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UNITED STATES-CARIBBEAN TRADE PARTNERSHIP ACT

OCTOBER 31, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 2644]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2644) to provide to beneficiary countries under the Caribbean Basin Economic Recovery Act benefits equivalent to those provided under the North American Free Trade Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. INTRODUCTION

A. Purpose and Summary

H.R. 2644, The "United States-Caribbean Trade Partnership Act" strengthens the U.S. commitment to the Caribbean region to ensure that it is not eroded by the implementation of the North American Free Trade Agreement (NAFTA), which is having the unintended effect of diverting investment from the Caribbean Basin region to Mexico. The bill provides NAFTA parity benefits for Caribbean countries in order to restore benefits eroded by NAFTA implementation, and to preserve and attract investment to the CBI region.

The bill would grant preferential tariff and quota treatment, equivalent to that accorded to Mexico under NAFTA, for a fourteen month period on those products which are currently excluded from the CBI, pending the accession of CBI countries to the NAFTA. The bill preserves authority in current law for the President to withdraw, suspend, or limit benefits if countries fail to meet designation criteria. In addition, H.R. 2644 also authorizes such actions with respect to new parity benefits, based on a review of designation criteria as further interpreted by the bill.

In order to encourage the Administration to give a high priority to expanding trade with the Caribbean, the bill directs the USTR to meet on a regular basis with trade ministers of countries in the Caribbean to discuss the likely timing and possible procedures for initiating negotiations for the beneficiary countries to accede to NAFTA. The bill also requires reports to Congress which: 1) assess progress towards economic development and market oriented reforms in the Caribbean and, 2) analyze CBI countries with respect to their ability to undertake the trade obligations of NAFTA.

B. Background and Need for Legislation

In February 1992, President Reagan announced that he would seek legislation to establish the Caribbean Basin Initiative (CBI), a program to further the economic development and political stability of Caribbean countries. The CBI was a package of economic assistance, trade benefits and other incentives. The Caribbean Basin Economic Recovery Act (CBERA) was enacted in 1983, with an effective date of January 1, 1984. Under the CBI, the President is authorized to grant to countries in the Caribbean and Central America, duty-free access to the U.S. market under certain conditions. CBI trade benefits were made permanent in 1990. Products which are excluded from duty-free treatment under CBI include: textile and apparel articles, canned tuna, petroleum and petroleum products, footwear, handbags, luggage, flat goods, work gloves, leather-wearing apparel, and certain watches.

In 1993, total U.S. imports from CBI beneficiaries under the CBERA amounted to $10.1 billion. During the early years the CBERA was in effect, the U.S. ran a significant trade deficit with the region. In the fourth year of the program, the trade balance shifted in favor of the U.S. and has remained in surplus since that time. The U.S. surplus amounted to about $1 billion in 1996, making the region one of the few in the world with which the U.S. has enjoyed a sustained favorable balance of trade. U.S. exports to CBI beneficiary countries amounted to $15.3 billion in 1996.

C. Legislative History

H.R. 553, The Caribbean Basin Trade Security Act, was introduced on January 18, 1995 by Messrs. Crane, Gibbons, Rangel and Shaw.

On February 10, 1995, the Subcommittee on Trade held a public hearing on H.R. 553. On March 29, 1995, the Subcommittee on Trade considered H.R. 553 and ordered the bill favorably reported to the full Committee on Ways and Means by a recorded vote of 11–3, with an amendment in the nature of a substitute. The Administration testified in support of the bill, as amended.

On June 23, 1997, the Committee on Ways and Means approved the "United States-Caribbean Basin Trade Partnership Act" as Section 9, Subtitle H of H.R. 2014, the Taxpayer Relief Act of 1997. These provisions as passed by the House were not included in the final Conference agreement.

On October 8, 1997, H.R. 2644, the "United States-Caribbean Basin Trade Partnership Act," was introduced by Chairman Archer, containing provisions identical to those included in Subtitle H of H.R. 2014. On October 9, 1997, the Committee on Ways and Means ordered H.R. 2644 favorably reported by voice vote.

II. EXPLANATION OF THE BILL

A. Section 1: Short Title

The short title of the bill is the "United States-Caribbean Trade Partnership Act".

B. Section 2: Findings and Policy

Present Law

The Caribbean Basin Initiative (CBI) program was established by the Caribbean Basin Economic Recovery Act (CBERA), which was enacted on August 5, 1983. This legislation authorized the President to grant duty-free treatment to imports of eligible articles from designated Caribbean countries. The basic purpose of the CBI program, as originally proposed by President Ronald Reagan, was to respond to an economic crisis in the Caribbean by encouraging industrial development primarily through preferential access to the U.S. market. The goal was to promote political and social stability in a strategically important region. CBI trade benefits were made permanent in 1990.

Explanation of provision

Section 2(a) contains the findings of Congress that:

(1) The Caribbean Basin Economic Recovery Act represents a permanent commitment by the United States to encourage the development of strong democratic governments and revitalized economies in neighboring countries in the Caribbean Basin region.

(2) The economic security of the countries in the Caribbean Basin is potentially threatened by the diversion of investment to Mexico as a result of the North America Free Trade Agreement (NAFTA).

(3) Offering NAFTA equivalent benefits to Caribbean Basin Initiative countries, pending their eventual accession to the NAFTA, will promote the growth of free enterprise and economic opportunity in the region and thereby enhance the national security interests of the United States.

(4) Countries in the Western Hemisphere offer the greatest opportunities for increased exports of United States textile and apparel products.

(5) Given the greater propensity of countries located in the Western Hemisphere to use United States components and to purchase United States products compared to other countries, increased trade and economic activity between the United States and countries in the Western Hemisphere will create new jobs in the United States as a result of expanding export opportunities.

Section 2 states that it is, therefore, the policy of the United States to: (1) offer Caribbean Basin partnership countries tariff and quota treatment equivalent to that accorded to products of NAFTA countries, and to seek the accession of these partnership countries to the NAFTA or a free trade agreement comparable to the NAFTA at the earliest possible date, with the goal of achieving full NAFTA participation by all Caribbean countries by January 1, 2005; and, (2) assure that the domestic textile and apparel industry remains competitive in the global marketplace by encouraging the formation and expansion of "partnerships" between the textile and apparel industry of the United States and the textile and apparel industry of various countries located in the Western Hemisphere.

Reason for change

This section outlines the Committee's view that the commitment made by the United States to countries in the Caribbean Basin region in 1983 has been unintentionally eroded by effects of the NAFTA which was implemented on January 1, 1994. It states that the purpose of the bill is to encourage economic reforms in CBI countries that would prepare them for eventual accession to

NAFTA or for participation in mutually advantageous free trade agreements that contains provisions comparable to the NAFTA. The Committee believes that encouraging the development of strong democratic governments and healthy economies in neighboring countries in the Caribbean and Central America will increase U.S. exports, decrease illegal immigration, and improve regional cooperation in efforts to fight drug trafficking. In addition, the Committee intends that this bill will foster increased opportunities for U.S. companies in the textile and apparel sector to expand coproduction arrangements with countries in the CBI region, and thereby sustain and preserve manufacturing operations in the U.S. that would otherwise be relocated to the Far East.

C. SECTION 3: DEFINITIONS

Explanation of provision

Section 3 defines several terms used in the bill.

D. SECTION 4: TEMPORARY PROVISIONS TO PROVIDE NAFTA PARITY TO PARTNERSHIP COUNTRIES

Present law

Under the CBERA, imports from CBI beneficiary countries, except for certain products that are statutorily excluded, are granted duty-free treatment, subject to specific eligibility requirements. Statutorily excluded articles are ineligible for duty-free treatment under the CBI. These excluded products are: textile and apparel articles that are subject to textile agreements, canned tuna, petroleum and petroleum products, footwear, handbags, luggage, flat goods, work gloves, and leather-wearing apparel. Also excluded are certain watches and watch products.

Under NAFTA, imports of these products from Mexico (excluded from CBI and listed above) receive either declining tariff or duty-free and quota-free treatment.

Explanation of provision

Section 4 of the bill amends section 213(b) of the CBERA to provide tariff and quota treatment on imports from CBI beneficiary countries of excluded articles that is identical to tariff and quota treatment accorded like articles imported from Mexico under the NAFTA during a temporary period of up to fourteen months.

Reason for change

The Committee believes that expanding the benefits of the Caribbean Basin Initiative on a temporary basis, to offer tariff and quota treatment similar to NAFTA will encourage partnership countries to complete the economic reforms necessary for them to negotiate accession to NAFTA.

1. RULES OF ORIGIN

Present law

Chapter Four of the NAFTA establishes rules of origin for identifying goods that are to be treated as “originating in the territories of the NAFTA parties” and are therefore eligible for preferential treatment accorded to originating goods under the NAFTA, including reduced duties and duty-free and quota-free treatment.

Explanation of provision

Section 4 of the bill provides that NAFTA tariff and quota treatment would apply to CBI articles which meet NAFTA rules of origin (treating the United States and CBI beneficiary countries as "parties" under the agreement for this purpose). Customs procedures applicable to exporters under the NAFTA also must be met for partnership countries to qualify for parity treatment. Imports of articles currently excluded under CBI, which do not meet the conditions of NAFTA parity, would continue to be excluded from the CBI program.

Reason for change

This section establishes "NAFTA Parity" for imports from partnership countries and ensures that Customs procedures required of Mexico under NAFTA would also be required of partnership countries receiving benefits under the bill.

2. EFFECTIVE DATE AND TERMINATION OF TEMPORARY TREATMENT

Present law

CBI trade benefits were made permanent in 1990.

Explanation of provision

Under section 4 a temporary transitional period would begin May 15, 1998, and end on the date that either NAFTA accession or a reciprocal free trade agreement enters into force with the partnership country, or on July 15, 1999, whichever is earlier.

Reason for change

As discussed above, the Committee believes that offering temporary NAFTA benefits to CBI countries is in the national economic and security interest of the United States. However, the Committee would prefer a longer period than the fourteen months provided for in the bill, and will continue to work to identify an additional funding source to achieve this objective.

3. DESIGNATION CRITERIA

Present law

In determining whether to designate any country as a CBI beneficiary country, the President must take into account 7 mandatory and 10 discretionary criteria that are listed in section 212 of the CBERA:

(1) whether the country is a Communist country;

(2) whether the country has nationalized, expropriated or otherwise seized ownership or control of U.S. property (including intellectual property), unless he determines that prompt, adequate, and effective compensation has been or is being made, or good faith negotiations to provide such compensation are in progress or the country is otherwise taking steps to discharge its international obligations, or a dispute over compensation has been submitted to arbitration;

(3) whether the country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of U.S. citizens;

(4) whether the country affords "reverse" preferences to developed countries and whether such treatment has or is likely to have a significant adverse effect on U.S. commerce;

(5) whether a government-owned entity in the country engages in the broadcast of copyrighted material belonging to U.S. copyright owners without their express consent or the country fails to work toward the provision of adequate and effective intellectual property rights;

(6) whether the country is a signatory to an agreement regarding the extradition of U.S. citizens;

(7) whether the country has or is taking steps to afford internationally recognized worker rights to workers in the country;

(8) an expression by the country of its desire to be designated;

(9) the economic conditions in the country, its living standards, and any other appropriate economic factors;

(10) the extent to which the country has assured the United States it will provide equitable and reasonable access to its markets and basic commodity resources;

(11) the degree to which the country follows accepted rules of international trade under the GATT and Tokyo Round agreements;

(12) the degree to which the country uses export subsidies or imposes export performance or local content requirements which distort international trade;

(13) the degree to which the trade policies of the country are contributing to the revitalization of the region;

(14) the degree to which the country is undertaking self-help measures to protect its own economic development;

(15) the extent to which the country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive intellectual property rights;

(16) the extent to which the country prohibits its nationals from engaging in the broadcast of copyrighted material belonging to U.S. copyright owners without their express consent; and,

(17) the extent to which the country is prepared to cooperate with the United States in the administration of the Act.

Under the CBERA, the President is prohibited from designating a country a beneficiary country if any of criteria (1)–(7) apply to that country, subject to waiver if the President determines that country designation will be in the U.S. national economic or security interest. The waiver does not apply to (4) and (6). Criteria (9)–(18) are discretionary. Under the CBERA, criteria (7) is included as both mandatory and discretionary.

Explanation of provision

The bill makes no change in country designation criteria established in the CBERA.

4. GENERAL REVIEW OF COUNTRIES

Present law

Section 212(f) of the CBERA requires the President, every three years, to submit to the Congress a complete report regarding the operation of the CBI program, including the results of a general review of beneficiary countries.

Explanation of provision

Section 4 of the bill amends section 212(f) of the CBERA to provide that the next review take place one year after the effective date of H.R. 2644 and subsequent reviews occur at three year intervals thereafter. The bill requires the President to conduct and report to Congress on triennial reviews of the benefits accorded under H.R. 2644. The review will be based on the 17 eligibility criteria listed in section 212 of the CBERA, as further interpreted by the bill. These criteria include intellectual property protection, investment protection, market access, worker rights, cooperation in administering the program, and the degree to which the country follows accepted rules of international trade provided for under the World Trade Organization. The President may determine, based on the review, whether to withdraw, suspend, or limit new parity benefits. Existing authority in the CBERA would continue to withdraw, suspend, or limit current benefits at any time based on present criteria.

Reason for change

The Caribbean Basin Initiative is a conditional trade program because, under Section 212 of the CBERA, the President must take into account seven mandatory and ten discretionary criteria when determining whether to designate a country as a beneficiary country. Nevertheless, the Committee is aware that questions periodically arise regarding beneficiary countries' adherence to the eligibility criteria. As part of the implementation of this legislation, the Committee expects the President to offer adequate opportunities for interested parties to present information concerning CBERA beneficiaries' adherence to the eligibility criteria.

The Committee intends that the triennial review of countries based on eligibility criteria in current law, as further interpreted by the bill, will reinforce the conditional nature of benefits accorded under the U.S.-Caribbean Basin Trade Partnership Act.

5. TERMINATION OR WITHDRAWAL OF BENEFITS

Present law

The President may withdraw or suspend designation of any beneficiary country or withdraw, suspend, or limit the application of duty-free treatment to any article from any country if he determines that, as a result of changed circumstances, the country is not meeting criteria set forth in the statute for beneficiary country designation. The President must publish at least 30-days advance notice of the proposed action. The U.S. Trade Representative shall accept written public comments and hold a public hearing on the proposed action.

Explanation of the provision

All country designation criteria apply as under the CBERA. The President may withdraw, suspend, or limit the application of duty-free or preferential quota treatment to any article if he determines the country or the product, based on changed circumstances, should be barred from eligibility. The bill makes no change in the President's authority to withdraw, suspend, or limit current benefits under the CBERA at any time.

Reason for change

Broad authority for the President to withdraw, suspend, or limit benefits under the CBERA is retained in the bill. The bill provides similar authority for the President with respect to the new trade benefits that are provide by HR 2644.

6. SAFEGUARDS

Present law

The import relief procedures and authorities under section 201–204 of the Trade Act of 1974 apply to imports from CBI beneficiary countries, as they do to imports from other countries. If CBI imports cause or threaten to cause serious injury to the domestic industry producing a like or directly competitive article, section 213(e) of the CBERA authorizes the President to suspend CBI duty-free treatment and proclaim a rate of duty or other relief measures.

Under NAFTA, the U.S. may invoke a special safeguard provision at any time during the tariff phase-out period if a NAFTA-origin textile or apparel good is being imported in such increased quantities and under such conditions as to cause "serious damage, or actual threat thereof," to a domestic industry producing a like or directly competitive good. The President is authorized to either suspend further duty reductions or increase the rate of duty to the most-favored-nation rate for up to three years. The NAFTA also provides for a "quantitative restriction" safeguard, which the United States or Mexico may invoke against "non-originating" textile or apparel goods, using the standard of "serious damage, or actual threat thereof."

Reason for change

The Committee believes that NAFTA equivalent safeguard authority is appropriate in order to ensure that the domestic textile and apparel industry is not damaged by increased imports from the Caribbean Basin region.

Explanation of provision

Normal safeguard authorities under CBERA would apply to imports of all products except textiles and apparel. NAFTA equivalent safeguard authorities would apply to imports of textile and apparel products from CBI countries, except that, under the bill, the President would not be obligated to provide equivalent trade liberalizing compensation to the exporting country.

7. TREATMENT OF TEXTILE AND APPAREL IMPORTS FROM CARIBBEAN COUNTRIES AND MEXICO

a. GAL program and "807" tariff treatment

Present law

The "Special Access Program for Textiles," established by regulation in February 1986, provides flexible Guaranteed Access Levels (GALs) to the U.S. market for textile or apparel and "made up" textile product categories (not fabric, yarn, or other textile products) assembled in CBI countries from fabrics wholly formed and cut in the United States, under bilateral agreements negotiated at the request of each Caribbean government. GALs (also know as "807A") are separate limits from (and usually significantly higher than) standard quota levels, and are generally increased upon request of the exporting country.

Imports under item 9802.00.80 of the U.S. Harmonized Tariff Schedule (previously item 807) which are assembled abroad from U.S.-fabricated components, including apparel assembled in Caribbean countries from fabric cut in the United States, are assessed duty only on the value-added abroad. Under the NAFTA, Mexico receives duty-free and quota-free treatment on articles assembled from U.S.-formed and cut fabric.

Explanation of provision

Under section 4 of the bill, duty-free and quota free treatment applies to apparel that is: (1) subject to the "GAL" program, (i.e. assembled from fabrics wholly formed and cut in the United States) and which meets the NAFTA yarn-forward rule of origin; (2) cut and sewn in a partnership country from fabrics wholly formed in the United States, from yarns wholly formed in the United States; (3) is knit-to-shape in partnership country from yarns wholly formed in the United States; or (4) is made in a partnership country from fabric knit in a partnership country from yarn wholly formed in the United States. Hand-made, hand-loomed and folklore articles of the region also qualify for duty-free and quota-free treatment.

Reason for change

The bill would provide similar tariff and quota treatment on imports of textile and apparel products from partnership countries that is similar to the tariff and quota treatment accorded to like articles imported from Mexico under NAFTA. In addition, the bill would grant duty-free and quota free treatment to imports of three categories of apparel products that are not duty-free under NAFTA: (1) apparel cut and sewn in a partnership country from fabrics wholly formed in the United States, from yarns wholly formed in the United States; (2) apparel that is knit-to-shape in partnership country from yarns wholly formed in the United States; and (3) apparel that is made in a partnership country from fabric knit in a partnership country from yarn wholly formed in the United States.

b. Originating textile and apparel goods

Present law

Certain textile and apparel articles from major supplying CBI countries are subject to import quotas under bilateral agreements negotiated on a product-category basis under authority of Section 204 of the Agricultural Act of 1956 and in accordance with the Uruguay Round Agreement on Textiles and Clothing. Articles under quota may be assembled from U.S. and/or foreign components.

Explanation of provision

Under section 4, imports of textile and apparel articles from CBI partnership countries that meet NAFTA rules of origin would receive equivalent tariff treatment to such goods of Mexico and enter quota-free. There would be no change in the treatment of non-originating textile products currently subject to import quotas under bilateral and multilateral textile agreements.

Reason for change

This provision furthers the general purposes of the bill described above.

c. Trade preference levels (TPLs)

Present law

Appendix 6(B) of the NAFTA provides a limited exception to the NAFTA rules of origin for textile and apparel goods. The exception takes the form of Tariff Preference Levels (TPLs) under which specific quantities of goods from each NAFTA country that do not meet NAFTA "yarn-forward" rules of origin will nonetheless be accorded NAFTA preferential tariff rates. Imports of such goods that exceed these quantities will be subject to MFN duty rates. Under NAFTA, TPLs are available for three broad categories of products: (1) cotton or man-made apparel; (2) wool apparel; and, (3) goods entered under subheading 9802.00.80 of the HTS.

Explanation of provision

Section 4 authorizes the USTR to establish TPLs for Caribbean textile and apparel products which are similar to those established for Mexican textile and apparel products in the NAFTA. After consulting with the domestic industry and other interested parties, USTR is authorized to establish TPLs in the following categories at specified levels: not more than 45,000,000 square meter equivalents of cotton or man-made fiber apparel; not more 1,500,000 square meter equivalents of wool apparel; and, not more than 25,000,000 square meter equivalents of goods entered under subheading 9802.00.80 of the HTS. The bill requires that these amounts be allocated among the seven partnership countries which have the largest volume of textile and apparel exports to the United States, based on a pro rata share of the volume of their textile and apparel exports.

Reason for change

This provision furthers the general purposes of the bill described above.

d. Customs procedures and penalties for transshipment

Present law

Under NAFTA, Parties to the Agreement must observe Customs procedures and documentation requirements which are established in Chapter 5 of the NAFTA. Requirements regarding Certificates of Origin for imports receiving preferential tariffs are detailed in Article 502.1 of the NAFTA.

Explanation of provision

The bill directs the Secretary of the Treasury to prescribe regulations that require, as a condition of entry, that any importer of record that claims preferential tariff treatment for textile and apparel products under the bill must comply with requirements similar in all material respects to the requirements regarding Certificates of Origin contained in Article 502.1 of the NAFTA, for a similar importation from Mexico. In addition, if an exporter is determined under the laws of the United States to have engaged in illegal transshipment of textile or apparel products from a partnership country, then the President shall deny all benefits under the bill to such exporter, and to any successors of such exporter, for a period of 2 years.

Finally, the bill requires the Commissioner of Customs to conduct a study analyzing the extent to which each partnership country has: (1) cooperated with the United States in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel products; and (2) has taken appropriate measures consistent with its laws and domestic procedures to prevent transshipment and circumvention from taking place.

Reasons for change

These provisions address concerns raised by the textile and apparel industry that increasing trade with the Caribbean Basin region could result in illegal transshipments of textile and apparel products through the region.

E. Section 5: Effect of NAFTA on Sugar Imports From Beneficiary Countries

Present law

Under the tariff-rate quota system for sugar, which was proclaimed by the President on December 23, 1994, the Secretary of Agriculture establishes the quota quantity that can be entered at the lower tier import duty-rates. The USTR allocates quantities to CBI countries that receive duty-free treatment. Imports above the in-quota amount from CBI countries are subject to tariffs at the higher over-quota rates.

The quantity of sugar which may be imported duty-free from Mexico is governed by Section A of Annex 703.2 of the NAFTA.

Under NAFTA, access grows over time to unlimited duty-free access for exports of sugar from Mexico beginning in the year 2009.

Explanation of provision

Section 102 requires the President to monitor the effects, if any, of the NAFTA on access to the U.S. sugar market by CBI beneficiary countries. If the President considers that NAFTA implementation is affecting or likely will affect market access adversely, the President shall: (1) take action by Executive authority after consulting with interested parties and appropriate committees, or (2) propose legislation necessary or appropriate to ameliorate such effects.

Reasons for change

Section 5 responds to concerns raised by CBI beneficiary governments that additional access to the U.S. sugar market for Mexico under the NAFTA could potentially result in a decrease in access for exports of sugar from the Carribean and thereby reduce employment in the region.

F. Section 6: Duty-Free Treatment for Certain Beverages Made With Caribbean Rum

Present law

Rum and beverages made with rum are eligible for duty-free entry into the United States both under the CBI program and NAFTA, provided they meet the CBI or NAFTA rules of origin and other requirements. When Caribbean rum is processed in Canada into a rum beverage and the beverage is exported from Canada into the United States, it is not eligible for duty-free treatment under either the CBI or the NAFTA. The beverage is ineligible for duty-free treatment under CBI because it is not shipped directly from a beneficiary country to the United States as the CBI rules require. The beverage does not qualify for NAFTA duty-free treatment because the processing in Canada is not sufficient to qualify it as a NAFTA "originating good."

Explanation of provision

Section 6 amends the CBERA to accord duty-free treatment to certain beverages imported from Canada if: (1) the rum is the growth, product, or manufacture of a beneficiary country or the U.S. Virgin Islands; (2) the rum is imported directly into Canada, and the beverages made from it are imported directly from Canada into the United States; and (3) the rum accounts for at least 90 percent by volume of the alcoholic content of the beverages.

Reason for change

This provision would ensure that certain rum beverages that originate in the CBI, but which are processed in Canada, are not denied duty-free treatment under the CBERA.

G. Section 7: Meeting of Trade Ministers and USTR

Present law

No provision.

Explanation of provision

Section 7 directs the President to convene a meeting with the trade ministers of CBI partnership countries in order to establish a schedule of regular meetings, to commence as soon as practicable, of the trade ministers and the USTR. The purpose of the meetings shall be to further consultations between the U.S. and partnership countries concerning the likely timing and procedures for initiating negotiations for partnership countries to: (1) accede to NAFTA; or (2) enter into comprehensive, mutually advantageous trade agreements with the United States that contain comparable provisions to the NAFTA, and would make substantial progress in achieving the negotiation objectives listed in Section 108(b)(5) of Public Law 103–182. (These are general trade negotiating objectives for future free trade agreements which were included in the NAFTA implementing bill).

Reason for change

This provision is intended to encourage the United States Trade Representative to expand efforts to increase trade with countries in the Caribbean Basin region.

H. Section 8: Report on Economic Development and Market Oriented Reforms in the Caribbean Basin

Present law

Under the CBERA, the President must submit a complete report to the Congress every 3 years on the operation of the program, including the results of a general review of beneficiary countries.

Explanation of provision

Section 8 requires the USTR to make an assessment of the economic development efforts and market oriented reforms in each partnership country, and the ability of each such country, on the basis of such efforts and reforms, to undertake the obligations of the NAFTA. Not later than July 1, 1998, the USTR shall submit to the President, the Committee on Finance, and the Committee on Ways and Means, a report on this assessment.

The USTR shall include in this report a discussion of possible timetables and procedures pursuant to which partnership countries can complete the economic reforms necessary to enable them to negotiate accession to the NAFTA. The USTR shall also include an assessment of the potential phase-in periods for implementing NAFTA obligations that may be necessary to successfully integrate the lesser developed economies of the Caribbean into NAFTA.

Section 8 lists factors USTR should consider in assessing the ability of Caribbean countries to accede to the NAFTA.

Reason for change

The report required in this section will provide important information regarding the progress that partnership countries are making with respect to making the economic reforms necessary to accede to NAFTA or to enter into a free trade agreement containing obligations similar to those contained in NAFTA.

I. SECTION 9: REVENUE PROVISIONS

Present law

For deduction purposes, any method or arrangement that has the effect of a plan deferring the receipt of compensation or other benefits for employees is treated as a deferred compensation plan (sec. 404(b)). In general, contributions under a deferred compensation plan (other than certain pension, profit-sharing and similar plans) are deductible in the taxable year in which an amount attributable to the contribution is includible in income. However, vacation pay which is treated as deferred compensation is deductible for the taxable year of the employer in which the vacation pay is paid to the employee (sec. 404(a)(5)).

Temporary Treasury regulations provide that a plan, method, or arrangement defers the receipt of compensation or benefits to the extent it is one under which an employee receives compensation or benefits more than a brief period of time after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed. A plan, method or arrangement is presumed to defer the receipt of compensation for more than a brief period of time after the end of an employer's taxable year to the extent that compensation is received after the 15th day of the 3rd calendar month after the end of the employer's taxable year in which the related services are rendered (the "2½ month" period). A plan, method or arrangement is not considered to defer the receipt of compensation or benefits for more than a brief period of time after the end of the employer's taxable year to the extent that compensation or benefits are received by the employee on or before the end of the applicable 2½ month period. (Temp. Treas. Reg. Sec. 1.404(b)–1T A–2.)

The Tax Court recently addressed the issue of when vacation pay and severance pay are considered deferred compensation in *Schmidt Baking Co., Inc.,* 107 T.C. 271 (1996). In *Schmidt Baking,* the taxpayer was an accrual basis taxpayer with a fiscal year that ended December 28, 1991. The taxpayer funded its accrued vacation and severance pay liabilities for 1991 by purchasing an irrevocable letter of credit on March 13, 1992. The parties stipulated that the letter of credit represented a transfer of substantially vested interest in property to employees for purposes of section 83, and that the fair market value of such interest was includible in the employees' gross incomes for 1992 as a result of the transfer.[1] The Tax Court held that the purchase of the letter of credit, and the resulting income inclusion, constituted payment of the vacation and severance pay within the 2½ month period. Thus, the vacation and

[1] While the rules of section 83 may govern the income inclusion, section 404 governs the deduction if the amount involved is deferred compensation.

severance pay were treated as received by the employees within the 2½-month period and were not treated as deferred compensation. The vacation pay and severance pay were deductible by the taxpayer for its 1991 fiscal year pursuant to its normal accrual method of accounting.

Explanation of provision

The bill specifically overrules the result in *Schmidt Baking* and provides that, with respect to severance pay,[2] the Internal Revenue Code will be applied without regard to the result reached in that case. Thus, under the bill, the fact that severance pay is includible in income is not taken into account in determining whether or not payment has been made. In determining whether severance pay is deferred compensation, the fact that it is includible in the income of employees within the applicable 2½ month period is not taken into account in determining whether there has been payment or receipt by the employees. Rather, the item must have been actually paid or received within the 2½ period in order for the compensation not to be treated as deferred compensation.

It is intended that similar arrangements, in addition to the letter of credit approach used in *Schmidt Baking,* do not constitute payment of severance pay, even if employees have an income inclusion. Thus, for example, payment does not include the furnishing of a note or letter or other evidence of indebtedness of the taxpayer, whether or not the evidence is guaranteed by any other instrument or by any third party. As a further example, payment does not include a promise of the taxpayer to provide service or property in the future (whether or not the promise is evidenced by a contract or other written agreement). In addition, payment does not include an amount transferred as a loan, refundable deposit, or contingent payment.

The bill does not affect the determination of whether an item is includible in income. Thus, for example, using the mechanism in *Schmidt Baking* for severance pay still results in income inclusion to the employees, but the employer is not entitled to a deduction for the severance pay until actually paid to and received by the employees.

Reasons for change

Prior to the Tax Reform Act of 1986, an employer could make an election to deduct an amount representing a reasonable addition to a reserve account for vacation pay earned by employees before the close of the current year and expected to be paid by the close of that year or within 12 months thereafter. As a result of concerns that this rule provided more favorable tax treatment for vacation pay than other types of compensation or deductible items, the Tax Reform Act of 1986 limited this special rule to vacation pay that is paid during the current taxable year within 8½ months after the close of the taxable year of the employer with respect to which the vacation pay was earned by employees.

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[2] A provision that overrules *Schmidt Baking* other than with respect to severance pay is included in the H.R. 2646, the "Education Savings Act for Public and Private Schools Act," as ordered reported by the Committee on Ways and Means on October 9, 1997.

The tax treatment of vacation pay was again changed in the Omnibus Budget Reconciliation Act of 1987 ("OBRA 1987"). At that time, the Congress was concerned that then-present law provided more favorable tax treatment for vacation pay that was deferred by employees beyond the end of the year than was provided for other deferred benefits. The House and Senate bills would have repealed the reserve for accrued vacation pay and would have provided that deductions for vacation pay generally would be allowed in any taxable year for amounts paid during the year, plus vested vacation amounts paid or funded within 2½ months after the end of the year. The conference agreement followed a different approach, and provided that "vacation pay earned during any taxable year, but not paid to employees on or before the date that is 2½ months after the end of the taxable year, is deductible for the taxable year of the employer in which it is paid to employees."[3] The key difference between the House and Senate provisions and the conference agreement to OBRA 1987 is that the conference agreement does now allow a deduction for amounts that vest and are funded (i.e., are includible in income) within 2½ months after the end of the employer's taxable year.

The Committee believes that the decision in *Schmidt Baking* reaches an inappropriate result and represents an incorrect interpretation of the intent of the Congress in adopting the vacation pay provision in OBRA 1987. OBRA 1987 reflects Congressional intent and understanding that compensation actually paid beyond the 2½ month period is deferred compensation.

Effective date

The provision is effective for taxable years ending after October 8, 1997. Any change in method of accounting required by the provision is treated as initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment required by section 481 as a result of the change is taken into account in the year of the change.

III. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 2644.

Motion to report the bill

The bill H.R. 2644 was ordered favorably reported, by voice vote on October 9, 1997, with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee agrees with cost estimates furnished by the Congressional Budget Office (CBO) on H.R. 2644, set forth below.

[3] H. Rept. 100–495, 921 (Dec. 21, 1987).

B. Budget Authority and Tax Expenditures

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 2644 does not include any new budget authority and reduces tax expenditures by an amount equal to the revenue raised by the provision clarifying the deduction for deferred severance pay.

C. Cost Estimate Prepared by the Congressional Budget Office

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 17, 1997.

Hon. Bill Archer,
Chairman, House Committee on Ways & Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for the United States-Caribbean Trade Partnership Act, as ordered reported by the House Committee on Ways & Means on October 9, 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Alyssa Trzeskowski.

Sincerely,

June E. O'Neill, *Director.*

Enclosure.

H.R. 2644.—United States-Caribbean Trade Partnership Act

Summary: The Congressional Budget Office has reviewed the United States-Caribbean Trade Partnership Act, as ordered reported on October 9, 1997 by the House Committee on Ways and Means. 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 clarify the Internal Revenue Code to overrule the Schmidt Baking Company case with respect to severance pay. CBO and the Joint Committee on Taxation (JCT) estimate that the bill would increase receipts by $6 million in fiscal year 1998 and by $7 million over fiscal years 1998 through 2002. Because enacting the bill would affect receipts, pay-as-you-go procedures would apply.

The bill contains one new private-sector mandate, but does not contain any intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), and therefore would not impose any costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimate 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
REVENUES						
CBI NAFTA parity	−60	−182	0	0	0	−242
Clarification of deduction for accrued severance pay	66	105	55	11	12	249

Basis of estimate

Revenues: Under current law, the United States offers duty-free treatment to products of 24 countries in the Caribbean 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 and quota treatment equivalent to that accorded to products under the North American Free Trade Agreement (NAFTA) to products of Caribbean Basin partnership countries. NAFTA parity would begin May 15, 1998 and would terminate on July 15, 1999. The bill would encourage the United States Trade Representative (USTR) to seek the accession of these beneficiary countries to the 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 the NAFTA, under which the tariff treatment accorded at any time to any textile or apparel article that originates in the territory of a partnership country shall be identical to that which is accorded to a good of Mexico. This bill extends immediate duty-free and quota-free treatment to apparel articles assembled in an eligible Caribbean Basin partnership country formed from U.S. fabric, articles subjected to certain types of washing and finishing, articles knit-to-shape from yarns wholly formed in the U.S., articles made in a partnership county from fabric knit in a partnership country from yarns, wholly formed in the U.S., and hand loomed, handmade, and folklore, and folklore articles originating in Caribbean Basin partnership countries.

The bill also clarifies the Internal Revenue Code of 1986 with respect to deductions for accrued severance pay to reverse the result reached in the case of the Schmidt Baking Company, Inc. v. Commissioner of Internal Revenue. JCT estimates the provision will increase revenues by $66 million in 1998, and by $249 million in the years 1998 through 2002. CBO concurs with this estimate.

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 receipts. The projected changes in receipts 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	1998–2002
Changes in outlays	0	0	0	0	0	0
Changes in receipts	6	−77	55	11	12	7

Intergovernmental and private-sector impact: The Joint Committee on Taxation has determined that H.R. 2644 contains one new private-sector mandate, as defined in UMRA. The provision relating to clarification of deduction for accrued severance pay is estimated to increase tax revenue by $249 million over fiscal years 1998 through 2002, which is the estimated amount that the private sector will be required to spend in order to comply with this federal private sector mandate. The revenue provision will offset the budget cost of the reduced tariffs under the trade provision of the bill. The revenue provision will not impose a federal intergovernmental mandate on State, local, or tribal governments, as such governmental entities are generally exempt from federal income tax.

Estimate prepared by: Alyssa Trzeszkowski.

Estimate approved by: Rosemary Marcuss, Assistant Director for Tax Analysis.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, October 16, 1997.

Mrs. JUNE O'NEIL,
Director, Congressional Budget Office,
Washington, DC.

DEAR MRS. O'NEIL: The staff of the Joint Committee on Taxation has reviewed the revenue provision of H.R. 2644 ("United States-Caribbean Basin Partnership Act") as ordered reported by the House Committee on Ways and Means on October 9, 1997. In accordance with the requirements of Public Law 104–4, the Unfunded Mandates Reform Act of 1995, we have determined that the revenue offset provision of the bill contains a Federal private sector mandate: "clarify deduction for accrued severance pay."

As indicated in the enclosed revenue table, this provision is estimated to increase tax revenue by $249 million over fiscal years 1998–2002, which is the estimated amount that the private sector will be required to spend in order to comply with this Federal private sector mandate. The revenue raised from this provision will offset the budget cost of the reduced tariffs under the trade provisions of the bill. The revenue provision will not impose a Federal intergovernmental mandate on State, local, or tribal governments, as such governmental entities are generally exempt from Federal income tax.

If you would like to discuss this information further, you may call me or my staff.

Sincerely,

KENNETH J. KIES, *Chief of Staff.*

Enclosure: Revenue table.

ESTIMATED BUDGET EFFECTS OF A REVENUE OFFSET FOR H.R. 2644, THE ''UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT,'' AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS; FISCAL YEARS 1998–2002

[In millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	1998–02
1. Clarify deduction for accrued severance pay	tyea 10/8/97	66	105	55	11	12	249

Note: Details may not add to totals due to rounding.

Legend for ''Effective'' column: tyea=taxable years ending after.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee concludes that the actions taken in this legislation are appropriate given its oversight of international trade and tax matters.

B. Summary of Findings and Recommendations of the Committee on Government Reform and Oversight

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Reform and Oversight with respect to the provisions in H.R. 2644.

C. Constitutional Authority Statement

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 (''The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States * * *'').

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the provision of the bill relating to the repeal of the 14-day rule on rental of vacation property will impose a Federal mandate on the private sector in the amount shown in the CBO estimate, above. This revenue is needed to offset the budget cost of the Trade Adjustment Assistance provision. This provision of the bill will not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI5(c)

Rule XXI5(c) of the Rules of the House of Representatives provides, in part, that ''No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members.” The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increase within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, 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 italic, existing law in which no change is proposed is shown in roman):

THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT

* * * * * * *

SEC. 212. BENEFICIARY COUNTRY.

(a) * * *

* * * * * * *

(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 county, 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).

(B)(i) Based on the President's review and analysis described in subsection (f), the President may determine if the preferential treatment under section 213(b)(2) and (3) should be withdrawn, suspended, or limited with respect to any article of a partnership country. Such determination shall be included in the report required by subsection (f).

(ii) Withdrawal, suspension, or limitation of the preferential treatment under section 213(b)(2) and (3) with respect to a partnership country shall be taken only after the requirements of subsection (a)(2) and paragraph (2) of this subsection have been met.

* * * * * * *

⟦(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.—Not later than 1 year after the date of the enactment of the United States-Caribbean Trade Partnership Act and at 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—

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

(2) with respect to subsection (c)(4), the degree to which a country follows accepted rules of international trade provided for under the General Agreement on Tariffs and Trade and the World Trade Organization;

(3) with respect to subsection (c)(9), the extent to which beneficiary countries are providing or taking steps to provide protection of intellectual property rights comparable to the protection provided to the United States in bilateral intellectual property rights agreements;

(4) with respect to subsection (b)(2) and subsection (c)(5), the extent that beneficiary countries are providing or taking steps to provide protection of investment and investors comparable to the protection provided to the United States in bilateral investment treaties;

(5) with respect to subsection (c)(3), the extent that beneficiary countries are providing the United States and other WTO members (as such term is defined in section 2(10) of the Uruguay Round Agreements Act (19 U.S.C. 3501(10)) with equitable and reasonable market access in the product sectors for which benefits are provided under this title;

(6) with respect to subsection (c)(11), the extent that beneficiary countries are cooperating with the United States in administering the provisions of section 213(b); and

(7) with respect to subsection (c)(8), the extent that beneficiary countries are meeting the internationally recognized worker rights criteria under such subsection.

In the first report under this subsection, the President shall include a review of the implementation of section 213(b), and his analysis of whether the benefits under paragraphs (2) and (3) of such section further the objectives of this title and whether such benefits should be continued.

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 section 213(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) * * *

* * * * * * *

(5) The duty-free treatment provided under this ⟦chapter⟧ *title* shall apply to an article (other than an article listed in subsection (b)) which is the growth, product, or manufacture of the Commonwealth of Puerto Rico if—

(A) * * *

* * * * * * *

(6) Notwithstanding paragraph (1), the duty-free treatment provided under this title shall apply to liqueurs and spirituous beverages produced in the territory of Canada from rum if—

(A) such rum is the growth, product, or manufacture of a beneficiary country or of the Virgin Islands of the United States;

(B) such rum is imported directly from a beneficiary country or the Virgin Islands of the United States into the territory of Canada, and such liqueurs and spirituous beverages are imported directly from the territory of Canada into the customs territory of the United States;

(C) when imported into the customs territory of the United States, such liqueurs and spirituous beverages are classified in subheading 2208.90 or 2208.40 of the HTS; and

(D) such rum accounts for at least 90 percent by volume of the alcoholic content of such liqueurs and spiritous beverages.

⟦(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, 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 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; 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 HTS column 2 rates of duty apply.⟧

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

(A) EQUIVALENT TARIFF AND QUOTA TREATMENT.—During the transition period—

(i) the tariff treatment accorded at any time to any textile or apparel article that originates in the territory of a partnership country shall be identical to the tariff treatment that is accorded at such time under section 2 of the Annex to an article described in the same 8-digit subheading of the HTS that is a good of Mexico and is imported into the United States;

(ii) duty-free treatment under this title shall apply to any textile or apparel article that is imported into the United States from a partnership country and that—

(I) is assembled in a partnership country, from fabrics wholly formed and cut in the United States from yarns formed in the United States, and is entered—

(aa) under subheading 9802.00.80 of the HTS; or

(bb) under chapter 61, 62, or 63 of the HTS if, after such assembly, the article would have qualified for treatment under subheading 9802.00.80 of the HTS, but for the fact the article was subjected to bleaching, garments dyeing, stone-washing, enzyme-washing, acid-washing, perma-pressing, oven-baking, or embroidery; or

(II) is knit-to-shape in a partnership country from yarns wholly formed in the United States;

(III) is made in a partnership country from fabric knit in a partnership country from yarns wholly formed in the United States;

(IV) is cut and assembled in a partnership country from fabrics wholly formed in the United States from yarns wholly formed in the United States; or

(V) is identified under subparagraph (C) as a handloomed, handmade, or folklore article of such country and is certified as such by the competent authority of such country; and

(iii) no quantitative restriction or consultation level may be applied to the importation into the United States of any textile or apparel article that—

(I) originates in the territory of a partnership country, or

(II) qualifies for duty-free treatment under subclause (I), (II), (III), (IV), or (V) of clause (ii).

(B) NAFTA TRANSITION PERIOD TREATMENT OF OTHER NONORIGINATING TEXTILE AND APPAREL ARTICLES.—

(i) PREFERENTIAL TARIFF TREATMENT.—Subject to clause (ii), the President may place in effect at any time during the transition period with respect to any textile or apparel article that—

(I) is a product of a partnership country, but

(II) does not qualify as a good that originates in the territory of a partnership country or is eligible for benefits under subparagraph (A)(ii),

tariff treatment that is identical to the in-preference-level tariff treatment accorded at such time under Appendix 6.B of the Annex to an article described in the same 8-digit subheading of the HTS that is a product of Mexico and is imported into the United States. For purposes of this clause, the "in-preference-level tariff treatment" accorded to an article that is a product of Mexico is the rate of duty applied to that article when imported in quantities less than or equal to the quantities specified in Schedule 6.B.1, 6.B.2., or 6.B.3. of the Annex for imports of that article from Mexico into the United States.

(ii) LIMITATIONS ON ALL ARTICLES.—(I) Tariff treatment under clause (i) may be extended, during any calendar year, to not more than 45,000,000 square meter equivalents of cotton or man-made fiber apparel, to not more than 1,500,000 square meter equivalents of wool apparel, and to not more than 25,000,000 square meter equivalents of goods entered under subheading 9802.00.80 of the HTS.

(II) Except as provided in subclause (III), the amounts set forth in subclause (I) shall be allocated among the 7 partnership countries with the largest volume of exports to the United States of textile and apparel goods in calendar year 1996, based upon a pro rata share of the volume of textile and apparel goods of each of those 7 countries that entered the United States under subheading 9802.00.80 of the HTS during the first 12 months of the 14-month period ending on the date of the enactment of the United States-Caribbean Trade Partnership Act.

(III) Five percent of the amounts set forth in subclause (I) shall be allocated among the partnership countries, other than those to which subclause (II) applies, based upon a pro rata share of the exports to the United States of textile and apparel goods of each of those countries during the first 12 months of the 14-month period ending on the date of the enactment of the United States-Caribbean Trade Partnership Act.

(iii) PRIOR CONSULTATION.—The President may implement the preferential tariff treatment described in clause (i) only after consultation with representatives of the United States textile and apparel industry and other interested parties regarding—

(I) the specific articles to which such treatment will be extended,

(II) the annual quantities of such articles that may be imported at the preferential duty rates described in clause (i), and

(III) the allocation of such annual quantities among beneficiary countries.

(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—For purposes of subparagraph (A), the Trade Representative shall consult with representatives of the partnership country for the purpose of identifying particular textile and apparel goods that are mutually agreed upon 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) BILATERAL EMERGENCY ACTIONS.—(i) The President may take—

(I) bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any textile or apparel article imported from a partnership country if the application of tariff treatment under subparagraph (A) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to an article described in the same 8-digit subheading of the HTS that is imported from Mexico; or

(II) bilateral emergency quantitative restriction actions of a kind described in section 5 of the Annex with respect to imports of any textile or apparel article described in subparagraphs (B)(i) (I) and (II) if the importation of such article into the United States results in conditions that would be cause for the taking of such actions under such section 5 with respect to a like article that is a product of Mexico.

(ii) The requirement in paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not be deemed to apply to a bilateral emergency action taken under this subparagraph.

(iii) For purposes of applying bilateral emergency action under this subparagraph—

(I) the term "transition period" in sections 4 and 5 of the Annex shall be deemed to be the period defined in paragraph (5)(E); and

(II) any requirements to consult specified in section 4 or 5 of the Annex are deemed to be satisfied if the President requests consultations with the partnership country in question and the country does not agree to consult within the time period specified under such section 4 or 5, whichever is applicable.

(3) NAFTA TRANSITION PERIOD TREATMENT OF CERTAIN OTHER ARTICLES ORIGINATING IN BENEFICIARY COUNTRIES.—

(A) EQUIVALENT TARIFF TREATMENT.—

(i) IN GENERAL.—Subject to clause (ii), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that originates in the territory of a partnership country shall be identical to the tariff treatment that is accorded at such time under Annex 302.2 of the NAFTA to an article de-

scribed in the same 8-digit subheading of the HTS that is a good of Mexico and is imported into the United States.

(ii) EXCEPTION.—Clause (i) does not apply to any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS.

(B) RELATIONSHIP TO SUBSECTION (h) DUTY REDUCTIONS.—If at any time during the transition period the rate of duty that would (but for action taken under subparagraph (A)(i) in regard to such period) 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 for the purposes of implementing such action.

(4) CUSTOMS PROCEDURES.—

(A) IN GENERAL.—

(i) REGULATIONS.—Any importer that claims preferential tariff 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.—In order to qualify for such preferential tariff treatment 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—

(I) the partnership country from which the article is exported, and

(II) each partnership country in which materials used in the production of the article originate or undergo production that contributes to a claim that the article qualifies for such preferential tariff treatment,

has implemented and follows, or 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.

(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.

(C) PENALTIES FOR TRANSSHIPMENTS.—If the President determines, based on sufficient evidence, that an exporter has engaged in willful illegal transshipment or willful customs fraud with respect to textile or apparel articles for which preferential tariff treatment under subparagraph (A) or (B) of paragraph (2) is claimed, then the President shall

deny all benefits under this title to such exporter, and any successors of such exporter, for a period of 2 years.

(D) STUDY BY USTR ON COOPERATION OF OTHER COUNTRIES CONCERNING CIRCUMVENTION.—The United States Commissioner of Customs shall conduct a study analyzing the extent to which each partnership country—

(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning fiber content, quantities, description, classification, or origin of textile and apparel goods; and

(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Trade Representative shall submit to the Congress, not later than October 1, 1998, a report on the study conducted under this subparagraph.

(5) DEFINITIONS.—For purposes of this subsection—

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

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

(C) The term "partnership country" means a beneficiary country.

(D) The term "textile or apparel article" means any article referred to in paragraph (1)(A) that is a good listed in Appendix 1.1 of the Annex.

(E) The term "transition period" means, with respect to a partnership country, the period that begins on May 15, 1998, and ends on the earlier of—

(i) July 15, 1999; or

(ii) the date on which—

(I) the United States first applies the NAFTA to the partnership country upon its accession to the NAFTA, or

(II) there enters into force with respect to the United States and the partnership country a free trade agreement comparable to the NAFTA that makes substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of

the North American Free Trade Agreement Implementation Act (19 U.S.C. 3317(b)(5)).

(F) An article shall be deemed as originating in the territory of a partnership country if the article meets the rules of origin for a good set forth in chapter 4 of the NAFTA, and, in the case of an article described in Appendix 6.A of the Annex, the requirements stated in such Appendix 6.A for such article to be treated as if it were an originating good. In applying such chapter 4 or Appendix 6.A with respect to a partnership country for purposes of this subsection—

(i) no countries other than the United States and partnership countries may be treated as being Parties to the NAFTA,

(ii) references to trade between the United States and Mexico shall be deemed to refer to trade between the United States and partnership countries, and

(iii) references to a Party shall be deemed to refer to the United States or a partnership country, and references to the Parties shall be deemed to refer to any combination of partnership countries or the United States.

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