Florida State University Journal of Transnational Law & Policy

Volume 12 | Issue 1 Article 3

2002

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Dypski, Michael Cornell (2002) "The Caribbean Basin Initiative: An Examination of Structural Dependency, Good Neighbor Relations, and American Investment," *Florida State University Journal of Transnational Law & Policy*: Vol. 12: Iss. 1, Article 3.
Available at: https://ir.law.fsu.edu/jtlp/vol12/iss1/3

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Cover Page Footnote

The author, a member of the Maryland and District of Columbia Bars, holds a B.A. in political science from Saint Mary's College of Maryland, a M.A. in International Affairs from The Elliott School of International Affairs at The George Washington University, and a J.D. from The University of Baltimore School of Law. He currently is pursuing an LL.M. in International and Comparative Law at The Georgetown University Law Center.

This article is available in Florida State University Journal of Transnational Law & Policy: https://ir.law.fsu.edu/jtlp/vol12/iss1/3

THE CARIBBEAN BASIN INITIATIVE: AN EXAMINATION OF STRUCTURAL DEPENDENCY, GOOD NEIGHBOR RELATIONS, AND AMERICAN INVESTMENT

MICHAEL CORNELL DYPSKI[1]

Table of Contents

1. The author, a member of the Maryland and District of Columbia Bars, holds a B.A. in political science from Saint Mary's College of Maryland, a M.A. in International Affairs from The Elliott School of International Affairs at The George Washington University, and a J.D. from The University of Baltimore School of Law. He currently is pursuing an LL.M. in International and Comparative Law at The Georgetown University Law Center.

I. INTRODUCTION

On May 18, 2000, President William Clinton signed into law the Trade and Development Act of 2000.[2] The goal of the Act is to "authorize a new trade and investment policy for sub-Saharan Africa, expand trade benefits to the countries in the Caribbean Basin, renew the generalized system of preferences, and reauthorize the trade adjustment assistance programs."[3]

The focus of this paper is to examine Title II of this Act, the United States-Caribbean Basin Trade Partnership Act ("CBTPA")[4] and its predecessors. The CBTPA is actually the third in a series of legislation for a "comprehensive program 'to promote economic revitalization and facilitate expansion of economic opportunity in the Caribbean Basin region.'"[5] The Caribbean Basin Economic Recovery Act of 1983 ("CBERA") and the Caribbean Basin Economic Recovery Expansion Act of 1990 laid the foundation for the current American trade framework in the region outlined in the CBTPA. Collectively, these three acts are known as the Caribbean Basin Initiative ("CBI").

Part II of this paper will provide the basic historical dynamic and background of the United States' role in Latin America and the Caribbean, which gave birth to the CBI. This background will lead to a discussion of these three pieces of international law, with obvious emphasis on the current legislation.

Part III will discuss and analyze the Caribbean Basin Economic Recovery Act of 1983, the Caribbean Basin Economic Recovery Expansion Act of 1990, and the Caribbean Basin Trade Partnership Act of 2000.

Part IV will include the role of American companies and their input of foreign direct investment ("FDI") in the region, as well as the political, economic, and social climates of several of the beneficiary CBI states and their attitudes toward the United States' FDI.

This paper will conclude with discussion of the future viability of the CBI in an expanding free trade environment dominated by the North American Free Trade Agreement and the World Trade Organization, and whether the CBI provides real opportunity for the American investor in the region.

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2. Pub. L. No. 106-200, 114 Stat. 251 (2000) (codified in scattered sections of 19 U.S.C.).
3. *Id.*
4. *Id.* §201.
5. THE CARIBBEAN BASIN: ECONOMIC AND SECURITY ISSUES, S. PRINT NO. 102-110, at 332 (1993) (quoting President Ronald Reagan in a February 1982 speech before the Organization of American States).

II. HISTORICAL BACKGROUND

The success of the Cuban Revolution of 1959 brought about an amalgamation of Marxism-socialism, reformist concepts of economic dependency in the Caribbean and Latin America, and blatant anti-imperialism to the backyard of the United States.[6] Due to weak adherence of the United States to its "good neighbor policy"[7] and the growing popularity of the structural dependency theory[8] as a viable explanation for the economic, political, and social woes of the Third World, pro-Soviet and anti-capitalist sentiments were fomented in the struggling Latin American and Caribbean region. The "good neighbor policy" of United States-Latin American relations was an attempt, at times vain, to diminish the American shadow in the region and lessen its role as the "colossus of the north."[9]

In an effort to remedy some of the vast inequalities in the Caribbean and Latin America and perhaps to quash growing communist sentiments, the United States under President John Kennedy, with the support of several Latin American countries, proclaimed the Alliance for Progress in 1961.[10] Under the plan, the United States was to provide a substantial portion of the $20 billion in funding deemed necessary for the alliance, including more than

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6. EDWIN WILLIAMSON, THE PENGUIN HISTORY OF LATIN AMERICA 354 (1992).

7. ROBERT H. FERRELL, AMERICAN DIPLOMACY 765-793 (3d ed. 1975). Succinctly, the "good neighbor policy," usually attributed to President Franklin Roosevelt, is a policy of non-intervention. *Id.* Roosevelt, in his 1933 inaugural address, set forth "a new spirit of cooperation rather than intimidation" in the United States' relationships with other nations in the world. MICHAEL J. KRYZANEK, U.S.-LATIN AMERICAN RELATIONS 52 (2d ed. 1990). Roosevelt stated:

> In the field of world policy, I would dedicate this nation to the policy of the good neighbor — the neighbor who resolutely respects himself and, because he does so, respects the rights of others — the neighbor who respects his obligations and respects the sanctity of his agreements in and with a world of neighbors.

Id. at 53.

The "good neighbor policy" marked a significant change in the American approach to other states in the Western Hemisphere. Prior to the 1930s, the United States continued to adhere to the Monroe Doctrine, promulgated by the fifth President in 1823. Basically, this policy asserted the sovereignty of the United States in all hemispheric matters and acted as a warning to the European powers to refrain from interfering in the affairs of the United States and the newly independent nations of Latin America. *See id.* at 24-27.

8. *See* G. POPE ATKINS, LATIN AMERICA IN THE INTERNATIONAL POLITICAL SYSTEM 348-49 (3d ed. 1995).

9. FERRELL, *supra* note 7, at 765. The overthrow of the Arbenz government in Guatemala (1954), the Central Intelligence Agency debacle at the Bay of Pigs, Cuba (1961), the Marine invasion of the Dominican Republic (1965), and the U.S. assisted toppling of the Allende government in Chile (1972) are stark examples of the fragility of striking balance between perceived American national security interests and good neighbor relations with Latin America and the Caribbean. See WILLIAMSON, *supra* note 6, at chs. 9, 12 & 14, for concise histories of these episodes of intervention.

10. *See* FERRELL, *supra* note 7, at 789.

$1 billion the first year.[11] Unfortunately, the Alliance for Progress failed. Under the plan, most of the development in the region was to come from private investment. However, due to the overall social, economic, and political turbulence in the region, some new, some ancient, private investors ignored Kennedy's call.[12]

Shortly after the creation of the United Nations in 1945, one of its agencies, the Economic Commission for Latin America and the Caribbean ("ECLA"), published a thorough and radical analysis of economic development in the region.[13] Inspired and promulgated by the Argentine economist Raúl Prebisch, the structural dependency theory "visualizes the world economy in terms of a 'center-periphery' structure", with capitalist-industrialized nations forming the center and the developing-underdeveloped world at the periphery.[14] Under the structural dependency theory, the states of Latin America and the Caribbean remain under a "form of colonialism."[15] Prebisch stressed the necessity for economic reform in the states of the region. He urged for a widening and deepening of economic integration, an expansion of local markets, and mass industrialization as the means for sustained growth and development.[16] Prebisch advocated foreign intervention in the economies of the developing-underdeveloped world through "public economic assistance, private investment, and trade preferences", but stressed the ultimate goal of domestic fiscal independence.[17] By the

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11. *Id.*

12. *Id.* Professor Ferrell states that:

> Problems . . . arise out of the extremely unequal distribution of wealth and position in Latin America. The United States as a true democracy has become a sort of showcase to all Latin America, and many of the Latins with the increased advantages of education are going to ask questions about the medieval social structures in some of their nations. Getting these structures adjusted to modern . . . realities may bring considerable political . . . perhaps international trouble.

Id.

Professor Ferrell's description of the situation of the region is starkly accurate, albeit perhaps coarse. He continues with:

> [the nations of Latin American and the Caribbean] "did not have the pool of skilled manpower such as Europe possessed on the eve of the Marshall Plan. After several years, the Alliance for Progress petered out, going the way of so many other projects and dreams for the betterment of the Western Hemisphere . . . [In the region] the United States has seemed constantly to be coming up against dead ends, but no better policy has appeared . . . than that of the good neighbor.

Id.

13. ATKINS, *supra* note 8, at 348.

14. *Id.* at 348-49.

15. *Id. at 349.*

16. *Id.*

17. *Id.* As quoted in ATKINS, Mr. Prebisch said that "[e]xternal cooperation is important, but only as a means of supplementing and stimulating internal action, not as a substitute for

late 1980s and into the early 1990s, Latin America and the Caribbean generally abandoned the structural dependency approach, as greater democratization efforts and economic liberalization (i.e., laissez faire, market-driven forces) gained favor.[18]

Structuralism, burgeoning adherence to Cuban-style Marxist ideology, and strengthening anti-American sentiments would forge an environment in Latin America and the Caribbean, which by the late 1970s and early 1980s, would reach such a magnitude to force Washington to pay greater attention to its southern neighbors.

The United States, stymied and suffering from the so-called "Vietnam syndrome," was either unwilling or unable to confront the "revolutionary change" threatening its foreign policy and national security interests.[19] What follows are some examples reflecting this sea of change in American foreign policy from that of activism to delayed intervention. These events would forge the United States' ambition to gain positive influence in Latin America and the Caribbean and promote democracy and free trade.

- In 1979, the Sandinista front overthrew the Somoza dictatorship in Nicaragua, establishing the first successful Marxist revolution in the Western Hemisphere since the Cuban Revolution.[20]

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it." *Id.*

18. *Id.* As will be set forth below, President Clinton advocated a greater expansion of the CBI, emerging as the CBTPA of 2000. The author of this article believes that the CBI, while a needed tool for Caribbean economic development and political stability, is the continuation of a long-standing structural dependent relationship between the United States and her southern neighbors. Interestingly, in 1994, Clinton called for greater domestic state intervention to promote self-sufficiency in the Caribbean and Latin America. *See* DUNCAN GREEN, SILENT REVOLUTION: THE RISE OF MARKET ECONOMICS IN LATIN AMERICA 178 (1995). American policy-makers favored increased research and development, more government spending on infrastructure, and greater governmental intervention in industrial planning. *Id.* Clinton's Under-Secretary for International Affairs at the U.S. Treasury, Lawrence Summers, in a speech to the InterAmerican Development Bank stated that "markets alone, without government action, cannot bring the shared prosperity that we crave . . . [This idea] should be top of any agenda for Latin America and the Caribbean today." *Id.*

However, the United States has been slow to practice what it has preached. It has been pointed out that while the United States

> advocates 'managed trade' in its own dealings with countries like Japan, it is unwilling to countenance such activities from the South, for which it continues to prescribe large doses of free trade and deregulation. The flow of ideas from the North has nourished the debate, but the political pressures from Washington have continued to close it down.

Id.

19. KRYZANEK, *supra* note 7, at 221.

20. *See* THOMAS C. WRIGHT, LATIN AMERICA IN THE ERA OF THE CUBAN REVOLUTION 175-76 (1991).

- A year later, the Nicaraguan Revolution inspired the FMLN-led revolutionary movement in El Salvador in an attempt to emulate their Marxist comrades in Managua.[21]
- Throughout the 1970s, Jamaica, Grenada, and Guyana were "openly pro-Cuba"[22] and quite adept at playing the "Cuban card."[23] The leaders of the Caribbean had remarkable "political *savoir faire* . . . most of them of Fabian socialist persuasion. They understood the limits of Washington's interests beyond geopolitics and were also wary of the stirrings on their left."[24] Many leaders in the Caribbean, most notably Michael Manley and Edward Seaga of Jamaica and Maurice Bishop of Grenada, "began to exploit" the United States-Cuban tension to suit their own political and personal objectives.[25]

This economic, political, and ideological maelstrom at America's "third border"[26] caused Washington to counter with a tool of containment known as the Caribbean Basin Initiative. "Designed as a means of responding to communist-inspired revolution through a comprehensive trade and aid policy," the Caribbean Basin Initiative united the Caribbean and Central America into a single strategic area "that would benefit from more liberal access to [America's] markets, greater economic assistance, and more incentives for capital investment."[27] Ravaged by revolution and overall state instability, the CBI was viewed as a means to

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21. *Id.* at 95-96. The FMLN (Frente Farabundo Martí de Liberación Nacional) movement in El Salvador, having never gained complete control of the country and weakened by the collapse of the Sandinista government in Nicaragua, eventually failed by the beginning of the 1990s.

22. ANTHONY P. MAINGOT, THE UNITED STATES AND THE CARIBBEAN 120 (1994).

23. *Id.* at 114-39.

24. *Id.* at 119.

25. *Id.* at 114-39. *See also* Steven G. Fishbach, *"The Quiet Revolution": Trade and Investment Liberalization in Chile and Jamaica*, 48 ADMIN. L. REV. 527, 535 (1996) (recognizing that "[d]uring his first year as prime minister, Seaga successfully courted foreign investment and aid by skillfully 'maneuvering the geopolitical Cold War setting to extract the most from . . . the United States.").

26. President Ronald Reagan called Central America and the Caribbean the United States' "third border." *See* KRYZANEK, *supra* note 7, at 80.

27. *Id.* *See also* Mark Baker, *Privatization in the Developing World: Panacea for the economic ills of the Third World or prescription overused?*, 18 N.Y.L. SCH. J. INT'L & COMP. L. 233, 247 (1999).

> Bilateral trade agreements like the Caribbean Basin Initiative, which served to spur foreign assembly plants in the Caribbean to take advantage of low labor costs, gave the development of export-assembly industries some momentum. The Caribbean nations in turn were permitted increased access to U.S. markets. This type of industrialization which sought the input of foreign investors was termed "industrialization by invitation."

Id.

resuscitate the struggling region. The program made starkly evident the importance and vitality of the Caribbean region to the interests of the United States as the Soviet-Cuban menace loomed.[28] The CBI began as a "Marshall Plan" tailored for the Caribbean.[29] This paper will examine the utility of the regime today and whether the United States' government, as well as its investment concerns, have aided in the reconstruction and development of the CBI beneficiary members.

III. THE CARIBBEAN BASIN INITIATIVE

A. *Phase Two: The Caribbean Basin Economic Recovery Act of 1983*

On August 5, 1983, President Ronald Reagan signed into law The Caribbean Basin Economic Recovery Act,[30] the "cornerstone of [the] CBI."[31] For exporters in the Caribbean, "the intended hallmarks of CBI were simplicity and ease of use."[32] Most Caribbean exports are eligible for preferential treatment under the CBI or the United States Generalized System of Preferences ("GSP").[33] However, the GSP has a complicated duty structure considered by some to "disadvantage small, relatively inexperienced" exporters and producers in the Caribbean.[34] The CBERA is a means to quickly and efficiently promote a modernization in the Caribbean economic base from a few, "low value 'traditional'" and agricultural goods, like sugar, bananas, and coffee, to more diverse, manufactured products.[35] What follows is a

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28. Keiron E. Hylton, *International Trade: Elimination of Tariffs on Caribbean Products*, 25 HARV. INT'L L.J. 245, 249 (1984).

29. *Id.*

30. Pub. L. No. 98-67 (1983) (codified at 19 U.S.C. §§ 2701-2706, & 7652 (Supp. 1983)). Pub. L. No. 98-67 consists of two titles. Title I is entitled "Interest and Dividend Tax Compliance." This title is of no relevance for purposes of this paper. Title II is entitled the "Caribbean Basin Initiative." Title II consists of three subtitles: Subtitle A (codified at 19 U.S.C. §§ 2701-2706), deals with duty-free treatment; Subtitle B (codified at 26 U.S.C. § 7652) sets forth various tax provisions, particularly in regards to rums from Puerto Rico and the United States Virgin Islands; and Subtitle C (§ 231) in response to Congressional concerns over communism in the region, section 231 simply states: "It is the sense of the Congress that sugar from any Communist country in the Caribbean Basin or in Central America should not be imported into the United States."

31. Rachel Shub, *Recent U.S. Trade and Investment Initiatives in Latin America and the Caribbean*, 789 PLI/Corp. 585, 597 (1992).

32. James E. Stamps, *Caribbean Basin Initiative: Ten Years of Trade Preference*, 3 FLA. ST. J. TRANSNAT'L L. & POL'Y 149, 150 (1994).

33. *Id.*

34. *Id.* at 151.

35. *Id.* at 150.

summary of the major provisions of the CBERA considered relevant for purposes of this paper.

Section 211 gives the President authority to "proclaim duty-free treatment or other preferential treatment for all eligible articles from any beneficiary country."[36] Under Section 212(a) of the Act, the President may designate a country as a beneficiary of the CBI under proclamation, after notifying both the House of Representatives and the Senate.[37] Conversely, the President may terminate a beneficiary's CBI designation by proclamation after notification to Congress and sixty days notice to the beneficiary at issue.[38] Reasons for the withdrawal of CBI privileges must be provided to that country.[39]

At the creation of the CBERA, twenty-seven nations and territories were designated as "beneficiary countries."[40] These included Anguilla, Antigua and Barbuda, The Bahamas, Barbados, Belize, British Virgin Islands, Cayman Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, Saint Christopher-Nevis [now known as Saint Kitts and Nevis], Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, and the Turks and Caicos Islands.[41] For these states to acquire "beneficiary country" status, they have to satisfy seven conditions, some of which could be waived.

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36. 19 U.S.C. § 2701 (2000). This authority differs from the Presidential authority to proclaim duty-free treatment under the Generalized System of Preferences ("GSP"). *Id.* § 2463(a). Under the GSP, advice from the International Trade Commission ("ITC") is a precondition to a granting of duty-free treatment. Under the CBI, advice from the ITC is not necessary. *See* Francis W. Foote, *The Caribbean Basin Initiative: Development, Implementation, and Application of the Rules of Origin and Related Aspects of Duty-Free Treatment*, 19 GEO. WASH. J. INT'L L. & ECON. 245, 267 n.101 (1985).

37. 19 U.S.C. § 2702(a)(1)(A).

38. *Id.* § 2702(a)(2).

39. *Id.*

40. *Id.* § 2702(b).

41. *Id.* On January 1, 1984, twenty of these "beneficiary countries" were eligible for CBI status: Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago. The Bahamas was designated in March 1985. Upon becoming independent from the Netherlands Antilles in April 1986, Aruba joined the CBI. Guyana was designated in November 1988. Nicaragua was designated in November 1990. Panama's CBI status was suspended in April 1988, but restored in March 1990. Anguilla, the Cayman Islands, Suriname, and the Turks and Caicos Islands have not requested beneficiary status. *See* USTR, *Third Report to the Congress on the Operation of the Caribbean Basin Economic Recovery Act* 9 (1999), *at* http://www.ustr.gov/regions/whemisphere/camerica/3rdreport.pdf (last visited May 15, 2002).

Under Section 212(b), the President is proscribed from designating any of the preceding twenty-seven states as beneficiary countries if their government:

> (1) is Communist or appears to be "controlled by international communism (i.e., by the Soviet Union);"[42]
> (2) "has nationalized, expropriated, or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which was owned 50% or more by United States citizens."[43] This includes actions "to repudiate or nullify any existing contract or agreement with any patent, [44] trademark, or other intellectual property"[45] of imposing taxes, exactions, or maintenance and operational restrictions so as to effectively seize, nationalize, and expropriate American property or business concerns.[46] This condition could be mollified if the President determines that the offending state has made or is putting forth a good faith effort to provide prompt, adequate, and effective compensation for its taking actions;[47]
> (3) fails to recognize binding arbitral awards in favor of the United States;[48]
> (4) gives preferential treatment to other developed nations, besides the United States, which has or could have a significant detrimental effect on American commerce;[49]
> (5) violates intellectual property laws by broadcasting materials of American copyright owners without their consent;[50] and
> (6) does not have signatory status to a treaty, convention, or protocol regarding the extradition of citizens of the United States.[51]

42. Foote, *supra* note 36, at 269.
43. 19 U.S.C. § 2702(b)(2)(A).
44. *Id.* § 2702(b)(2)(B)(i).
45. *Id.* § 2702(b)(2)(B)(ii).
46. *Id.* § 2702(b)(2)(C).
47. *Id.*
48. *Id.* § 2702(b)(3).
49. *Id.* § 2702(b)(4).
50. *Id.* § 2702(b)(5).
51. *Id.* § 2702(b)(6), *repealed by* Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, tit. IX,

While the preceding conditions are mandatory, those under paragraphs (1), (2), (3), and (5) could be waived only if the President determines, and reports to Congress, that the designation of the beneficiary country is in the national economic and security interests of the United States.[52]

Section 212(c) lists several additional, and wholly discretionary, criteria the President must take into account in an executive determination of bestowing beneficiary status to an eligible state.[53] These conditions were intended to ensure that each designated country is engaging in market-oriented policies and programs that will allow the CBI to properly function as a tool of economic development.[54] The Executive must consider:

> (1) an expression by a beneficiary country of its desire to join CBI;[55]
> (2) the economic conditions, living standards, and other relevant economic factors of the country;[56]
> (3) the country's willingness to provide equitable and reasonable access to the markets and commodity resources of the country;[57]
> (4) the country's acceptance and adherence to rules of international trade in accordance with the General Agreement on Tariffs and Trade and section 2(a) of the 1979 Trade Agreements Act;[58]
> (5) the degree to which a country uses trade distortion maneuvers, such as export subsidies, export performance requirement, or local content requirements;[59]
> (6) the degree to which a country employs trade policies which contribute to the overall revitalization of the Caribbean Basin region;[60]

§ 9002(b), 100 Stat. 3207-166 (1986).

52. *Id.* § 2702(b)(7).
53. *Id.* § 2702(c).
54. Foote, *supra* note 36, at 276 n.160.
55. 19 U.S.C. § 2702(c)(1).
56. *Id.* § 2702(c)(2).
57. *Id.* § 2702(c)(3).
58. *Id.* § 2702(c)(4).
59. *Id.* § 2702(c)(5).
60. *Id.* § 2702(c)(6).

(7) the degree to which a country is engaging in self-help practices and measures to promote and ensure its own economic development;[61]
(8) the degree to which a country has in place policies promoting worker's rights and permitting rights of organization and collective bargaining;[62]
(9) the countries' protections of the intellectual property rights of foreign nationals, including patents, trademarks, copyrights, and broadcast materials;[63] and
(10) the countries' willingness to cooperate with the United States in the overall, general administration of the CBI.[64]

Section 213, entitled "Eligible Articles," deals with duty-free treatment of certain goods under the CBERA.[65] Under the Act's rules of origin, duty-free treatment is afforded to any article which is the "growth, product, or manufacture of a beneficiary country" and enters the United States directly from a beneficiary country.[66] Furthermore, the article must have an added value of at least 35 percent reflecting the cost of the materials produced plus the direct costs of processing operations.[67]

Section 213(b) lays out articles specifically excluded from preferential CBI treatment.[68] These article include:

(1) textiles and apparel subject to textile agreements;[69]

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61. *Id.* § 2702(c)(7).
62. *Id.* § 2702(c)(8).
63. *Id.* § 2702(c)(9)-(10).
64. *Id.* § 2702(c)(11).
65. *Id.* § 2703.
66. *Id.* § 2703(a)(1).
67. *Id.* § 2703(a)(1)(B). Under § 2703(a)(3), "direct costs of processing operations" includes all actual labor costs involved in production, assembly, and manufacture, as well as dies, molds, tooling, and depreciation attributable to the production of an eligible article.
68. *Id.* § 2703(b). See also Foote, *supra* note 36, at 282-289 for brief histories of Congress' considerations and rationale for the exclusion of these articles.
69. *Id. § 2703(b)(1)(A).* Under the CBERA, textiles are ineligible for duty-free treatment. However, in June 1986, the Special Access Program, known as Super 807 (HTS 9802.00.80.10, formerly 807.0010), was implemented to apply to "imports of textile apparel assembled in a CBI beneficiary from fabric formed as well as cut in the United States." S. PRINT NO. 102-110, *supra* note 5, at 339. "The U.S. components can be made of either U.S. or foreign fabric as long as the fabric is cut to shape in the United States and exported ready for assembly." CARIBBEAN BASIN ECONOMIC RECOVERY ACT: IMPACT ON THE UNITED STATES: 13TH REPORT, USITC PUB. 3132, 13 (1998). This ultra-CBERA provision gave reduced duty treatment and permitted bilateral negotiations to increase any applicable quotas in regards to apparel and textiles. *Id.* These "guaranteed access levels" agreements are in effect with several Caribbean

> (2) footwear, handbags, luggage, flat goods, work gloves, and leather apparel;[70]
> (3) tuna, prepared or preserved in any manner, in airtight containers;[71]
> (4) petroleum and products derived from petroleum;[72] and
> (5) watches and watch-related parts and accessories.[73]

Indicative of Congressional concern for the people of the developing states of the Caribbean region, section 213(c) sets forth a unique aspect of the CBERA. While the remainder of the Act focuses on the political and economic aspects of duty-free treatment of Caribbean goods, this section shows a willingness of the United States to protect the dietary needs of the people of the Caribbean and thwart greedy and unscrupulous producers of sugar and beef. The President is given wide discretion "to determine what constitutes an adequate plan in consideration of the fact that the agricultural capabilities of many Caribbean countries are limited by climatic, geographic and other factors."[74]

Within ninety days of designation, a beneficiary country must provide to the President a "stable food production plan" outlining the measures and proposals necessary to ensure that the nutritional levels of the region's population will not be adversely affected by an increase in sugar and beef production.[75] If the President either does not receive an acceptable plan or determines that a beneficiary country is not putting forth a good faith effort to institute a reasonable plan, he must suspend, after consultation with the offending country, the duty-free treatment.[76] The President shall remove the suspension upon satisfactory production, in the determination of the Executive, of a viable nutrition maintenance plan by the beneficiary country.[77]

The sugar industry has maintained "a crucial place in the economic and social lives" of the Caribbean people.[78] To this, the

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states, including Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Jamaica. *Id.*

70. 19 U.S.C. § 2703(b)(1)(B).
71. *Id.* § 2703(b)(1)(C).
72. *Id.* § 2703(b)(1)(D).
73. *Id.* § 2703(b)(1)(E).
74. Foote, *supra* note 36, at 294.
75. 19 U.S.C. § 2703(c).
76. *Id.* §§ 2703(c)(2)-(3).
77. *Id.* § 2703(c)(5).
78. REPORT OF THE WEST INDIAN COMMISSION: TIME FOR ACTION 173 (2d ed. 1993).

CBERA sets forth special rules in regards to sugars, syrups, and molasses in section 213(d).[79] This subsection is "intended to balance the need to prevent interference with the domestic price support program against the need to assure Caribbean Basin countries preferential access to U.S. sugar markets."[80] It also gives the President tremendous control over sugar imports into the United States. The President, in consultation with the Secretary of Agriculture, may suspend or adjust upward quantitative limitations on sugar, syrups, and molasses depending upon a determination of the exports' effect on the American price support program in place for sugar beets and sugar cane.[81]

Under subsection (e), the President may invoke protective measures, or safeguards, to respond to negative impacts of CBI duty-free treatment on American domestic industries.[82] By Executive proclamation, duty-free treatment may be suspended if founded upon either Section 203 of the Trade Act of 1974 or Section 232 of the Trade Expansion Act of 1962.[83] An Executive suspension of duty-free treatment shall be deemed an increase in duty under subsections (a) and (c) of section 203 of the Trade Act of 1974.[84] Following the proclamation, the ITC is to provide a report stating the possible, if any, negative impact of the article on domestic industries.[85] However, a discovery by the ITC of a negative impact alone, excluding a national security concern under Section 232 of the Trade Expansion Act of 1962, is insufficient for the Presidential

79. 19 U.S.C. § 2703(d) (Supp. 1983).

80. Foote, *supra* note 36, at 294.

81. 19 U.S.C. § 2703(e). *See also* Robert A. Pastor & Richard D. Fletcher, *Twenty-first Century Challenges for the Caribbean and the United States: Toward a New Horizon, in* DEMOCRACY IN THE CARIBBEAN: POLITICAL, ECONOMIC, AND SOCIAL PERSPECTIVES 264-265 (Jorge I. Domínguez et al. eds., 1993). The authors point out that Congress approved a new sugar quota system in 1981. Through this, imported sugar received a higher price, but the quota reductions caused severe overproduction. From 1975-1981, the United States imported 1.7 million tons of Caribbean sugar. This amount plummeted to only 442,000 tons in 1989. The potential revenue loss to the region from 1982 to 1989 was about $1.8 billion. Throughout the region during this period, close to 400,000 jobs were lost in the sugar industry. Five sugar mills closed in the Dominican Republic alone from 1982 to 1992. As the authors dramatically state: "The effect of U.S. sugar policy on the region has been comparable to that of the most ferocious natural or political disasters." Pastor & Fletcher, *supra* note 81, at 264.

82. 19 U.S.C. § 2703(e).

83. *Id.* § 2703(e)(1). Section 203(a)(1)(A) of the Trade Act of 1974 states, in part, "the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefit than costs." 19 U.S.C. § 2253(a)(1)(A) (Supp. 1983). Section 232 of the Trade Expansion Act of 1962 deals with the impact of imports on American national security. Following a negative recommendation of the Secretary of Commerce, the President must take necessary action to alleviate threats to national security from imports. 19 U.S.C. § 1862(b)(1)(A) (Supp. 1983).

84. 19 U.S.C. § 2703(e)(3).

85. *Id.* § 2703(e)(2).

proclamation to stand. The CBERA states that no proclamation which provides solely for a suspension of duty-free treatment of any article shall be made unless the United States International Trade Commission, "in addition to making an affirmative determination . . . determines in the course of its investigation . . . that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this title."[86]

Sections 215 and 216 of the CBERA requires that the International Trade Commission and the Secretary of Labor, respectively, draft reports to Congress, reviewing and analyzing the overall impact of CBI on the United States and its production, labor force, investment, and related matters.[87]

Section 218 contains the sunset provision of the Act. It states that the duty-treatment under the CBERA shall begin on the date of its enactment[88] and shall terminate on August 5, 1990.[89]

For purposes of this paper, the relevant portions of the CBERA have been covered. Next, this paper will discuss the changes and further development of the CBI under the Caribbean Basin Economic Recovery Expansion Act of 1990 ("Expansion Act"). This Act provides greater coverage of Caribbean articles eligible for duty-free treatment[90] and places more pressures upon the CBI states to ensure worker's rights and provides tax incentives for foreign direct investment from the United States into the region. After seven years, the Expansion Act was perceived as a remedy for the continued anemic economic malaise and stagnation in the Caribbean region. Although the United States International Trade Commission asserted, despite weak data, that the

86. *Id.* § 2703(e)(4).
87. 19 U.S.C. §§ 2704-2705 (Supp. 1983).
88. *Id.* § 2706(a) (Supp. 1983).
89. *Id.* § 2706(b).
90. For the CBI to be a worthwhile endeavor for all parties involved, the United States had to provide broader duty-free treatment for Caribbean goods. From 1983 to 1990, the growth of imports under the CBERA eligible goods, in absolute terms, had been smaller than that of CBERA non-eligible goods, the former increasing by $1.339 billion and the latter by $1.648 billion. S. PRINT NO. 102-110, *supra* note 5, at 338. This "suggesting that the effectiveness of the CBERA might need some improving. The same need is suggested by Congressional concerns that resulted in the Caribbean Basin Recovery Expansion Act of 1990." *Id.* Also, note that during the first four years after the inception of the CBI program, the major beneficiaries were the "larger and more economically diversified" states of The Dominican Republic, Jamaica, Costa Rica, Guatemala, and Honduras. Gregory K. Schoepfle & Jorge F. Perez-Lopez, *Employment Implications of Export Assembly Operations in Mexico and the Caribbean Basin*, *in* MIGRATION IMPACTS OF TRADE AND FOREIGN INVESTMENT 22 (Sergio Díaz-Briquets & Sidney Weintraub eds., 1991).

> 'CBERA has proven to be a success in many regards' and significant increases have been registered in some new or nontraditional U.S. imports under the preference e.g., frozen GSP-eligible orange juice, and ethanol; GSP-eligible jewelry, and medical instruments from selected countries, the CBERA and other related provisions have as yet not brought about substantial improvements in the overall export position of CBERA countries vis-à-vis the United States and, indirectly, in the diversification, restructuring, and/or expansion of the Caribbean economies as a whole. Nor does it appear that CBERA imports have grown faster than other imports from CBERA countries.[91]

B. *Phase Two: The Caribbean Basin Economic Recovery Expansion Act of 1990*

On August 20, 1990, the Customs and Trade Act of 1990 was signed into law.[92] Title II of the Act is entitled the "Caribbean Basin Economic Recovery Expansion Act of 1990".[93] Through this Act," Congress stressed that the "commitment of the United States to the successful development of the [Caribbean] region, as evidenced by the enactment of the Caribbean Basin Economic Recovery Act, should be reaffirmed, and further strengthened, by amending that Act to improve its operation."[94]

Perhaps the most notable portion of the Act is Section 211. This repealed Section 218 of the CBERA,[95] thereby extending CBI benefits indefinitely.

Under Section 213(b)(2) of the CBERA, footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel were not eligible for duty-free treatment.[96] Section 212 of the Expansion Act reduces tariffs on these goods, with the exclusion of footwear, by 20 percent over a five-year period, with a 2.5 percentage point limit.[97]

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91. S. PRINT NO. 102-100, *supra* note 5, at 338.
92. Pub. L. No. 101-382, 104 Stat. 629 (1990) (codified in scattered sections of 19 U.S.C.).
93. 19 U.S.C. § 2701 (Supp. 1990) (Congressional findings note 3).
94. *Id.*
95. 19 U.S.C. § 2706 (Supp. 1990).
96. *Id.* § 2703(b)(2) (Supp. 1983).
97. *Id.* § 2703(a)(Supp. 1990). This section was to go into effect on or after January 1, 1992. Also, the 20 percent duty reduction does not apply to articles with a tariff rate of more than 12.5 percent. *See id.*

Section 213 of the Expansion Act amends Section 212 of the CBERA to include another statement of the United States' concerns for labor by consideration of whether the beneficiary countries afford their citizens "internationally recognized worker rights."[98]

Section 215 of the Expansion Act enlarges the scope of eligible goods to those which are the "growth, product, or manufacture" of Puerto Rico.[99] These goods are duty-free as long as they are imported directly from a beneficiary country into the United States, have been further processed, "advanced," or "improved" in a beneficiary country, and, if any materials are added to the article in the beneficiary country, that material is a product of the beneficiary country or the United States.[100]

Under Section 222 of the Expansion Act, products, exclusive of textiles and petroleum products, are eligible for duty-free treatment if they are processed or assembled from components or ingredients wholly made in the United States.[101]

Fears of countervailing duties and causes of action from dumping are allayed in light of Section 224.[102] This law states that CBI imports will not be calculated in a cumulative manner, except in relationship to other beneficiary countries.[103] This provision "aims to make it less likely that imports from a CBI country will be found to be a cause of injury to U.S. industries."[104]

Finally, under Section 936 of the Internal Revenue Code, American corporations receive a tax credit for doing business in Puerto Rico and securing the monies in Puerto Rican financial institutions.[105] This in turn benefits CBI beneficiary countries because under the provisions of the tax law, Puerto Rican banks allow investors to borrow these funds at below-market interest rates (typically 1 to 2 percentage points below the London Interbank Offer Rate) to finance projects in the Caribbean.[106] These provisions are

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98. *Id.* § 2702(b)(7).

99. *Id.* § 2703(a). These benefits were to apply to articles entered or withdrawn from warehouse to consumption on or after August 5, 1990. *Id.* § 2703(b)(1).

100. *Id.* § 2703(a).

101. *Id.* § 2703.

102. *Id.* §1677.

103. *Id.*

104. Stamps, *supra* note 32, at 159.

105. 26 U.S.C. § 936 (2000).

106. *Id. See also* Stamps, *supra* note 32, at 160 n.67. For a CBI country to benefit from these investment and project financing monies, a country must have

> concluded with the United States a 'tax information exchange agreement' (TIEA) providing for 'the exchange of such information [with respect to any person] . . . as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the

formalized under Section 227 of the Expansion Act.[107] Oddly, however, the Section 936 program was repealed as part of the Small Business Job Protection Act in 1996.[108] "Accordingly, this source of investment income for qualifying countries no longer is available."[109]

Despite the progress and increased trade liberalization under the Expansion Act, the states of the Caribbean continued to express "disappointment . . . that the U.S. had not yet enacted legislation to grant NAFTA parity to products of Caribbean origin and that stated U.S. commitments of support for satisfactory market arrangements for the Caribbean in their traditional markets had also not yet been translated into appropriate action."[110] The primary fear of Caribbean leaders is that the comprehensive textile and apparel provisions of NAFTA will cause a detrimental production shift from the CBI beneficiaries to Mexico.[111] As was noted in the early 1990s before the inception this trilateral regime, "NAFTA would eliminate advantages of the CBI."[112] If Mexican investment and industry is "successful in swamping the North American market, Caribbean countries have just cause for concern."[113]

To abate these concerns and instill confidence in the Caribbean leadership of the dedication of the United States to freer trade and

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beneficiary country.'

S. PRINT NO. 102-110, *supra* note 5, at 341, *quoting* 25.U.S.C. § 2674(6)(C)(i) (2000).

Many beneficiary countries are reluctant to subject themselves to these TIEAs for "fear that as a result they might be forced to change their tax laws or disclose sensitive income information." *Id.*

107. 104 Stat. 661 (amending 26 U.S.C. §936). Section 227 further states that the government of Puerto Rico shall ensure that at least $100 million is available for Caribbean investments each year.

108. USTR, *Third Report*, *supra* note 41, at 13. *See also* The Small Business Job Protection Act, Pub. L. No. 104-188, § 1601, 110 Stat. 1827 (1996).

109. USTR, *Third Report*, *supra* note 41, at 13.

110. ANNUAL REPORT OF THE SECRETARY GENERAL OF THE CARIBBEAN COMMUNITY 49 (1998). The members of The Caribbean Community (CARICOM) are Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. CARICOM Observers include Aruba, Bermuda, the Cayman Islands, Colombia, the Dominican Republic, Mexico, Netherlands Antilles, Puerto Rico, and Venezuela. Anguilla, the British Virgin Islands, and the Turks and Caicos Islands are CARICOM Associate Members. *See* The Caribbean Community Secretariat, *at* http:www.caricom.org (last visited Sept. 13, 2002).

111. J.T. O'Neal, *A Handshake Not a Hand-Out: Extending NAFTA Parity to Textile Imports from the Caribbean Basin Countries*, 9 FLA. J. INT'L L. 497, 501 (1994). In 1993, the United States, Canada, and Mexico entered into the North American Free Trade Agreement ("NAFTA"). 32 I.L.M. 289. The NAFTA is a comprehensive trade program requiring the three signatories to gradually eliminate tariffs. O'Neal, *supra* note 111, at 498.

112. JENNIFER HOSTEN-CRAIG, THE EFFECT OF A NORTH AMERICAN FREE TRADE AGREEMENT ON THE COMMONWEALTH CARIBBEAN 109 (1992).

113. *Id.* at 110.

greater investment in the CBI members, the Caribbean Basin Trade Partnership Act ("CBTPA") became effective in October 2000.[114]

In a speech only a few weeks before the passage of the CBTPA, Ambassador Charlene Barshefsky, the United States Trade Representative, said that the United States and Caribbean states "have no more critical a set of relationships than those with our closest neighbors."[115] Ambassador Barshefsky went on to discuss the "new additions to the current set of eligible goods . . . which will be eligible for treatment equivalent to that offered to Mexican goods under the North American Free Trade Agreement".[116] These new provisions are seen as but one step towards a greater Free Trade Area of the Americas. She concluded her speech by stating that the:

> CBI enhancement will [be] especially valuable, by providing early incentives for investment in the region, and encouraging domestic reform and liberalization policies that build the capacity for smaller economies to compete . . . Over time, all of us will benefit from a generally stronger hemispheric economy that will increase opportunities for trade, investment, and tourism throughout the region; and this is particularly evident for the Caribbean region as the natural bridge between the Americas.[117]

The major relevant provisions of the CBTPA will now be discussed.

C. Phase Three: The Caribbean Basin Trade Partnership Act of 2000

Under Section 202(b)(1), the United States clarifies its intent and dedication to include the states of the Caribbean into NAFTA or a NAFTA-like arrangement of free trade and tariff treatment.[118]

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114. Trade and Development Act of 2000, *supra* note 3.

115. Ambassador Charlene Barshefsky, *The Turning Point: The Caribbean Basin Initiative and the Free Trade Area of the Americas in 2000*, a speech given at the Inter-American Development Bank, p. 1 (Sept. 11, 2000), *at* http://www.ustr.gov/speech-test/barshefsky/barshefsky_98.html (last visited May 15, 2002).

116. *Id.* at 4.

117. *Id.* at 5.

118. Trade and Development Act of 2000, *supra* note 3, §202(b)(1). This section states that "[i]t is the policy of the United States to offer Caribbean Basin beneficiary countries willing to prepare to become a party the FTAA or another free trade agreement, tariff treatment essentially equivalent to that accorded to products of NAFTA countries for certain products not currently eligible for duty-free treatment under the CBERA." *Id.*

Perhaps the most dramatic portion of the CBTPA deals with the extension of duty-free and quota-free treatment to once ineligible goods produced in the Caribbean. Section 211, which amends, or more appropriately radically alters, Section 213(b) of the CBERA, provides greater access to the American market, most notably for textiles and apparel. During the transition period of October 1, 2000 to the earlier of either September 30, 2008 or the date on which the Free Trade Area of the Americas or a similar integration regime enters into force,[119] the Caribbean beneficiary countries are to enjoy preferential treatment.[120] This means that certain once-excluded products "shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels."[121] Some of these include:

> (1) apparel items assembled in one or more beneficiary countries from fabrics wholly formed or cut in the United States;[122]
> (2) apparel items cut and assembled in one or more beneficiary countries from fabric wholly formed in the United States;[123]
> (3) apparel items, excluding socks, knit to shape from American fabrics and knit apparel articles, other than T-shirts, cut and wholly assembled in one or more CBI countries from fabric formed wholly in either the Caribbean or the United States;[124]
> (4) apparel items cut, sewn, or knit to shape in a beneficiary country or countries from fabrics not readily available in either the United States or in a beneficiary country;[125]
> (5) Caribbean government-certified hand-loomed, handmade, or folklore items;[126] and
> (6) textile luggage manufactured from fabrics wholly formed in the United States.[127]

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119. *Id.* §211(a), creating section 213(b) of the CBERA.
120. *Id.* §211(a), creating section 213(b)(2)(B) of the CBERA.
121. *Id.*
122. *Id.* §211(a), creating section 213(b)(2)(A)(i) of the CBERA.
123. *Id.* §211, creating section 213(b)(2)(A)(ii) of the CBERA.
124. *Id.* §211, creating section 213(b)(2)(A)(iii) of the CBERA. T-shirts are eligible, but subject to certain quantitative limitations. *See* amended CBERA section 213(b)(2)(A)(iii)(III).
125. *Id.* §211, creating section 213(b)(2)(A)(v) of the CBERA.
126. *Id.* §211, creating section 213(b)(2)(A)(vi)of the CBERA.
127. *Id.* §211, creating Section 213(b)(2)(A)(viii) of the CBERA. Also, under section 212 of the CBTPA, liquors and spirituous beverages produced in Canada and containing at least 90 percent rum by volume receive duty-free treatment if the rum is a product of a CBI country or the United States Virgin Islands. *Id.* §212, amending Section 213(a) of the CBERA. The

The CBTPA provides for severe penalties for those who engage in the practice of transshipment.[128] If the President makes a determination upon sufficient evidence that transshipment has occurred, all CBI benefits will be rescinded from the offending exporter for two years.[129] If a beneficiary country is unwilling to prevent transshipment, an Executive finding of such will result in a quantity reduction of textiles and apparel eligible for import into the United States, under a formula of the quantity of the transshipped articles multiplied by three.[130]

The rules regarding CBI eligibility in relations to apparel and textiles are quite strict. The preceding duty-free and quota-free provisions heavily favor the use of fabrics produced either in the United States or the Caribbean. Apparel and textiles manufactured in the Caribbean, but outside the scope of the CBTPA and the revised CBERA, fall within the provisions set out in the Harmonized Tariff System and the World Trade Organization Agreement on Textiles and Clothing.[131] To reaffirm the United States' reluctance to allow import of apparel and textiles not conforming to the preceding rules, as well as attempting to satisfy the Caribbean's yearning for NAFTA-like treatment, the CBTPA states that the tariff treatment during the transition period afforded to footwear, canned tuna, petroleum, watches and certain watch parts, handbags, luggage, flat goods, work gloves, and leather wearing apparel "shall be identical to the tariff treatment" of a Mexican product under NAFTA.[132]

Canadian alcoholic product must be imported directly from Canada into the United States to receive this treatment. *Id.*

128. *Id.* §211, creating Section 213(b)(2)(D)(iii) of the CBERA. Transshipment

> has occurred when preferential treatment . . . has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment.

Id.

129. *Id.* § 211, creating section 213(b)(2)(D)(i) of the CBERA.

130. *Id.* § 211, creating section 213(b)(2)(D)(ii) of the CBERA.

131. 65 Fed. Reg. 59650, 59654 (Oct. 5, 2000).

132. Trade and Development Act of 2000, *supra* note 3, § 211, creating section 213(b)(3)(A)(i) of the CBERA. Under this section, textiles and apparel are tacitly excluded from the NAFTA treatment afforded the remaining quintet of products/product groups in section 211(b)(1)(A)-(F) of the CBTPA. *See also* 65 Fed. Reg., *supra* note 131, at 59652, which states: Under Section 213(b)(3)(A)(i), "imports of footwear, canned tuna, petroleum and petroleum products, watches and watch parts, handbags, luggage, flat goods, work gloves, and leather wearing apparel would be eligible for a reduction in duty equal to the preference Mexican products enjoy in accordance with the staged duty-rate reductions set forth in . . . NAFTA." *Id.*

Finally, the CBTPA further subjects the CBI beneficiary countries to not only the original CBERA eligibility requirements,[133] but also criteria indicating commitment to multiple principles of the World Trade Organization: negotiations in hemispheric economic integration plans, improved worker's and children's rights, and combating narco-trafficking and corruption.[134]

With the legal foundation of the United States' current approach to trade, investment, and development in the Caribbean region established, the next part of this paper will discuss and analyze the role of the CBI host countries and foreign direct investment from the United States ("USFDI"). This section will, first, provide a broad overview of USFDI in the Caribbean in recent years. Second, this section will discuss USFDI within the CBI framework and how it has been received by, and integrated into, some of the United States' major Caribbean trading partners.

IV. THE UNITED STATES, THE CARIBBEAN, AND FOREIGN DIRECT INVESTMENT: ANALYSIS AND CASE STUDIES

In general, foreign direct investment has "the advantage of not adding to a country's debt overhang by incurring new debt-servicing liabilities, while possibly generating significant resource flows to the country and improving its exports, employment and income situations."[135]

For purposes of this paper, foreign investment is "clearly necessary for the overall economic development of the Caribbean Basin countries and particularly for achieving the stated purposes of the CBI."[136] However, the program, which has rested on the basis of trade barrier elimination and investment promotion,[137] "contains no direct incentives for stimulating U.S. private investment in the Basin."[138] While the aforementioned Section 936 provisions promoted an indirect and limited incentive for investment,[139] it has now been eliminated. Under the current regime, American investment in the Caribbean, at least in relation to the CBI, rests solely upon the tariff and quota system in place. As was noted

133. 19 U.S.C. §2702(b)-(c) (2000).

134. Trade and Development Act of 2000, *supra* note 3, §211, creating section 213(b)(5)(B)(i)-(vii) of the CBERA.

135. Swinburne Lestrade, *State Policy and the Role of Direct Foreign Investment in a world of increased capital mobility--New directions, in* CARIBBEAN ECONOMIC POLICY AND SOUTH-SOUTH CO-OPERATION 249 (Ramesh F. Ramsaran ed., 1993).

136. S. PRINT NO. 102-110, *supra* note 5, at 340.

137. LATIN AMERICA IN A NEW WORLD 70 (Abraham F. Lowenthal & Gregory F. Treverton eds., 1994).

138. S. PRINT NO. 102-110, *supra* note 5, at 340.

139. *Id.* at 341.

shortly after the implementation of the Expansion Act of 1990, "the lack of specific, broad based investment incentives in the CBI has left any CBI-connected stimulation of U.S. investment in the Caribbean Basin countries primarily up to the indirect effects of export stimulation brought about by the CBERA trade preference."[140]

To take advantage of the CBI preferences, American corporations began to invest in "low wage export processing area[s]."[141] In many states of the Caribbean, this has equated with an expansion in textile and apparel manufacturing. For example, in recent years, the clothing industry in the Dominican Republic has accounted for almost 50% of all national exports to the United States, in contrast to about 10% in 1980.[142] In Costa Rica, clothing accounted for 36% of all exports to the United States in 1995, up from 9% in 1980.[143]

Other leading Caribbean exports from 1998-2000, and their primary countries of origin are:

- The Bahamas: expandable polystyrene;
- Costa Rica: pineapples, cantaloupes, orange juice, and hair dryers;
- Dominican Republic: cigars, raw sugar, circuit parts, electric transformers, and beer made from malt;
- Honduras: non-woven hospital and lab apparel; and
- Nicaragua: beef cuts.[144]

These numbers, of course, do not indicate the flow of FDI by the United States into the region. This is the case due to a dearth of statistical data. While net inflows of foreign direct investment are readily available,[145] through sources like the United States Department of Commerce and the United Nations, record keeping in many Caribbean states, in regards to CBI specific activities, is inadequate. As the USITC concedes, "although official foreign direct investment statistics show that FDI in the region is growing

140. *Id.* at 342.

141. FOREIGN DIRECT INVESTMENT IN LATIN AMERICA: PERSPECTIVES OF THE MAJOR INVESTORS 74 (The Inter-American Development Bank & The Institute for European-Latin American Relations, 1998).

142. *Id.*

143. *Id.*

144. THE IMPACT OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT: 15TH REPORT, USITC PUB. 3447, 30 (2001).

145. *See id.* at 60. *See also Foreign Investment in Latin America and the Caribbean 2000*, U.N. Economic Commission for Latin America and the Caribbean 52 (2001); *Caribbean Trade and Investment Report 2000*, *at* http://www.caricom.org/archives/ctirexcerpts.htm (last visited May 15, 2002).

gradually, it is difficult to isolate trends in investment in CBERA-eligible products alone."[146] In 1997, only the American embassy in Trinidad and Tobago responded to a USITC request for information on "new or expansion investment" in CBI-eligible products.[147] By 2000, Trinidad and Tobago was joined by Barbados, El Salvador, Guatemala, Guyana, Honduras, Nicaragua, and Saint Kitts and Nevis in providing data pertaining directly to CBERA-related investments.[148] Much of this data, however, comprises aggregate FDI data in CBERA-related investment. The USITC states that "it is difficult to distinguish trends in investment in CBERA-eligible products alone."[149]

From a broad viewpoint, the Caribbean constitutes an area of "vital importance in the strategies that U.S. companies have adopted in the face of the new challenges of globalization."[150] Despite their small size, the states of Central America and the Caribbean collectively received a "considerable amount of FDI," as they saw an input of US$5.35 billion in 1999.[151] In fact, except for Antigua and Barbuda, Belize, and Guyana, all of the countries of the Caribbean region experienced an increase in FDI in the second half of the 1990s.[152] However, this investment growth is tempered by the fact that almost 90% of Caribbean FDI from 1995 to 1999 was directed to only nine countries: Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Panama, and Trinidad and Tobago.[153]

What follows are brief surveys of the investment climate for several of the larger beneficiary states receiving CBI treatment.[154]

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146. IMPACT ON THE U.S. OF THE CARIBBEAN BASIN RECOVERY ACT: 13TH REPORT, *supra* note 69, at 56.

147. *Id.* The information provided revealed a 108% increase in USFDI from 1996 to 1997. "These significant investment figures (in terms of a per capita basis) make Trinidad and Tobago the second most important U.S. investment partner in the Western Hemisphere (after Canada, and excluding countries with extensive offshore banking services)." *Id.* However, petrochemical and oil/gas exploration accounted for over 80% of this American investment. At that time, these activities were not eligible for preferences under CBI. *Id.*

148. IMPACT ON THE U.S. OF THE CARIBBEAN BASIN RECOVERY ACT: 15TH REPORT, *supra* note 144, at 91. Even when CBERA-related investment data is provided by a country, it is sometimes woefully inadequate. For example, in the 2000 report, El Salvador and Honduras reported solely on investments in the garment maquila sector. *Id.*

149. *Id.*

150. FOREIGN DIRECT INVESTMENT IN LATIN AMERICA: PERSPECTIVES OF THE MAJOR INVESTORS, *supra* note 141, at 79.

151. *Foreign Investment in Latin America and the Caribbean 2000*, *supra* note 145, at 51.

152. *Id.*

153. *Id.*

154. The Caribbean microstates receiving CBI treatment (i.e., Antigua and Barbuda, Aruba, the British Virgin Islands, Dominica, Grenada, Montserrat, Netherlands Antilles, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines) are excluded because these countries have small economies relying primarily on tourism. Also, the United States Trade

These are based upon recent data from the federal government and numerous Central Banks and serve useful both as a tool for comparative study as well as risk analysis for prospective American investors in the region.

A. The Bahamas

With a stable, democratic government,[155] lack of corporate and personal income taxes,[156] proximity to the United States,[157] easy profit repatriation,[158] and no real history of political violence,[159] or expropriation,[160] The Bahamas has experienced a significant increase in FDI in recent years.[161]

However, the Bahamian economy is predominantly import-based and is not actively engaged in exporting under the CBI, except for some chemicals, plastics,[162] and polystyrene.[163] Heavy reliance on tourism, relatively high wages, along with small agricultural and manufacturing sectors, "have hindered the Bahamas' ability to exploit" the benefits of the program.[164] While Bahamian legislation, such as the Industries Encouragement Act, which exempts some duties from imported machinery, tools, equipment and raw materials[165] might entice investment, it should be noted that "import substitution appears to be the primary focus of investment promotion efforts; attracting investment that generates exports is secondary."[166] Hence, for the American investor wishing to utilize CBI treatment, the Bahamas may not provide an optimal opportunity.

Representative concedes that in there is "very little information about the trade policies of these smaller CBERA beneficiaries." *See* USTR, *Third Report*, *supra* note 41, at 55.

155. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Bahamas* 1, *at* http://www.state.gov (last visited May 15, 2002).

156. *Id.* at 23.

157. *Id.* at. 21.

158. *Id.* at 22.

159. *Id.* at 27.

160. *Id.* at 22.

161. *Id.* at 29. In 1998, in flows of FDI in The Bahamas measured $793.8 million; in 1999, FDI measured at $512.8 million. "While no exact breakdown of this figure is available," most investment in the Bahamas is centered on hotel construction and development. *Id.*

162. USTR, *Third Report*, *supra* note 41, at 25.

163. USITC PUB. 3447, *supra* note 144, at 49. In 2000, expandable polystyrene accounted for around 90 percent of Bahamian imports under the CBERA. *Id.*

164. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Bahamas*, *supra* note 155, at 27-28.

165. *Id.* at 23.

166. USITC PUB. 3132, *supra* note 69, at 87.

B. Barbados

The Government of Barbados openly encourages FDI on the island, as all foreign investors receive the benefit of national treatment.[167] Programs, such as the Fiscal Incentives Act[168] and Section 14A of the Income Tax Act,[169] provide generous benefits to foreign exporting companies. Also, the country has experienced relatively stable FDI over the past ten years hovering around $15 million per annum.[170] The Barbadian government compiles no official data on the breakdown of foreign direct investment.[171]

In sum, Barbados, with a highly stable government,[172] ease of repatriation upon registration with the Central Bank,[173] investor-friendly legislation, and standard expropriation rights, which rarely if ever have been exercised,[174] make Barbados an attractive host for investment. However, with the absence of reliable government statistics of FDI, the conservative investor may well be wary of investment on the island until clearer indicators are available.

C. Belize

Despite one of the most stable political environments in the Caribbean,[175] a commitment to easy repatriation of profits,[176] and a stated openness to FDI,[177] several investment activities may not be engaged in by non-Belizeans.[178] For purposes of the CBI, these prohibited economic sectors include merchandising, fishing within the nation's barrier reef area, sugar cane cultivation, and apiary

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167. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Barbados* 22, *at* http://www.state.gov (last visited May 15, 2002).

168. *Id.* at 23. The Fiscal Incentives Act, which provides equal treatment to both nationals and foreigners, permits any manufacturer a maximum ten-year tax holiday by satisfying either a value-added criterion or exports 100% of its output to markets outside of the Caribbean Community. *Id.*

169. *Id.* at 24. Under this tax law, any manufacturer may receive a tax reduction determined by the percentage of its profits derived from foreign exports.

170. *Foreign Investment in Latin America and the Caribbean 2000, supra* note 145, at 52.

171. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Barbados, supra* note 167, at 34.

172. *Id.* at 3.

173. *Id.* at 23.

174. *Id.* at 26.

175. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Belize* 12, *at* http://www.state.gov (last visited May 15, 2002).

176. *Id.* at 33.

177. *Id.* at 23. The Belize Trade and Investment Development Service has identified the following as priority investment sectors: agriculture, agro-businesses, food processing, livestock, aquaculture, horticulture, light-manufacturing, offshore assembly plants, deep-sea fishing and processing, and forestry. *Id.*

178. *Id.* at 23-24.

activities.[179] Combined with these restrictions is a history of appropriation,[180] bureaucratic red-tape, and the sentiment of many foreign investors that Belize's "investment promotion tools are rarely as open and effective as they are portrayed."[181]

The inefficiency and friction of the state bureaucracy has been coupled with the government's desire for FDI in areas which could be well-suited for utilization of the CBI (with the exception of the prohibited sectors of sugar and reef fishing). When the CBI was established, several industries, such as citrus and exotic fruits and farmed shrimp enjoyed the program's benefits.[182] Overall, however, Belize appears to provide mixed opportunity to the American investor.

D. Costa Rica

Costa Rica, with a net inflow of FDI in 1999 of US$669 million,[183] is one of the Caribbean's most promising and rapidly developing countries. A dedication to attracting high quality FDI,[184] an active investment promotion program (The Costa Rican Coalition for Development Initiatives),[185] a highly-educated workforce,[186] and economic/political stability[187] make Costa Rica one of the most attractive beneficiaries of CBI treatment.[188] In regards to CBI, industrial investments are progressing healthily. As a whole, "the CBERA program grants Costa Rica duty-free treatment for some 4,000 products and has played a significant role in helping

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179. Other sectors prohibited by law to non-Belizeans include internal transportation, restaurants and bars, souvenir manufacturing for local market, sightseeing tours, accounting, legal services, and beauty salons. *Id.*

180. *Id.* at 25. The State Department points out that while there have been no instances of expropriation or nationalization of a foreign company, there have been several contentious cases where the government, under its right of eminent domain, has appropriated property belonging to foreign investors. *Id.*

181. *Id.* at 23. Investment schemes, such as the Fiscal Incentives Act, International Business and Public Companies Act, Export Processing Zone Act, and Commercial Free Zone Act are cited as torpid legislation. *Id.*

182. USITC PUB. 3447, *supra* note 144, at 76.

183. *Foreign Investment in Latin America and the Caribbean 2000*, *supra* note 145, at 52.

184. U.S. Dept. of State, *FY 2000 Country Commercial Guide: Costa Rica* 61, *at* http://www.state.gov (last visited May 15, 2002).

185. *Id.* at 62.

186. *Id.*

187. *Id.*

188. *Id.* at 114. For example, in 1998, net FDI into Costa Rica reached US$531 million. Seventy-eight percent of that came from U.S. investors. Also, Costa Rica enacted a new expropriation law in 1995 (Law No. 7495). *See* USTR, *2000 National Trade Estimate Report on Foreign Trade Barriers* 68 (2000). Under this law expropriations, while rare, are to occur only after full advance payment is made. *Id.*

Costa Rica diversify its exports and increase bilateral trade with the U.S."[189]

Industries that are relatively labor intensive and require moderately to highly skilled workers are expected to prosper.[190] While entrenched U.S. investors such as Dole and Chiquita remain in Costa Rica,[191] newer investments taking advantage of CBI have included "manufacturing or assembly of electronic components, telecommunications equipment, machinery, consumer goods, electrical appliances, up-scale apparel products, toys, sporting goods, selected leather products . . . and health and natural, resource-based products, including food processing and agro-industrial products."[192]

Overall, with the exception of state-controlled monopolies in telecommunications, electricity, insurance, and petroleum refining, "no significant barriers exist" in regards to foreign investment in Costa Rica.[193] These proscriptions probably have minimal effect on CBI related investments.

E. Dominican Republic

In 1999, the Dominican Republic received a total of US$1.338 billion in FDI, more than 25% of the Caribbean region's total.[194] According to 1998 statistics, the stock of United States FDI in the country reached $535 million.[195] These numbers reflect a spectacular surge in investment on the island-nation. The annual average FDI inflow into the Dominican Republic from 1995 to 1999 was three and a half times higher than inflows during the period from 1990 to 1994.[196]

For the U.S. investor, foreign direct investment has been concentrated in the manufacturing and financial sectors.[197] "Much

189. U.S. Dept. of State, *FY 2000 Country Commercial Guide: Costa Rica*, *supra* note184, at 62.

190. *Id.*

191. *Id.* at 96.

192. *Id.* at 62. *See also* USITC PUB. 3447, *supra* note 144, at 77. In 1997, Intel invested approximately $200 million and employs around 2,000 processionals and technicians. Intel exports in 1999 were over $2 billion.

193. U.S. Department of State, *FY 2000 Country Commercial Guide: Costa Rica*, *supra* note 184, at 193.

194. *Foreign Investment in Latin America and the Caribbean 2000*, *supra* note 145, at 52. It must be noted that while the CBI has had a significant impact in FDI in the D.R., foreign-funded electricity privatization accounted for a large portion of the cited 1999 FDI increase. *Id.* at 53.

195. USTR, *2000 National Trade Estimate Report on Foreign Trade Barriers*, *supra* note 188, at 69.

196. *Foreign Investment in Latin America and the Caribbean 2000*, *supra* note 145, at 52.

197. USTR, *2000 National Trade Estimate Report on Foreign Trade Barriers*, *supra* note 188, at 69.

of the U.S. investment in the manufacturing sectors is located in export processing zones where footwear, apparel, and to a lesser extent, electronic products and medical goods, are assembled from U.S. components and materials and then exported back to the United States."[198]

While the Dominican Republic has experienced remarkable growth in the past decade and permits liberal infusion of FDI,[199] several obstacles remain which should be made apparent to the U.S. investor. Besides a history of tyrannical dictatorship, mentioned in the first section of this paper, the current government faces pandemic corruption,[200] labor and social unrest,[201] a history of expropriation and insufficient compensation,[202] and weak adherence to dispute settlement mechanisms.[203]

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198. *Id.* *See also* USITC PUB. 3447, *supra* note 144, at 78. These export processing zones, or free trade zones ("FTZs") offer 100 percent exemption on all taxes, duties, and fees relating to production/export activities. Within the FTZs, the U.S. has been the largest investor, with a recent share of 47 percent, 228 firms. *Id.* at 78-79.

199. The Dominican government has efficiently promoted a transition "in terms of sectoral structure, the traditionally natural-resource-based export structure underwent considerable diversification in the 1990s, thanks to heavy foreign investments in relatively simple manufacturing activities in textiles or assembly of imported components for the electronic industry." *Foreign Investment in Latin America and the Caribbean 2000, supra* note 145, at 53. These efforts are linked to the government's bid to encourage investments in more sophisticated manufacturing activities. *Id.*

Under Dominican law, there are no limited on foreign control or screening of foreign investment and foreign investment is permitted in all sectors of the economy except for: disposal and storage of toxic, hazardous, or radioactive waste not produced in the country; activities affecting public health and the ecological equilibrium of the country; and the production of materials and equipment directly linked to national security. *See* U.S. Dept. of State, *FY 2001 Country Commercial Guide: Dominican Republic* 44, *at* http://www.state.gov (last visited May 15, 2002).

200. *Id.* at 48.

201. *Id.* The State Department reports an incident in 1999, where two small bombs were placed near facilities belonging to an American-owned electricity distribution company. One bomb caused minor damage. *Id.*

202. *Id.* at 45. As the State Department reports:

> Dominican expropriation standards have historically been at variance with international norms. A number of U.S. investors have outstanding disputes with the Dominican Government concerning expropriated property. In some cases these claims have existed for many years. Investors and lenders often have not received prompt or adequate payment. Even when compensation has been ordered by a Dominican court, or when the Government has recognized the claim, actual payment has been extremely difficult to obtain.

Id.

203. *Id.* The Dominican Republic adheres to the "Calvo Doctrine," under which commercial disputes must be settled by judicial processes of the country in which the dispute occurs. *Id.* *See also* ROBERT BLEDSOE & BOLESLAW BOCZEK, THE INTERNATIONAL LAW DICTIONARY 123 (1987). In this text, the authors appear to equate what the State Department labels the "Calvo Doctrine" with their use of the "Calvo Clause." According to Bledsoe and Boczek, the Calvo Clause is a public contractual clause with "aliens requiring that disputes arising from a contract be settled solely by local remedies." *Id.* at 122. In contrast, the "Calvo Doctrine"

F. El Salvador

After twelve years of civil conflict,[204] El Salvador has experienced impressive liberalization and development of its foreign investment structure. In 1999, the stock of USFDI was approximately $600 million, an increase of $380 million from 1998.[205]

The keystone of the Salvadoran investment structure is the Investment Law of 1999, which the USTR touts as "world class."[206] Other complementary legislation includes the 1990 Export Activation Law and the 1998 Free Trade Zone Law.[207]

These laws, along with a Bilateral Investment Treaty with the United States in March 1999,[208] provide a stable foundation for U.S. investment in El Salvador. While a recent shift in FDI from textiles and apparel to privatization and acquisitions in telecommunications and electricity companies has occurred,[209] the Salvadoran labor force, over half of which is skilled in the agricultural and

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is the "[p]roposition that a state cannot be responsible for acts of insurrectionists against aliens or, more broadly, for any damages resulting from domestic uprisings, mob violence or revolutions, irrespective of whether or not the state took all reasonable measures to protect the aliens." *Id.* at 123. This is an interesting, yet academic discrepancy.

Normally, there are no provisions for private sector--government dispute settlement. *FY 2001 Country Commercial Guide: Dominican Republic*, *supra* note 199, at 184. While recently becoming a member of the International Center for the Settlement of Investment Disputes ("ICSID"), the D.R., has not historically recognized the right of investors to submit disputes to binding international arbitration. Also, Santo Domingo does not enter into binding arbitration with foreign private citizens. *Id.* at 46.

204. U.S. Dept. of State, *FY 2001 Country Commercial Guide: El Salvador* 8, *at* http://www.state.gov (last visited May 15, 2002).

205. USTR, *2000 National Trade Estimate Report on Foreign Trade Barriers*, *supra* note 188, at 84 (2000).

206. USTR, *Third Report*, *supra* note 41, at 36. The Investment Law of 1999 is a "[c]omprehensive, clearer, and modern piece of legislation" that encourages foreign investors, both natural and legal persons, to freely establish businesses in El Salvador, with the exception of small business activities, defined as having less than $25,000 start up capital, and fishing within twelve miles of the state's territorial sea. Other relevant sections of this law afford comprehensive intellectual property protection, optional registration of investment with the Ministry of the Economy, and clear procedures for dispute resolution between foreign investors, the government, and Salvadoran partners. *Id. See also* U.S. Dept. of State, *FY 2001 Country Commercial Guide: El Salvador*, *supra* note 204, at 25.

207. U.S. Dept. of State, *FY 2001 Country Commercial Guide: El* Salvador, *supra* note 204, at 24. Both the Free Trade Zone Law of 1998 and the Export Reactivation Law of 1990 provide incentives for firms maintaining maquilas. These maquilas will be discussed further in the next section of this paper. Over ninety percent of the production in the maquila system is textile based. Other incentives include twenty-year tax exemptions, duty free importation of machinery, equipment, and manufacturing tools, and duty-free importation of raw materials and partially completed products. *Id.* at 26.

208. *Id.* at 28. This BIT complements a 1960 investment guarantee treaty, protecting U.S. investors against losses from currency inconvertibility and expropriation. The last case of expropriation was in 1986, involving a private electric distribution company. *Id.*

209. *Foreign Investment in Latin America and the Caribbean 2000*, *supra* note 145, at 54.

manufacturing sectors,[210] should provide the necessary base for investment in CBI-related areas.

G. Guatemala

Guatemala, a country with a USFDI stock of $429 million in 1998,[211] is like its neighbor, Belize, difficult to gauge as an opportunity for the conservative investor. One on hand, as the State Department reports, Guatemala, which enjoys CBI treatment has "[e]njoyed very healthy growth over the last decade" in exports to the United States such as textiles, flowers, and seasonal fruits and vegetables.[212] On the other hand, while Guatemala does afford national treatment to foreign investors, its laws are complex, confusing, and discouraging.[213] Passage of the Investment Law of 1998 was an attempt to streamline the administrative processes of investment registration and promote overall investment in the country. However, bureaucratic hurdles exist and the scene in Guatemala City has impeded fluidity of the investment system.[214]

H. Guyana

Beleaguered by severe drought in 1998, a 57-day strike by civil service workers in 1999, a ban on shrimp exports by the United States for environmental law violations,[215] coupled with a long history of social unrest and political and economic mismanagement,[216] Guyana should be a nation of great concern for the American investor. Yearning for new investment,[217] the

210. U.S. Dept. of State, *FY 2001 Country Commercial Guide: El Salvador*, *supra* note 204, at 30.

211. USTR, *2000 National Trade Estimate Report on Foreign Trade Barriers*, *supra* note 188, at 128.

212. U.S. Dept. of State, *FY 2000 Country Commercial Guide: Guatemala* 53, *at* http://www.state.gov (last visited May 15, 2002). *See also* USITC PUB. 3447, *supra* note 144, at 82. Since passage of the CBTPA of 2000, 41 new companies have opened apparel/textile operations in Guatemala, creating 12,500 new jobs.

213. USTR, *2000 National Trade Estimate Report on Foreign Trade Barriers*, *supra* note 188, at 129.

214. U.S. Dept. of State, *FY 2000 Country Commercial Guide: Guatemala*, *supra* note 212, at 53. This source states that "[t]hough Guatemala in 1998 passed a new foreign investment law to streamline and facilitate foreign investment, time-consuming administrative procedures and occasional arbitrary impediments are still a reality." *Id.* at 52. Also, enforcement of dispute settlement, while similar in procedure to the United States, is, in practice, "[l]ess transparent, more cumbersome and poorly implemented." *Id.* at 54.

215. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Guyana* 1, *at* http://www.state.gov (last visited May 15, 2002).

216. For a detailed history of modern Guyana, see Ralph R. Premdas, *Race, Politics, and Succession in Trinidad and Guyana*, *in* MODERN CARIBBEAN POLITICS 113-124 (Anthony Payne & Paul Sutton eds., 1993).

217. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Guyana*, *supra* note 215, at

Guyanese legislative, administrative, and judicial system remains inchoate and fragile.[218] While Guyana experienced a surge in FDI about ten years ago, "in recent years there have been some smaller scale investments but none of the desperately needed larger foreign investments have developed. The relative absence of new foreign investors may be due to a lack of clarity in Guyana's investment policy and the need for an investment code."[219] These well-entrenched problems should provide sufficient bases for circumspection in the realm of FDI. Interestingly, despite this tenuous stability, the State Department still views "Guyana as a potentially profitable site for American investors, particularly in the areas of primary materials, agriculture, and some consumer products."[220] It must be noted, that while "the amount of CBI investment in 2000 was $325,000 . . . [n]o U.S. company has invested in CBERA-related industries in Guyana."[221]

I. Honduras

The State Department has assessed Honduras as "an excellent location to penetrate the Central American market."[222] This is indicated by an increase in new FDI in 1999 of US$230 million from $US 99 million in 1998.[223] The Honduran Central Bank reported new FDI in 1999 by sector as US$56 million in manufacturing, US$42 million in agriculture, and $US42 million in mining.[224] Specifically, the overall stock of American FDI was $186 million in 1998,[225] with new U.S. investment reaching US$90 in 1999.[226]

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218. *Id.* at 22.

219. *Id.* at 29.

220. *Id.* at 2. The State Department points out that Guyana has a vast array of exotic and gourmet foods products which have a high demand in the Caribbean and North America. Products, such as jams, jellies, fruit puree blends, rice, sauces, and spices have shown "great potential for increased production and export." *Id.* However, American "investors should proceed with caution and patience . . . and realize that Guyana's infrastructure and legal frameworks are still developing." *Id.*

221. USITC PUB. 3447, *supra* note 144, at 84.

222. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Honduras* 2, *at* http://www.state.gov (last visited May 15, 2002). Positive factors of Honduran investment are ratification of the 1992 Investment Law, free trade zones, low labor costs, proximity to the American market, the "best Caribbean port" in Central America, economic and political stability, and reduced tariff levels. *Id.* at 46. Some major provisions of The 1992 Investment Law include a guarantee of national treatment to foreign investors, mandatory registration of new FDI, guaranteed freedom to export and import goods (with some phytosanitary and zoosanitary exceptions), and an unlimited right to own property. *Id.* at 46-47.

223. *Id.* at 46.

224. *Id.*

225. USTR, *2000 National Trade Estimate Report on Foreign Trade Barriers*, *supra* note 188, at 144.

226. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Honduras*, *supra* note 222,

In regards to CBI-related investments, the Honduran export economy is focused upon textiles and apparel. To this, other industries have suffered. While in 1998, the Honduran Congress passed a series of laws "designed to promote investment in renewable energy, tourism, agro-industry, and mining . . . [t]he Government has been slow to implement these laws."[227]

In contrast, the Honduran textiles and apparel industry continues to expand.[228] Honduras "ranks second in the world in apparel export production, first among CBI countries, and first in Central America."[229] Prolonged growth in this sector is anticipated. As a result of the Caribbean Basin Trade Partnership Act, "employment in the maquila sector is expected to double in the next five years."[230] This fertile environment should promote a significant increase in the number of U.S. apparel manufacturers operating in Honduras, now numbering around eighty-two in 2000.[231]

In sum, despite some considerable problems,[232] many endemic to most of Central America and the Caribbean, Honduras appears to represent an ideal investment opportunity, particularly in the well-established textile and apparel sectors. This seems even more so in light of the CBTPA and the expected growth surrounding that legislation.

J. Jamaica

Jamaica, praised during the Reagan administration as the "cornerstone of the CBI,"[233] remains a sizeable component of the preference system plan. In 1999, the island received US $524 million in new FDI, almost 10 percent of the Caribbean total, and an increase of over 40 percent from the 1998 figure.[234] As Jamaica's

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at 46.

227. *Id.* at 48.

228. *Id.* at 51. According to the Honduran Apparel Manufacturing Association, total foreign and domestic investment in the apparel industry amounted to US$1.08 billion in 1999. Of this, US$565 million was in foreign investment. Total U.S. investment in this sector reached US$322 million by the end of 1999. *Id.*

229. *Id.*

230. *Id.* at 48.

231. *Id.* at 51.

232. *Id.* at 2. The State Department cites judicial insecurity, a poorly educated labor force, outdated labor codes, corruption, administrative red tape, inadequate financial supervision, perceived inconsistent treatment for foreign investors, increasing crime, and an inadequately developed infrastructure as issues that "need to be addressed in order to improve the country's investment and business climate and attract even greater foreign investment." *Id.*

233. JAMES A. NATHAN & JAMES K. OLIVER, UNITED STATES FOREIGN POLICY AND WORLD ORDER 445 (4th ed. 1989).

234. *Foreign Investment in Latin America and the Caribbean 2000*, *supra* note 145, at 53. Like much of the Caribbean sub-region, FDI to Jamaica in the 1990s was aimed at the light, simple manufacturing in the export-processing zones. *Id.*

primary recipient of its exports, the United States has played a vital role for investment.[235] From 1996 to 1999, the value of American FDI in Jamaica surged from US$199 million to US$1.1 billion.[236] However, in 1999, USFDI dropped to US$849 million.[237] This contraction was due, in large part, to increased global competition in apparel production, Jamaica's largest non-traditional export industry.[238] For the U.S. investor wishing to exploit the benefits of CBI treatment, Jamaica also has significant agricultural and mining production possibilities.[239]

Overall, due to a well-developed investment law framework[240] and general economic stability, the environment in Jamaica is conducive to foreign investment. However, one need only look to the events of this past July in Kingston[241] to realize the fragility of a nation mired in poverty and significant economic and social disparity.[242]

K. Nicaragua

Ravaged by years of civil war at the hands of the Somoza family, the Sandinista front, and the America-supported Contras,[243] Nicaragua emerged in 1990 to forge democratic reforms and a "government oriented toward marketplace policies."[244] These changes were marked by significant increases in the amounts of FDI input to Nicaragua. From 1990 to 1994, Nicaragua received an annual average of US$19 million in FDI.[245] By 1999, this number

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235. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Jamaica* 2, *at* http://www.state.gov (last visited May 15, 2002).

236. *Id.* at 38.

237. *Id.*

238. USTR, *Third Report, supra* note 41, at 46. At one time, the garment industry provided employment for thousands of Jamaican workers. Since 1994, this industry has declined due to firm closures. Now, the sector employs 50% the number of workers it did in 1994. *See* USITC PUB. 3447, *supra* note 144, at 86.

239. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Jamaica, supra* note 235, at 4-5. Some of these products include sugar, spices, bananas, coffee, limestone, and alumina/bauxite. *Id.*

240. *Id.* at 30-32. This includes a bilateral investment treaty with the U.S., which came into force in 1997. *Id.* at 34. Legislation to attract foreign investment includes the Export Industry Encouragement Act (10-year tax exemptions, duty-free imports for raw materials used in production), the Industry Modernization Program, and the Factory Construction Law (tax relief for companies constructing and leasing factories). *Id.* at 30-32.

241. Matthew J. Rosenberg, *Jamaica Uses Army Against Opposition Protesters*, WASH. POST, JULY 11, 2001, at A16.

242. *See* U.S. Dept. of State, *FY 2001 Country Commercial Guide: Jamaica, supra* note 235, at 34, which states that "Crime [rooted in poverty, unemployment, and drug trafficking] poses a greater threat to damage foreign investment than do politically motivated activities." *Id.*

243. WILLIAMSON, *supra* note 6, at 357.

244. WRIGHT, *supra* note 20, at 196.

245. *Foreign Investment in Latin America and the Caribbean 2000, supra* note 145, at 52.

reached US $300 million.[246] Unfortunately, data from the Nicaraguan Central Bank goes little beyond this basic information.[247] Like many states in the Caribbean sub-region, most FDI flows in Nicaragua have been in construction, services, mining, energy, tourism, and aquaculture.[248] Also, like many other CBI beneficiaries, the apparel production sector has been the most successful. In 1999, apparel exports to the United States increased by 17 percent, to US$277 million.[249] With the CBTPA, Nicaragua hopes to take advantage of the enhanced tariff preferences in utilizing U.S. and Caribbean fabrics.[250]

Overall, Nicaragua appears to provide ample opportunity to the American investor. Certainly, problems similar to that of its Central American neighbors are present in Nicaragua. However, with the passage of Law Number 344, the Foreign Investment Law of 2000,[251] greater administrative, bureaucratic, and judicial streamlining, investment liberalization, thereby producing real opportunity will emerge. Since the electoral defeat of the Sandinistas under revolutionary leader Daniel Ortega in 1990,[252] Nicaragua has made "significant progress" in promoting foreign investment.[253] This enhanced liberalization has been the impetus for a recent average growth of 5 percent and further "visible signs of investment and economic progress."[254]

L. Panama

In 1998, Panama maintained a stock of USFDI of about US $27 billion.[255] However, in that same year, overall foreign direct investment in CBI-related activities accounted for only around 11% of Panamanian FDI.[256] The State Department has assessed that the

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246. *Id.*

247. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Nicaragua* 29, *at* http://www.state.gov (last visited May 15, 2002).

248. *Id.*

249. *Id.* at 15.

250. *Id.* at 16. Nicaragua has a substantial maquila sector, taking advantage of the country's lower labor costs. *Id.* at 15-16.

251. *Id.* at 22. The Foreign Investment Law of 2000 assures national treatment for both domestic and foreign investors, abolishes the foreign investment committee, recognizes property rights, including the right to proper indemnification, and eliminates the former necessity of investment contracts. *Id.*

252. KRYZANEK, *supra* note 7, at 241.

253. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Nicaragua*, *supra* note 247, at 22.

254. *Id.*

255. USTR, *2000 National Trade Estimate Report on Foreign Trade Barriers*, *supra* note 188, at 319.

256. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Panama* 60, *at http://*www.state.gov (last visited May 15, 2002). The breakdown by sector is as follows:

sectors with the greatest potential for expansion are ports, maritime services, telecommunications, tourism, energy, and mining.[257] Obviously, with its strategic location as a mid-point in the hemisphere and as homeland of the Panama Canal, the country has been able to link its transport and maritime service with the manufacturing and warehousing sectors. The Colon Free Trade Zone is the largest of its kind in the Western Hemisphere, second in the world to Hong Kong.[258] Typically tax advantages, import duty exemptions, and other incentives characterize the CFTZ,[259] as well as most other free trade zones. According to recent statistics, Panamanian exports have been slumping.[260] Perhaps this is due to burdensome labor costs. In Panama, the minimum wage was increased to US$253 monthly.[261] While in a global context this is not much, it is fairly high for Central America.[262]

Overall, just as the Panamanian government has taken a "wait and see" attitude[263] towards the economy, perhaps those interested in foreign direct investment should be as conservative. While Panama has initiated vast privatization efforts, maintains a stable infrastructural and political system, permits easy repatriation of profits as the American dollar is the legal national currency,[264] and holds interesting opportunities in regards to petroleum production,[265] the country has never been able, or has refused,[266] to fully exploit CBI benefits. In light of weak U.S. demand, at least relative to other CBI countries, Panama may not be of profitable interest to the CBI-oriented investor.[267]

Transport/storage - 33%; Services/communication - 31%; Manufacturing - 11%; Finance/Real Estate - 11%; Others - 14%. *Id.* Manufacturing, which includes the production of processed foods, clothing, and chemicals, along with construction constitutes only 12% of Panamanian GDP. *Id.* at 7-8. Agriculture, forestry, and fishing make up 7% of GDP. *Id.* at 8. Panama's principal primary products include, for example, bananas, sugar, shrimp, coffee, and tropical fruits. *Id.*

257. *Id.* at 8.

258. *Id.* at 10.

259. *Id.* at 37.

260. *Id.* at 10. During 1999, the CFTZ was significantly affected by a slowdown in Latin American consumption, the zone's largest export market. Exports dropped to US$4.9 billion in 1999, a drop from US$6 billion or 17% from 1998. *Id.*

261. *Id.* at 5.

262. *Id.*

263. *Id.* at 6.

264. *Id.* at 27.

265. *Id.* at 39.

266. Eighty percent of the Panamanian GDP is not in goods, but services (e.g., port activities, banking, insurance). *Id.* at 7. Note also that Panama's beneficiary status under CBI was suspended in April 1988, making it the first country to lose its CBI status. It was restored in March 1990. USTR, *Third Report*, *supra* note 41, at 8.

267. *Id.* at 40. As the State Department points out: "Since Panama is not an important textile exporter, the new legislation [the CBTPA of 2000] will be of limited value to Panama."

M. *Trinidad and Tobago*

As the largest foreign investor in the country,[268] Trinidad and Tobago attracted US$1.095 billion in United States FDI.[269] This number jumped to $1.2 billion last year.[270] In fact, these large inputs of FDI make Trinidad and Tobago the second largest recipient of American investment in the Western Hemisphere.[271]

While quite sizeable, much of this investment is directly connected to the county's considerable hydrocarbon/petroleum resources.[272] In 1999, 82 percent of FDI by American investors was in petrochemicals, oil, and gas.[273] Under the pre-2000 CBI regime, this environment would not be conducive to those interested in utilizing that particular trade framework. However, under the CBTPA, new opportunities have certainly become manifest. Under the CBERA of 1983 and the Expansion Act of 1990, petroleum and petroleum-derived products were expressly ineligible for duty-free treatment.[274] However, under the CBTPA, these once-ineligible products, now receive similar treatment as that of Mexican petroleum under NAFTA.[275] This development certainly makes Trinidad and Tobago a more enticing center for CBI-based investment.

Before the inception of the CBTPA, Trinidad and Tobago's attraction in regards to the CBI was limited. Overall, while oil and gas production are vital to the Trinidadian economy, greater diversification in non-petrochemical industries must occur in order to more fully reap the benefits of the program's duty and quota reductions.[276]

Id. With the new liberalization of petroleum export entry under the CBTPA, it is yet to be seen what kind of benefit Panama could receive. The author feels that, most likely, the greatest beneficiary of these petro-provisions will be Trinidad and Tobago.

268. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Trinidad and Tobago* 34, *at* http://www.state.gov (last visited May 15, 2002).

269. *Id.* at 40.

270. *Id.*

271. *Id.* at 34. This statistic is second to Canada and excludes countries of under one million inhabitants or those with significant offshore banking investment activities. *Id.*

272. *Foreign Investment in Latin America and the Caribbean 2000*, *supra* note 145, at 53. During the 1990s, production of natural gas in Trinidad and Tobago increased by 500%. *Id.*

273. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Trinidad and Tobago*, *supra* note 268, at 34.

274. 19 U.S.C. §2703(b)(4) (Supp. 1983 & Supp. 1990).

275. Trade and Development Act of 2000, §211, creating section 213(b)(3)(A)(i) of the CBERA.

276. The State Department notes that Trinidadian agricultural production is experiencing negative growth. U.S. Dept. of State, *FY 2001 Country Commercial Guide: Trinidad and Tobago*, *supra* note 268, at 3. However, industries like pleasure-boat construction, *id.* at 19, and, especially, methanol, sugar, and some iron, steel, and copper-zinc products (e.g., bars, rods) have had considerable impact on U.S. imports. *See* USITC PUB. 3132, *supra* note 69, at

This concludes the brief investment environment summaries of most of the CBI beneficiary states. The author hopes this section will provide the reader a decent overview of the national political, economic, and business climates of the Caribbean sub-region and their influence on investment decision-making.

V. NAFTA, THE WTO, AND THE CBI

Prior to the advent of the CBTPA in 2000, there had been great anxiety among the CBI countries regarding the deleterious effect of NAFTA on investment and trade in the region.[277] As has been noted, "prior to NAFTA, the growth rates of both Mexican and Caribbean textile exports had remained constant. This current change has caused much alarm in many CBERA countries whose economies have been growing primarily from the increase in their textile industries."[278]

With the CBTPA, these concerns should be allayed.[279] While nominally, the CBI beneficiaries are not members of NAFTA, they have received NAFTA-like parity, without the burden of the tariff and quota reciprocity prescribed by the Mexican-Canadian-U.S. counterpart. Until the termination of the CBTPA transition period on September 30, 2008, beneficiary countries receive duty-free and quota-free treatment of Caribbean goods into the United States.[280]

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32. In fact, although production is falling, iron and steel bars and rods have in recent years been Trinidad's largest CBI exports to the United States. *See* USTR, *Third Report*, *supra* note 41, at 18. Some sector diversification has been observed in light manufacturing related to products such as pasta, beer, cereals, canned foods, electric bulbs, and furniture. *See* USITC PUB. 3447, *supra* note 144, at 89.

277. USTR, *Third Report*, *supra* note 41, at 55. One article states: At the creation of NAFTA, "it was estimated by the World Bank that "the total Caribbean losses due to NAFTA-induced export displacement [were to] range from $35 million to $53 million a year." Paul Esquiel, *Beyond NAFTA: The Caribbean*, 1 NAFTA: LAW & BUSINESS REVIEW OF THE AMERICAS 137, 141 (1995). The World Bank went on to assert that "another potential harm the Caribbean might face as a result of NAFTA would be the diversion of direct investment away from the Caribbean and towards Mexico." *Id.* Later, in September 1993, President Clinton and U.S. Trade Representative Mickey Kantor promised that the Caribbean's economic and investment interests would be protected through "the reshaping" of the CBI. *Id.* After seven years of "reshaping," the CBTPA was born.

278. O'Neal, *supra* note 111, at 502. *See also* Hilbourne A. Watson, *Introduction: The Caribbean and the Techno-Paradigm Shift in Global Capitalism*, *in* THE CARIBBEAN IN THE GLOBAL POLITICAL ECONOMY 7 (Hilbourne A. Watson ed., 1994). In this text, the author states: The "implementation of the North American Free Trade Agreement (NAFTA) . . . could intensify the erosion of any advantages the [Caribbean] region has in low-wage assembly production." *See also* Brian D. Patterson, *Environmental Issues in the Evolving United States-Caribbean Trade Relationship*, 7 GEO. INT'L ENVTL. L. REV. 515, 532 (1995): "Tens of thousands of jobs in the region depend on the textile and apparel industry and these nations have invested heavily in infrastructure to support apparel manufacturing for export."

279. *See supra* Part III.B-C.

280. Trade and Development Act of 2000, §211(a), creating section 213(b)(2)(B) of the CBERA.

For once ineligible items, the CBTPA now affords these products NAFTA-like treatment.[281]

Therefore, the NAFTA menace has been abated to a large extent. What remains, however, is the World Trade Organization ("WTO"), its establishment of the liberalizing Agreement on Textiles and Clothing, and the erosion and elimination of the Multi-Fibre Arrangement ("MFA") under the General Agreement on Tariffs and Trade ("GATT").

Under Article XI of the GATT, which was created in 1947[282] and amended in 1994,[283] quantitative restrictions on imports, with some exceptions, are to be eliminated.[284] Within this framework, developing countries in the post-World War II era, began mobilizing attempts at rapid industrialization.[285]

Countries, like Japan, which were experiencing rapid economic development and industrialization were viewed as a threat and became a source of great apprehension to the developed world.[286] Throughout the 1950s and 1960s, many Western countries, mainly the United States and Great Britain, "began to oppose the general post-war trend of trade liberalization in the area of textiles."[287]

To this, nations of the developed world, under the auspices of the GATT, promulgated the Multi-Fibre Arrangement of 1974, which, "in direct conflict with the edicts of GATT," allows for quantitative restrictions in regards to textiles.[288] This regime, which has been altered and extended three times, provides for the negotiation of bilateral trade agreements and greater import control of textiles

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281. *Id.* §211, creating section 213(b)(3)(A)(i) of the CBERA. *See also supra* note 130.

282. GENERAL AGREEMENT ON TARIFFS AND TRADE (1947), art. XXVI(1) (amended 1994). *See* JOHN H. JACKSON, ET AL., 1995 DOCUMENTS SUPPLEMENT TO LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 51 (3d ed. 1995).

283. *See* JACKSON, *supra* note 282, at 15.

284. GATT art. XI states, in part:

> No prohibitions or restrictions . . . whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on exportation or sale for export of any product destined for the territory of any other contracting party.

Id. at 28.

285. *See* Alice Wohn, *Towards GATT Integration: Circumventing Quantitative Restrictions on Textiles and Apparel Trade Under the Multi-Fiber Arrangement*, 22 U. PA. J. INT'L ECON. L. 375, 388-390 (2001). Like in Europe and the United States, the development and expansion of the "textile industry [in the developing world] marked the beginning of industrialization." *Id.* at 388. This growth is seen as a "'primary stepping stone' to industrial development." *Id.* at 389.

286. *Id.* at 389.

287. *Id.*

288. Carl Dyer, et al., *U.S. Trade Policy in Retrospect: A Synopsis from the Continental Congress to Current Costs*, *in* INTERNATIONAL TRADE AND THE NEW ECONOMIC ORDER 163 (Raul Moncarz ed., 1995).

deemed to prevent "market disruption."[289] With the conclusion of the

Uruguay Round in 1994, which created the WTO,[290] it was determined that the MFA had run its course. The Agreement on Textiles and Clothing ("ATC") invokes the true spirit of the GATT, near complete global trade liberalization. The ATC sets forth a series of rules promoting the gradual and progressive removal of quantitative restrictions. The primary means to achieve this goal are stated succinctly in Article 9: "This Agreement and all restrictions there under shall stand terminated on the first day of the 121st month that the WTO Agreement is in effect, on which date the textiles and clothing sector shall be fully integrated into GATT 1994. There shall be no extension of this Agreement."[291] Hence, by 2005, quantitative restrictions and tariffs now in place under the MFA are to be eliminated.[292]

In effect, this will subvert the entire purpose of the CBI. With the removal of trade barriers and preferential treatment, the beneficiaries of the CBI will be placed on equal footing with all other exporters to the United States. For the United States, as a nation, the effect will probably be minimal. Since 1986, the total share of U.S. imports from CBI countries has been less than 2 percent.[293] For the American investor, however, the demise of the MFA could suffocate opportunity in CBI-related production in the region. The final section of this paper will analyze the prospects of the CBI for the American investor in the near future, both before and after the removal of the MFA.

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289. *Id.* The MFA was extended 1977-1981 ("MFA II"), 1982-1986 ("MFA III"), and 1986-1991 ("MFA IV"). *Id.* The MFA was to expire in July 1991. However, as the Uruguay Round stalled, one-year MFA extensions continued until 1993. *See* Wohn, *supra* note 285, at 404. "Market disruption" may be defined "in terms of damage to domestic industry with special reference to sales, market share, profits, employment, and production." Hilbourne A. Watson, *Global Restructuring and the Prospects for Caribbean Competitiveness: With a Case Study from Jamaica, in* THE CARIBBEAN IN THE GLOBAL POLITICAL ECONOMY 79-80 (Hilbourne A. Watson ed., 1994).

290. All CBI beneficiaries are members of the WTO, except for The Bahamas, *at* http://www.wto.org (last visited May 15, 2002).

291. The Agreement on Textiles and Clothing, in Annex 1A of the WTO Agreement, art. 9, *reprinted in* JACKSON, *supra* note 282, at 148.

292. Regardless of the 2005 termination of the MFA, the CBTPA is to expire on September 30, 2008. To comply with its WTO obligations during the 3 year period, the United States should request a waiver of GATT Article I with respect to equal treatment and most favored nation status. *See* JACKSON, *supra* note 282, at 8, 17.

293. For example, in 1999, the total share of U.S imports from CBI countries was 1.9 percent. Last year, that number fell to 1.8 percent, a value of $22.16 billion. *See* USITC PUB. 3447, *supra* note 144, at 15.

VI. CONCLUSION: THE FUTURE OF THE CBI AND THE AMERICAN INVESTOR

It is certainly true as one author asserts: [T]he MFA epitomizes protectionism . . . in the industrialized economies and violates the spirit of trade liberalization."[294] However, in regards to the states of the Caribbean region, the MFA, coupled with the CBI, has acted as a shield against an onslaught of exports from other areas of the developing world. The tariff and quota provisions under the CBI have afforded the program's beneficiaries a guaranteed market, thereby ensuring development and employment to a historically beleaguered region.

The negative effects to the Caribbean nations "by dismantling the MFA could be significant."[295] The garment production industry comprises "an important part of the Caribbean Basin economic system, and may not be able to survive without the assistance of distortive (sic) trade measures such as the MFA."[296] With the removal of the MFA, the textile-dependant countries of the Caribbean then must contend with added pressures from nations, such as India, Pakistan, and China, which "are much more efficient producers of textiles and apparel than are CBI countries."[297] A slew of unfettered manufacturing powerhouses, like China, would sacrifice the burgeoning textile and apparel maquilas of the Caribbean. In turn, American and Caribbean manufacturers will be "the first eliminated from the market because their prices will remain the highest."[298] With this sector diminished and relegated to near dissolution, U.S. investment in the Caribbean's textile plants will wither.

The American investor must keep in mind that the ATC/MFA applies only to textiles and apparel. The CBTPA was introduced last year to assist the Caribbean in preparation for the possible aftershock from the elimination of the MFA. While data indicates that prior to October 2000, the effects of the CBI were minimal on the U.S. economy, "the impact of the introduction of new preferences granted under the CBTPA amendment may not be insignificant."[299] This should come as welcome news to both U.S. investors and the

294. Watson, *supra* note 289, at 80.

295. Renee T. Legierski, *Out in the Cold: The Combined Effects of NAFTA and the MFA on the Caribbean Basin Textile Industry*, 2 MINN. J. GLOBAL TRADE 305, 318 (1993).

296. *Id.*

297. *Id.*

298. *Id.* at 319.

299. USITC PUB. 3447, *supra* note 144, at 91. It should be noted that while President Clinton signed the CBTPA in May 2000, the law's "transition period" did not begin until October 1, 2000. *See supra* text accompanying note 119.

Caribbean governments. In recent years, "U.S. imports from CBERA countries have been dominated . . . by assembly of apparel from U.S.-made fabric."[300] For many CBI countries, textile-based production is the foundation of exportation.[301] With the enhanced liberalization promoted by the CBTPA, USFDI flows into the Caribbean should increase. Proximity to the United States, skilled labor, stability, sufficient legal institutions, and now further quota-free and duty-free treatment, provides a somewhat healthy climate for investment in the region. Successful diversification efforts have been made in several countries, as it has become obvious that economies once founded on sugar and bananas cannot now be transformed into economies based on the maquila. These progressive measures will improve the Caribbean's standing as an investment center.

However, for the Caribbean, the race is on. The MFA phaseout, which will be completed in three years, looms over the Caribbean maquila system. One author has asserted that the "conclusion of NAFTA and the phasing out of the Multi-Fiber Agreement quotas under the Uruguay Round of the GATT have severely impaired the value of CBI benefits as investment incentives in beneficiary countries."[302] This is not necessarily so. However, this portent could become reality because, without further diversification, these economies will no doubt suffer by being overwhelmed by more efficient and cheaper Mexican and Asian counterparts.

For American FDI to enjoy CBI benefits in the future, investment can be aimed at either non-textile based industries or in the garment maquila system. The latter should be preferred for both the investor and the overall well-being of the Caribbean economies. Since this industry is so entrenched and has grown to

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300. INTERNATIONAL ECONOMIC REVIEW, USITC PUB. 3298, 15 (Apr./May 2000). This explains this section's concentration on the garment sector.

301. *See* Alejandro Ferraté, *Foreign Direct Investment in Costa Rica after the "Death" of CBI*, 2 J. INT'L LEGAL STUD. 119 (1996).

> The impact of the CBI on Central American [and the Caribbean] countries cannot be understated. CBI spurred foreign direct investment in the area, mostly in the form of export manufactures or maquiladoras. The most ubiquitous legacy of CBI is a large textile and apparel assembly industry in [the Caribbean and Central America]. The textile and apparel assembly maquiladoras were established in the 1980s and early 1990s to benefit from increased access to the U.S. market under CBI, lower production costs relative to some Asian producers, and stringent quotas on textile producers from Asian producers under the Multi-Fiber Agreements (MFA).

Id. at 119-120.

302. Matias F. Travieso-Diaz & Aledandro Ferraté, *Recommended Features of a Foreign Investment Code for Cuba's Free Market Transition*, 21 N.C. J. INT'L & COM. REG. 511, 527 (1996).

become the fulcrum of CBI investment and production in the region, its collapse will undoubtedly produce a ripple effect. This could undermine the entire economic system in the Caribbean and produce tremendous losses in money, labor, and stability. Further incentives from the beneficiary countries are necessary to entice overall CBI investment. In this area, celerity is demanded even more so in regards to textile-based industries as the MFA deadline approaches.

In conclusion, the relationship between the United States and the Caribbean is both symbiotic and symbolic. Their histories are elegantly intertwined. Without the one, the other's path would be dramatically different. The United States has acted as bully, hegemon, and patriarch. The states of the Caribbean have been dependent, once under their colonial yoke, and now as sovereign nations. Intrusive meddling from the North, inept leaders, who at times have acted as spoiled children, and environmental limitations are but a few of the factors for the Caribbean's developmental stalling and its pervasive, perhaps inevitable, dependency. For purposes of CBI investment, this union is more evident than ever. Continued input of investment into the keystone of the CBI economy, textiles, coupled with host country improvements through structural reformation via greater capital incentives (e.g., tax deferments), administrative transparency, and fair and speedy judicial remedies are necessary to diversify the manufacturing sectors. By bolstering the textile rampart, the overall economies of the Caribbean will be protected from the imminent storm called for in 2005. By not doing so, attempts at balancing and diversification will deteriorate and aggregate CBI investment will fall in the aftermath of rapid capital flight, unemployment, and instability.