, Int'l Trade Rep. (BNA) No. 14, at 1006 (Aug. 12, 1987).

121. *Id.*

122. *Id.*

curtails the entry of sugar products from these countries. Under the GSP, and now under CBI II, the custom duty on sugar exports to the United States from the Dominican Republic, Panama, and Guatemala is levied when these countries exceed their quotas by surpassing the competitive need limitations set up to protect domestic industry.¹²³

John Compton, Prime Minister of the small Eastern Caribbean island of St. Lucia and Jamaican Prime Minister Edward Seaga voiced strong criticism against the CBI.¹²⁴ They have pleaded for changes as a result of the negligible impact the CBI has had on the region.¹²⁵

VIII. PROPOSED CHANGES UNDER CBI II

In an effort to improve, extend, and broaden the operation of the CBI, Congressman Gibbons' proposed bill addresses eight topics. These changes address the major reasons for the initial program's failure:

The version introduced in the House contains two controversial provisions added by Gibbons that he conceded are sure to generate opposition from powerful organizations and labor groups. One provision would restore the sugar quotas of Caribbean nations serving U.S. markets to the original levels that prevailed before the CBI took effect. The other would allow unlimited duty-free treatment of clothing and other articles manufactured from materials that are 100 percent U.S.-made.¹²⁶

The proposed modifications to CBI deal with: 1) the percentage of the appraised value added to the goods that are attributable to the

123. *Supra* note 25. See also *CBI Trade and Investment Benefits Failing to Spur Broad Economic Growth*, GAO Reports, Int'l Trade Rep. (BNA) No. 5, at 1031 (July 2, 1988). Specifically, the General Accounting Office (GAO) addressed the fact that while total exports to the United States have increased for the CBI designated beneficiaries, net foreign exchange earnings have not increased accordingly. As a result, the problems of meeting debt service requirements continue. Additionally, dropping commodity prices and cuts in U.S. sugar quotas aggravate the problem as well. The shortage and crisis of hard foreign currency has not been alleviated. In terms of increased employment, the GAO reported that since most countries only attracted low-cost investments, the growth "cannot be termed secure or long-lasting because an investor can move to another country with minimal disruption or loss." *Id.*

124. *Caribbean Nations Welcome New CBI Bill, But Optimism is Tempered With Caution*, Int'l Trade Rep. (BNA) No. 4, at 1007 (Aug. 12, 1987).

125. *Id.*

126. *Legislation to Expand Trade Preferences for CBI Beneficiaries Introduced in the House*, *supra* note 120, at 1006.

United States; 2) duty free entry into the United States of certain types of products excluded under CBI; 3) injury determination reporting requirements of the Act; 4) extension of the duty free treatment program until the year 2007; 5) special tariff treatment for beneficiary country products; 6) the accumulation involving beneficiary country products under the countervailing duty and anti-dumping laws; 7) production of ethyl alcohol in beneficiary countries; and 8) sugar imports from beneficiary countries.¹²⁷

A. *Rule-of-Origin*

Under the CBI rule-of-origin requirements, at least thirty-five percent of the appraised value of the goods at the time they enter U.S. customs territory must be either value added or products of a beneficiary country.¹²⁸ If part of the cost or value of the article consists of materials produced in U.S. customs territory, an amount not to exceed fifteen percent may be applied towards determining the thirty-five percent rule-of-origin test.¹²⁹ CBI II proposes a distinction for purposes of this section between Eastern Caribbean beneficiary countries¹³⁰ and non-Eastern Caribbean nations. As to the former, the fifteen percent which may be attributable to U.S. origin will be increased to twenty-five percent; as to the latter, the fifteen percent will remain intact.¹³¹ This permits "U.S.-made imports to count for approximately seventy percent of the

127. See *supra* note 4.

128. See *supra* note 35.

129. *Id.*

130. For a listing of the different groups of countries, see *supra* note 56.

131. See *supra* note 4, at 2. The proposed amendment to Section 3 reads as follows: Section 213(a)(1) is amended by striking out the last sentence and inserting the following: If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed:

(i) 25 percent, if the article is the product of an East Caribbean beneficiary country; or (ii) 15 percent, if the article is the product of a beneficiary country other than an East Caribbean beneficiary country; of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

For purposes of the preceding sentence, each of the following will be considered as an East Caribbean nation during any period when designated as a beneficiary country: Antigua and Barbuda, Anguilla, Aruba, the British Virgin Islands, the Cayman Islands, Dominica, Grenada, Montserrat, Netherlands-Antilles, St. Christopher-Nevis, St. Lucia, St. Vincent and the Grenadines, and the Turks and Caicos Islands.

requirement."¹³²

The rationale for increasing the allowable percentage from Eastern Caribbean nations is to increase assembly operations in these islands. By granting this concession to the Eastern Caribbean nations, CBI II would lessen the apparent discrimination against these island states. CBI had no major impact on these countries because they lacked an economic infrastructure that could directly benefit from the limited advantages of the CBI.¹³³ Although the other nations in the program could at least count on a few areas of the CBI program from which they could potentially benefit, the majority of these Eastern Caribbean nations base their economies on tourism and service oriented industries, such as banking and corporate services. For example, the Bahamas, the Cayman Islands, and the Turks and Caicos are major offshore banking centers and greatly benefit from secrecy laws relating to their financial industries. These nations could benefit from the CBI only if they entered into tax information exchange treaties with the United States government.¹³⁴

B. *Product Eligibility*

The second major proposed change, and perhaps the most controversial, is to Section 213(b) of the CBI, which originally prohibited duty free entry of certain products (including textiles, apparels, petroleum and petroleum derived products, tuna, watches, and watch parts). Under CBI II, this section would be amended to allow entry of these products.¹³⁵ However, the products must meet specific criteria for eligibility. The applicable section of CBI II states that articles will receive duty free treatment if the United States International Trade Commission determines that:

- (A) the articles within that category either (i) are not produced in the United States, or (ii) are not produced in the United States in quantities sufficient to meet the domestic demand for the product; and (B) no directly competitive articles are pro-

132. *Legislation to Expand Trade Preferences for CBI Beneficiaries Introduced in the House*, *supra* note 120.

133. THIRD ANNUAL REPORT, *supra* note 38, at 3-8. See also *Caribbean Basin Representatives Generally Endorse CBI II Legislation as Hearings Start*, Int'l Trade Rep. (BNA) No. 14, at 1557 (Dec. 16, 1987).

134. THIRD ANNUAL REPORT, *supra* note 38.

135. For the text of this proposal, see *infra* app. A.

duced in the United States.¹³⁶

The industry which would stand to benefit most from this provision is the garment segment, which "has suddenly become the star of the manufacturing sector in several Caribbean nations. The value of regional apparel exports has soared from \$90 million in 1985 to \$1.073 billion by 1987."¹³⁷ In early 1988, at the Caribbean Fashion Carnival held in Montego Bay, Jamaica, William Houston, then Chief U.S. Textile Negotiator, stated that "apparel exports from CBI countries accounted for almost nine percent of total U.S. apparel imports, or triple the volume of U.S. imports from the entire European Community. Growth in the Caribbean is continuing at a rate of thirty-four percent annually."¹³⁸

C. Injury Determination

Another provision calls for a separate injury determination in countervailing duty and anti-dumping cases.¹³⁹ Currently, to determine injury to the U.S. domestic industry, imports from all countries exporting a certain product are cumulated.¹⁴⁰ The new bill would allow imports from countries to be treated separately, except to the extent of imports of like products that are the product of one or more other designated countries.¹⁴¹ Overall, this would reduce the possibility that any one import from a designated country might have a sufficient impact on the U.S. domestic markets. Therefore, the ITC would be less likely to find a material injury to

136. *Supra* note 3, at § 4 (amending § 213A(c)(1) of CBI). See also *Legislation to Expand Trade Preferences for CBI Beneficiaries Introduced in the House*, *supra* note 120. To obtain duty free treatment applicant must file a petition with the International Trade Commission.

137. *Imports of Caribbean Garments Soar in Wake of CBI, Further Access Sought*, Int'l Trade Rep. (BNA) No. 17, at 625 (Apr. 27, 1988).

138. *Id.*

139. CBI, *supra* note 2. Section 8 of CBI II states:

the volume and effect of imports from a country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act may only be cumulatively assessed with respect to the imports of like products that are the product of one or more other countries designated as beneficiary countries.

Id.

Countervailing duties are assessed in response to subsidies with respect to manufacture, production, or exportation of a class or kind of merchandise imported, or sold for importation into the United States. 19 U.S.C. § 1671(a) (1980). Anti-dumping duties are assessed on a class or kind of foreign merchandise which is being, or is likely to be, sold in the United States at less than its fair market value. 19 U.S.C. § 1673 (1980).

140. See CBI, *supra* note 2.

141. See *supra* note 131.

the U.S. domestic industry and levy a duty on the import.

D. Changes in Sugar Quotas

Another significant change would affect sugar quotas. The proposed bill would change the aggregate quantity of sugar that may enter the United States to the amount that was allocated to that specific country for import into the United States during the period beginning September 26, 1983, and ending September 30, 1984.¹⁴²

Former U.S. Trade Representative Clayton Yeuter testified that he opposes this provision "even though [the Reagan Administration] wants to find a way to increase the region's access to the United States market."¹⁴³ Yeuter gave two reasons for his opposition. First, "preferential reallocation of the sugar quota to CBI countries . . . would be inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade."¹⁴⁴ Second, by making the sugar program a budget item,¹⁴⁵ the provision would be in conflict with the 1985 Food Security Act.¹⁴⁶

IX. OBSERVATIONS

The primary issue outstanding is whether or not the CBI II will result in any significant changes to the economic situation in Central America and the Caribbean. Although CBI II provides for some significant changes to the original program, several important problems remain unresolved. In order to establish a truly comprehensive economic program for the area, several additional factors must be addressed such as: the lack of centralized administration in CBI countries; the absence of infrastructural support systems in the same; their failure to address the tourism and service industry; and finally, a heightened degree of guarantee or security for foreign investment.

First, a major reason for the CBI countries' failure to con-

142. THIRD ANNUAL REPORT, *supra* note 38, at 3-8. According to this report, the provision would increase the quotas from a current level of 350,690 short tons to 1,166,286 short tons.

143. See *Administration Generally Supports CBI II, Further Action May be Possible This Year*, *supra* note 38.

144. *Id.* See *supra* note 32 for an explanation of GATT.

145. 7 U.S.C.A. §§ 1281-1393 (1985).

146. See *generally supra* note 38.

cretely resolve any of their problems with the CBI is their lack of an effective centralized mechanism to mobilize and enact the provisions of the program. An international or regional organization patterned after GATT's Secretariat and Council of Representatives¹⁴⁷ is essential to facilitate the multilateralism required for an efficient program. Without it, the potential benefits for the region remain idle.

In 1988, the Caribbean Basin Business Promotion Council ("Council"), a federal advisory committee established by former Secretary of Commerce, C. William Verity, held its first meeting in Washington, D.C.¹⁴⁸ The Council consists of twenty-eight executives from U.S. companies and senior government officials from agencies involved with the CBI. The Council's objectives are to promote CBI business in their local business communities and industry sectors by serving as advisors for the affected industry sectors and by disseminating information about CBI investment opportunities throughout their business networks.¹⁴⁹ Section 107 of the CBI legislation directed the Secretary of State to study the feasibility of establishing a Caribbean Trade Institute in Harlem.¹⁵⁰ Ostensibly, this study was to incorporate an assessment of the extent to which such an institute "could facilitate cooperation between public and private interests, encourage greater cultural exchange, and promote job opportunities related to U.S.-Caribbean trade."¹⁵¹

However, the urgency of the socio-economic crisis in the region mandates a greater commitment by the United States in the form of an administrative agency, the so-called "Caribbean Basin Economic Community" (CBEC), comprised of eligible CBI member nations or subregional groups. This would allow for multilateral representation, as opposed to U.S. unilateral "commissions," and would effectuate the humanistic international nature of the program. This proposed agency should be established to organize, implement, and advise both the United States government and the beneficiaries in the implementation of the program. It could be established either under the auspices of the United Nations or under

147. See A. Swan, *supra* note 32.

148. *Caribbean Basin Business Promotion Council Holds Inaugural Meeting*, 5 CBI BUS. BULL., MAY 1988, at 1.

149. *Id.*

150. See CBI, *supra* note 2, § 107.

151. CBI REPORT, *supra* note 3, at 665.

the Organization of American States.¹⁵² “[A] comprehensive program for reconstruction and development, in which private efforts and public assistance [can be] effectively combined to repair the ravages of war, cope with inflation and payment problems and promote [the Caribbean’s and Central America’s] long range development”¹⁵³ can be best accomplished if a multilateral administrative agency, such as the proposed CBEC, is implemented.

A second and equally important reason for the relative failure of the CBI is the absence of an infrastructure support system, thus precluding the beneficiary nations from taking advantage of the program. An effective use of the program would require roads, power supplies, communications systems, airports, sea ports, and manufacturing facilities. The lack of these essential elements for economic development is particularly visible in Eastern Caribbean nations where inability to fulfill the country-of-origin requirements prevails. Although the CBI II would lower the contribution threshold from thirty-five percent to fifteen percent for the Eastern Caribbean nations,¹⁵⁴ and to twenty-five percent for non-Eastern Caribbean nations,¹⁵⁵ given their present technological shortcomings the ability of these nations to even meet this reduced level remains questionable.

A third and final deficiency in the CBI II is its failure to address the service industry, a prime revenue generating sectors of local economies. The majority of the CBI nations rely on tourism as a major source of hard currency reserves and as a foundation for their economic development.¹⁵⁶ A thorough program would address the need to promote and create incentives for a stronger tourist influx. Development studies including investigation and construc-

152. Treaty Establishing the European Economic Community, March 25, 1967, 298 U.N.T.S. 11 (entered in force Jan. 1, 1958).

In comparison, it should be noted that the European Community began as a trade organization among its member nations. By the year 1992, there will be no customs barriers throughout the European Economic Community (EEC) and its approximately 300 million inhabitants will form one of the strongest, most cohesive economic powers among the free market economies of the world. This European rebuilding is largely attributable to the success of the Marshall Plan in the post-World War II years. *Id.*

153. Street, *supra* note 4.

154. See CBI, *supra* note 2.

155. *Id.*

156. For example, Antigua and Barbuda had 195,000 tourists visit in 1984, St. Christopher-Nevis had 40,000 visitors in 1985, St. Lucia had 98,000 visitors in 1981 and tourist receipts of US\$34 million. St. Vincent and the Grenadines had tourist receipts of US\$18 million in 1983 and Grenada had tourist receipts of US\$17 million in 1984. See generally THE WORLD ALMANAC, *supra* note 8.

tion of tourist resorts should be a major provision. In addition, U.S. nationals should be encouraged by favorable tax programs and treatment to infuse capital into the region. In support of CBI II, representatives of the Caribbean Basin countries stated their reservation that "continued exclusion of tourism from the program will reduce its benefit to the region and consideration should be given to measures to aid tourism during Congressional debate on the bill."¹⁵⁷

Another proposal is a program which would guarantee direct investment in the region through a "Caribbean Basin Investment Guarantee Fund" (CBIGF). This program would be funded with a one-time start up infusion. Thereafter, funding would continue by a minimally assessed premium on foreign investments. For example, a premium fee to be determined based on the total investment value and an assessment of the risks involved would insure the face amount of capital invested by an entrepreneur against political and sovereign risk in the foreign jurisdiction.

The CBIGF would operate in the same manner as the Foreign Credit Insurance Association (FCIA) created in 1965 at the suggestion of the Export-Import Bank of the United States (Eximbank).¹⁵⁸ FCIA is an unincorporated underwriting association of insurance companies which issues short term and long term multi-buyer commercial credit policies. The Eximbank enters into agency and reinsurance agreements with the FCIA whereby Eximbank reimburses FCIA for any excess of net losses over net premiums over the course of one year. FCIA insures for its own commercial credit risk and for Eximbank's political and sovereign risk.¹⁵⁹ This program, established as a result of 12 U.S.C. § 635, furthered the congressional intent of insuring and guaranteeing U.S. exports to improve the U.S. balance of payments. This same system could be implemented for the purpose of reducing the perceived risks in capital investments in the Caribbean region.

One final reason for the CBI's failure is the constant pressure from U.S. businesses, special interest groups, and organized labor for the introduction of bills and the initiation of trade actions com-

157. *Caribbean Basin Representatives Generally Endorse CBI II Legislation as Hearings Start*, *supra* note 133.

158. For the general structure of Eximbank's authority to guarantee and insure foreign exports, see 12 U.S.C. § 635 (1965).

159. *Id.*

monly referred to as "protectionist."¹⁶⁰ A recent example was Congress' passage of the Textile and Trade Act of 1988¹⁶¹ which President Reagan vetoed calling it "protectionism at its worst" and citing its potentially "disastrous effects on the U.S. economy."¹⁶² Although the Super 807 program was designed to benefit the textile industry in the CBI beneficiary countries, the garment manufacturers in the Caribbean are lobbying for unrestricted access to the U.S. market for their exports.¹⁶³ They argue that "overall [their] supply of textile and apparel to the United States is quite small. . ." and that "[t]he Caribbean area is not a threat to the U.S. textile and apparel industry."¹⁶⁴

X. CONCLUSION

The CBI was the beginning of preferential treatment by the United States for trade and investments in a specific region. Although the U.S. intent in adopting this regionalistic approach was predominantly to further U.S. national security goals, if the program is to benefit the Caribbean, it cannot be railroaded by protectionist legislation.

The data corresponding to U.S. imports from the region demonstrate that the CBI program was unsuccessful in providing preferential access to the United States market for exports from Caribbean nations. Perhaps, if the original version of CBI proposed by President Reagan had survived in Congress with the four original provisions intact, the CBI nations might have truly bene-

160. See Ray, *Changing Patterns of Protectionism: The Fall in Tariffs and the Rise in Non-tariff Barriers*, 8 NW. J. INT'L L. & BUS. 285 (1987).

In discussing the consequences of trade policy conflicts, the author states:

by the mid-1970's protectionist interests had become strong enough to cripple legislation intended to assist developing countries in their efforts to expand exports of manufactured goods to the United States and other industrial nations. This trend continues into the 1980's as protectionist interests continue to gain strength. The issue is no longer whether protectionist special interest groups are sufficiently powerful to undermine the effectiveness of trade liberalizing legislation but rather whether or not there is any life left in the free trade movement.

Id. at 301.

161. S. 2662, H.R. 1154, 100th Cong., 2d Sess. (1988).

162. SANDLER & TRAVIS TRADE ADVISORY SERVICES, INC., V TRADE & CUSTOMS UPDATE, TEXTILE AND APPAREL TRADE ACT OF 1988 No. 8, at 7 (Oct. 1988).

163. *Imports of Caribbean Garments Soar in Wake of CBI, Further Access Sought*, *supra* note 137.

164. *Id.*

fited from the program.¹⁶⁵

Congressman Gibbons' efforts in correcting the weaknesses of the CBI should be applauded. The congressman's most beneficial proposed changes include the eligibility of certain textile and apparel items for duty free treatment, the increase in the percentage allowable of U.S. contents, and the establishment of sugar quotas at the 1983 to 1984 level.¹⁶⁶ A truly effective Marshall Plan for the Caribbean and Central America dictates an unwavering commitment from the United States. CBI II goes a long way towards this goal. However, the United States can do more for its southern neighbors. Congress should enact CBI II and reject all protectionist measures, which are, in the end, counterproductive to the spirit of the CBI and the economic development of the region.¹⁶⁷

GEMA M. PIÑÓN
RAÚL JAVIER SÁNCHEZ

165. For a discussion of the consequences of trade policy conflicts, see Ray, *supra* note 160. In light of GSP and CBI, the author states:

[O]ne recent study found that the GSP and CBI were sabotaged in this manner [I]f both the GSP and the CBI began as genuine efforts to provide developing countries with access to United States markets for key manufactured exports, the fact that special interest groups were able to influence the final legislation to the point of making it irrelevant in both cases is a bit chilling. In terms of our model, it suggests that our long-standing national commitment to trade liberalization is close to being cancelled by the power of special interest groups to thwart government efforts at international economic cooperation.

Id. at 310.

166. *Id.*

167. During the publication of this article, the House Ways and Means Committee reported to the Committee of the Whole House on the State of the Union on H.R. 1233 known as the "Caribbean Basin Economic Recovery Expansion Act of 1989." There are several differences between the reported bill and the bill as it was introduced in 1987 by Congressman Gibbons and Senator Graham.

One important difference lies in rule-of-origin requirements. Whereas the 1987 bill proposed a distinction for purposes of rule-of-origin requirements between Eastern Caribbean beneficiary countries and non-Eastern Caribbean nations, the 1989 bill eliminates such a distinction. Indeed, the 1989 bill simply includes a section which states: "It is the sense of the Congress that there should be undertaken special efforts in order to improve the ability of the organization of Eastern Caribbean States countries and Belize to benefit from the Caribbean Basin Economic Recovery Act." H.R. 1233, 101st Cong., 1st Sess. §§ 105 (1989).

Another significant distinction is in duty free eligibility. The 1987 bill provided specific criteria for duty free eligibility. See *supra* note 135 and accompanying text. Section 102 of the 1989 bill now defines the term "qualifying fabric" as fabric formed and cut in the United States and foreign fabric cut in the United States. *Id.* § 102. This section also mandates that the United States Trade Representative "shall establish with each beneficiary country guaranteed access levels for textile products assembled in

that country from qualifying fabrics." *Id.* The bill further authorizes the United States Trade Representative to negotiate and conclude bilateral agreements with each country regarding guaranteed access levels. Textile products entering the United States pursuant to a bilateral agreement would enter under duty free treatment and would be awarded duty free treatment. To qualify for duty free treatment under these provisions, a textile product assembled in a beneficiary country from qualifying fabric and incorporating findings and trimmings from Foreign origin are eligible for guaranteed access and duty free treatment, if its findings and trimmings do not exceed 25% of the cost of the components of the assembled product. The 1989 bill provides that quota articles, textile or apparel articles imported into the United States under either a specific limit or designated consultation levels established in a bilateral textile agreement between the United States and a beneficiary country subsequent to the enactment of the bill, will be subject to a rate of duty equal to 50% of the trade weighted average duty rate for the textile category under which the product is classified. The rate of duty of any footwear (other than leather footwear), handbag, luggage, flat good, work glove or leather wearing apparel which is the product of a beneficiary country, and was not a designated article would have a duty rate equal to 50% of the general rate of duty under the Harmonized Tariff Schedule of the United States.

The 1987 bill would have changed the aggregate quantity of sugar that may enter the United States to the amount that was allocated to that specific country for import during the period beginning September 26, 1983 and ending September 30, 1984. In contrast, under the 1989 bill, the Secretary of Commerce would determine whether any country not fully utilizing the base quota amount allocated to it each year and any amount determined to be unused during such year shall be reallocated pro rata among the CBI countries receiving base quota allocations for the year. The unused quota amount reallocated to any CBI country for any quarter year would be in addition to any reallocation made under the provisions of the bill. The 1989 bill also specifies that the aggregate of the amounts of the base quota allocations to the CBI countries for any year beginning after December 31, 1988, may not be less than 371,449 metric tons, raw value. The bill states that the allocation made for any year is suspended or terminated with respect to any country under any law authorizing such action for purposes of dealing with a threat to national security or U.S. foreign policy, the amount of suspended or terminated allocation shall be reallocated pro rata among the CBI countries receiving allocations for that year.

Section 201 of the 1989 bill requires the administrator of the Agency for International Development to establish an administrative program of scholarship assistance to enable students from eligible countries in the Caribbean and Central America to study in the United States. *Id.* §§ 201.

Notably, the bill seeks to recognize tourism as a central element of economic development in the Caribbean Basin. The bill requires that a study of tourism be conducted in an effort to increase tourism and related activities as a central part of the CBI program. As a step toward the accomplishment of this goal, the 1989 bill establishes a pilot preclearance program in which the United States Customs Service and the United States Immigration and Naturalization Service would preclear individuals travelling to the United States from CBI beneficiary countries. See *supra* note 156 and accompanying text for observations regarding the need for emphasis on tourism as an important economic sector in the region.

APPENDIX A

Sec. 4. TREATMENT OF EXEMPT ARTICLES.

(a) IN GENERAL - The Caribbean Basin Initiative Recovery Act is amended by inserting after section 213 the following new section:

Sec. 213A. SPECIAL CATEGORY ARTICLES.

(a) Except as provided in subsection (c) and (d), the duty-free treatment provided under this subtitle shall not apply to -

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

(2) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated at the time of the effective date of this title as eligible articles for 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 air-tight containers;

(4) petroleum, or any product derived from petroleum, provided for in part 10 of schedule 4 of the TSUS; or

(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 TSUS column 2 rates of duty apply.

(b) The President shall establish such categories of the kinds of articles referred to in each paragraphs (1) through (5) of subsection (a) as may be appropriate for purposes of administering each of subsections (c) and (d).

(c)(1) The President shall provide duty-free treatment under this subtitle to articles within any category established under subsection (b) if the United States International Trade Commission determines that-

(A) the articles within that category either-

(i) are not produced in the United States, or

(ii) are not produced in the United States in quantities sufficient to meet the domestic demand for the product; and

(B) no directly competitive articles are produced in the United States.

(2) The President shall withdraw the duty-free treatment provided under paragraph (1) to articles within any category if the Commission determines, after a petition for such a determination is filed under paragraph (3), that the category is no longer eligible for such treatment under subparagraph (A) and (B) of paragraph (1).

(3) A request for a determination under paragraph (1) or (2) may be made by any interested person by filing a petition for the determination in such form as the Commission shall prescribe. The Commission shall make the determination within 120 days after the date on which the request is received. The petition for a determination under paragraph (2) with respect to any category of articles may not be filed sooner than the first anniversary of the date on which the determination under paragraph (1) extending duty-free treatment to that category was made.

(d)(1) As used in this subsection, the term "duty-free quota" means, with respect to each category of articles established under subsection (b), and not excluded under paragraph (2), for each beneficiary country-

(A) for calendar year 1988, a quantity equal to 103 percent of the base quantity for that category for that country; and

(B) for each calendar year after 1988, a quantity equal to 103 percent of the duty-free quota for the immediately preceding calendar year for that category for that country. The base quantity of any category of articles established under subsection (B) for a beneficiary country is the larger of -

(i) the quantity of articles in that category that are a product of such country and were exported to the United States during the most recent 12-month period for which data is available; or

(ii) the quantity of articles in that category that results from dividing -

(I) the aggregate quantity of articles on that category that are a product of all beneficiary countries and exported to the United States during such 12-month period, by

(II) the number of beneficiary countries.

(2) For purposes of applying this subsection, articles that are provided duty-free treatment under subsection (c) or item 807.50 of the TSUS shall be disregarded.

(3) Subject to paragraph (4), the President shall provide duty-free treatment under this subsection to articles of any beneficiary country that are entered during any calendar year after 1987 before the total quantity entered during that year equals or exceeds the duty-free quota for those articles that country for that year.

(4) The aggregate quantity of articles -

(A) in any category to which a duty-free quota applies; and

(B) produced in all beneficiary countries; that may be entered duty-free during any calendar year after 1987 may not exceed an amount equal to 5 percent of the aggregate quantity of articles of that kind that are entered during that year from all beneficiary countries. If the 5 percent limitation set forth in the preceding sentence is exceeded during any calendar year, the President shall apply the excess, on an appropriate pro-rated basis, against the duty-free quotas for the following year for that category for all beneficiary countries.