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Page: 1/7

Council for Trade in Goods

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REQUEST FOR A WAIVER

CARIBBEAN BASIN ECONOMIC RECOVERY ACT (CBERA AS AMENDED)

The following communication, dated 27 June 2019, is being circulated at the request of the Delegation of the United States.

SPECIAL UNITED STATES TRADE ARRANGEMENTS FOR COUNTRIES OF CENTRAL AMERICA AND THE CARIBBEAN

Pursuant to Article IX:3 of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), the United States hereby requests Members to extend the existing waiver of US obligations under paragraph 1 of Article I of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and paragraphs 1 and 2 of Article XIII of the GATT 1994 to permit the United States to provide duty-free treatment to eligible products originating in beneficiary Central American and Caribbean countries and territories ("beneficiary countries") designated pursuant to the provisions of the Caribbean Basin Economic Recovery Act of 1983, as amended by the Caribbean Basin Economic Recovery Expansion Act of 1990 (CBERA).¹ The United States requests Members to extend the waiver through 30 September 2025, to the extent necessary to permit the United States to provide preferential tariff treatment to eligible products originating in beneficiary countries designated pursuant to the provisions of the CBERA, as amended by the United States-Caribbean Basin Trade Partnership Act, the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 ("HOPE Act"), the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 ("HOPE II"), the Haiti Economic Lift Program Act of 2010 ("HELP Act") ("CBERA as amended"), and the Trade Preferences Extension Act of 2015.

1 DESCRIPTION OF THE MEASURE

The United States-Caribbean Basin Trade Partnership Act (CBTPA), enacted as Title II of the Trade and Development Act of 2000 (Public Law 106-200), and amended by section 3107 of the Trade Act of 2002 (Public Law 107-210), section 1558 of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108-429), and section 15408 of the Food, Conservation, and Energy Act of 2008, amends the CBERA² by providing for preferential tariff treatment for additional products that originate in a country the President has designated as eligible to receive CBTPA benefits.³ Further, the Haitian Hemispheric Opportunity through Partnership

¹ See Caribbean Basin Economic Recovery Act, Renewal of Waiver, Decision of 5 May 2015 (WT/L/950).

² The original CBERA program is described in more detail in the Request for Renewal of Waiver (G/L/25) which was included in the previously submitted information on the CBERA programme in document G/C/W/508/Add.1.

³ In accordance with Section 212(b) of the CBERA as amended (19 U.S.C. § 2702 (b)), "Central America and the Caribbean" refers to the following countries or any successor political entities of these countries: 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 Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Turks and Caicos Islands, and Trinidad and Tobago.

The President has designated the following Central American and Caribbean countries as both CBERA and CBTPA beneficiary countries: Antigua and Barbuda, Aruba, The Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint

Encouragement Act of 2006 (HOPE Act), as amended by the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II) enacted as Title VI, Subtitle D, Part I of the Food, Conservation, and Energy Act of 2008 (P.L. 110-246) ("HOPE Act as amended") and the Haiti Economic Lift Program Act of 2010 (HELP Act) amend CBERA to make Haiti eligible for additional trade benefits. The text of the CBERA as amended is attached at Annex I.

Specifically, section 213(b)(2) of the CBERA as amended (19 U.S.C. § 2703 (b)(2)) provides for duty-free treatment for apparel assembled in eligible beneficiary countries from: (1) fabrics formed in the United States from US yarns and cut, dyed, and finished in the United States; (2) components knit-to-shape in the United States from US yarns; (3) fabrics formed in the United States from US yarns and dyed and finished in the United States, but cut in the region, and sewn with US thread; and (4) a combination of fabrics formed in the United States from US yarns and dyed and finished in the United States, but cut in the region, and components knit-to-shape in the United States from US yarns, and sewn with US thread. Subject to a quantitative limit, the CBERA as amended also provides for duty-free treatment for certain knit apparel cut and assembled in eligible beneficiary countries from fabrics formed in the region or the United States from US yarns, or apparel (other than socks) knit-to-shape in eligible beneficiary countries from US yarns. There is a separate quantitative limit for t-shirts (other than underwear) made in eligible beneficiary countries from fabric formed in the region from US yarns. In addition, the CBERA as amended provides for duty-free treatment for: (1) certain brassieres; (2) apparel made from fabrics or yarns from third party sources, if those inputs are determined to be in "short supply" in the United States; (3) certain textile luggage; and (4) hand-loomed, handmade, or folklore textiles or apparel.

In addition, section 213(b)(3) of the CBERA as amended (19 U.S.C. § 2703 (b)(3)) provides tariff treatment equivalent to that extended to Mexico under the North American Free Trade Agreement for certain non-textile and apparel products⁴, and duty-free treatment for four rubber footwear items.⁵ Section 213(a)(6) of the CBERA as amended (19 U.S.C. § 2703 (a)(6)) also provides for duty-free treatment of certain beverages produced in Canada from rum produced in CBERA beneficiary countries.

The HOPE Act as amended (Section 213a of the CBERA) provides for apparel imports from Haiti to enter the United States duty-free if the "applicable percentage" of the value of inputs and/or costs of processing is met from any combination of Haiti, United States, US FTA or regional preference program partner countries. The HOPE Act as amended also provides duty-free treatment for certain apparel articles if imported directly from Haiti or the Dominican Republic, provided that Haiti and the Dominican Republic develop procedures to prevent transshipment. The HOPE Act as amended also removes duties for three years on a specified quantity of woven apparel imports from Haiti made from fabric produced anywhere in the world. Additionally, the Act allows duty-free treatment for any apparel article classifiable under heading 6212.10 of the HTS (certain brassieres), if the article is both cut and sewn or otherwise assembled in Haiti or the United States, or both without regard to the source of the fabric or components from which the article is made. Finally, the HOPE Act as amended allows automotive wire harnesses imported from Haiti that contain at least 50 per cent by value of materials produced in Haiti, the United States, or US-FTA partner or regional preference program beneficiary countries to qualify for duty-free treatment. The HOPE Act as amended also establishes an International Labor Organization monitoring program, and requires the President to establish certain procedures to monitor Haiti's and individual producers' compliance with the eligibility criteria.

Vincent and the Grenadines, and Trinidad and Tobago. Sections 212 and 213(b)(5)(B) of the amended CBERA (19 U.S.C. §§ 2702, 2703 (b)(5)(B)) describe the eligibility criteria countries must meet to be designated as a CBERA or CBTPA beneficiary country.

To be eligible for the enhanced benefits of the CBTPA, however, CBTPA beneficiary countries must implement and follow (or be making substantial progress toward implementing and following) certain customs procedures and requirements, as described in section 213(b)(4) of the CBERA as amended (19 U.S.C. § 2703 (b)(4)). The following beneficiary countries are currently eligible for the enhanced benefits of the CBTPA: Barbados, Belize, Guyana, Haiti, Jamaica, Saint Lucia, and Trinidad and Tobago.

The Haiti Economic Lift Program Act of 2010 ("HELP Act") (P.L. 111-171) extended the enhanced benefits of the CBTPA until 30 September 2020.

⁴ These products are certain: (1) footwear; (2) canned tuna; (3) petroleum products; (4) watches and watch parts; and (5) handbags, luggage, flat goods, work gloves and leather wearing apparel.

⁵ With respect to footwear, note that section 1558 of the Miscellaneous Trade and Tariff Act of 2004 amended section 213(b) of the CBERA to reduce the number of footwear items that are ineligible to receive duty-free treatment.

In May 2010, the President signed the HELP Act. The HELP Act further expanded existing preferences for apparel and established new preferences for certain non-apparel textile goods. The HELP Act expanded and extended current preference programs under the HOPE and HOPE II Acts, and established new preferences providing unlimited duty-free treatment for certain knit apparel and certain non-apparel textiles wholly assembled or knit-to-shape in Haiti, using fabric or components from any source.

Under section 212(e) of the CBERA as amended (19 U.S.C. § 2702 (e)), the President may, in certain circumstances, withdraw or suspend the designation of any country as a beneficiary country, and may also withdraw, suspend, or limit the application of preferential treatment to any article of any beneficiary country. The CBERA as amended does not alter the benefits the United States provides under its Generalized System of Preferences (GSP) program to other developing countries.

Benefits provided under the original CBERA are permanent. The benefits added by the CBTPA are available through 30 September 2020, or until the Free Trade Area of the Americas (FTAA) or other free trade agreement between the United States and the beneficiary country enters into force, whichever occurs first.⁶ Additionally, certain benefits authorized by the HOPE Act as amended are available to Haiti through 30 September 2025.

2 SPECIFIC POLICY OBJECTIVES OF THE MEASURE

The CBERA as amended is intended to help Caribbean Basin countries develop their economies and diversify their exports. The CBERA as amended furthers these goals by creating opportunities to expand trade between the United States and beneficiary countries, thus promoting economic opportunity and growth in the region. The CBERA as amended is further intended to provide more stability, strengthen security, decrease illegal immigration, and improve regional cooperation in efforts to fight drug trafficking. The CBERA as amended is also designed to help stabilize the region's economies in the wake of devastating hurricanes in 1998, 2004, 2008, and 2017.

3 CIRCUMSTANCES JUSTIFYING THE WAIVER

The United States is committed to working in partnership with our close neighbours in the Caribbean Basin to improve livelihoods and expand economic opportunities through greater economic integration. In this effort, the Caribbean Basin countries have undertaken to strengthen their policy orientation to promote economic growth and to diversify exports. The CBERA as amended provides a vital US contribution to the efforts in this partnership to achieve greater economic integration.

The United States is concerned that conditions of poverty and instability remain high in our neighbours in the Caribbean Basin, particularly in Haiti. Economic prospects for these small countries are further complicated by susceptibility to natural disasters, such as the major hurricanes that have affected the Caribbean Basin in recent years. In response, the recent extension and expansion of benefits under the CBERA as amended by CBTPA and the HOPE, HOPE II, and HELP Acts is intended to further expand economic opportunities and contribute towards a more stable and prosperous region.

We note that our neighbour, Haiti, is the most impoverished country in the Western Hemisphere and one of the most susceptible to economic and political instability. On 12 January 2010, a massive earthquake struck Haiti, causing catastrophic damage inside and around the capital city of Port-au-Prince. The earthquake killed approximately 100,000 people, displaced more than

⁶ Under section 201(a)(3)(B) of the Dominican Republic-Central America-United States Free Trade Implementation Act, three exceptions apply to withdrawal of CBERA/CBTPA beneficiary status; the United States will continue to treat CAFTA-DR countries as beneficiary countries: (1) to preclude the International Trade Commission from cumulating CBERA imports in antidumping and countervailing duty investigations according to section 771(7)(G)(ii)(III) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III)); (2) to implement duty free treatment for certain ethyl alcohol provided under paragraph 12 of Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement; and (3) for purposes of taxpayer deductions for business trips to CBERA countries. Additionally, current CBERA and CBTPA beneficiary countries will be able to continue to count inputs from the former beneficiaries toward qualifying for benefits under CBERA and CBTPA.

1.5 million, and affected more than 3 million. A cholera epidemic that broke out in October 2010 further challenged the post-earthquake environment. The United States worked to respond to the humanitarian emergency following the earthquake, support recovery initiatives, and establish the foundation for reconstruction and longer-term development. An important element of the overall strategy is job creation and a long-term view to strengthen the capacity of Haiti's government institutions, as well as the institutions of the smaller economies in the region.

The United States is committed to a strategy that will reinforce economic growth, security, good governance, and leadership in creating a climate where investors will be willing to take risks and bring jobs to Haiti and the Caribbean Basin region. In this light, the issuance of a waiver to allow Haiti and the region extended benefits under CBERA as amended is a critical step in enhancing prospects for a stable future.

4 CONCLUSION

Pursuant to Article IX:3 of the WTO Agreement, the United States requests Members to extend the existing waiver of US obligations under paragraph 1 of Article I of the GATT 1994 and paragraphs 1 and 2 of Article XIII of the GATT 1994 to permit the United States to provide duty-free treatment to eligible products originating in beneficiary countries designated pursuant to the provisions of the CBERA. The United States requests Members to extend the waiver through 30 September 2025, to the extent necessary to permit the United States to provide preferential tariff treatment to eligible products originating in beneficiary countries designated pursuant to the provisions of the CBERA as amended. A draft waiver decision is attached for consideration.

The United States requests the Council for Trade in Goods to give this application for a waiver expeditious and favourable consideration. In the meantime, the United States will promptly enter into consultations, on request, with any interested Member with respect to any difficulty or matter that may arise as a result of the preferential treatment provided under the CBERA as amended.

UNITED STATES – CARIBBEAN BASIN ECONOMIC RECOVERY ACT**RENEWAL OF WAIVER***Draft Decision of ... 2019⁷*

The General Council,

Conducting the function of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

Having regard to paragraphs 1, 3 and 4 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"), the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956 (BISD 5S/25), and the Understanding in Respect to Waivers of Obligations under the General Agreement on Tariffs and Trade 1994 (the "Understanding");

Taking note of the request of the United States, pursuant to paragraph 3 of Article IX of the WTO Agreement, to extend the existing waiver⁸ of its obligations under paragraph 1 of Article I of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and paragraphs 1 and 2 of Article XIII of the GATT 1994 to permit the United States to provide duty-free treatment to eligible products originating in beneficiary Central American and Caribbean countries and territories ("beneficiary countries") designated pursuant to the provisions of the Caribbean Basin Economic Recovery Act of 1983, as amended by the Caribbean Basin Economic Recovery Expansion Act of 1990 (CBERA), by extending the waiver through 30 September 2025 to the extent necessary for the United States to provide preferential tariff treatment to eligible products originating in beneficiary countries designated pursuant to the provisions of the CBERA, as amended by the United States-Caribbean Basin Trade Partnership Act, the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008, the Haitian Economic Lift Program Act of 2010 ("CBERA as amended") and the Trade Preferences Extension Act of 2015;

Bearing in mind the Ministerial Decision on Measures in Favour of Least-Developed Countries, adopted in Marrakesh on 15 April 1994;

Bearing in mind also the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries and the 1994 Decision on Measures in Favour of Least-Developed Countries;

Bearing in mind also that the CONTRACTING PARTIES of the GATT 1947 granted the United States a waiver of obligations under paragraph 1 of Article I on 15 February 1985⁹, for the period from 1 January 1984 through 30 September 1995, and that Members extended the waiver on 15 November 1995¹⁰ in respect of paragraph 1 of Article I of the GATT 1994 through 30 September 2005, on 29 May 2009¹¹ through 31 December 2014, and that Members extended the waiver in respect of paragraph 1 of Article I of the GATT 1994 and expanded the waiver to cover paragraphs 1 and 2 of Article XIII of the GATT 1994 on 5 May 2015 through 31 December 2019, to the extent necessary for the United States to provide duty-free treatment for imports of eligible products originating in beneficiary countries designated pursuant to the provisions of the CBERA;

Considering that the United States-Caribbean Basin Trade Partnership Act (CBTPA), the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, the Haitian

⁷ Adopted in accordance with the Decision-Making Procedures under Article IX of the WTO Agreement agreed by the General Council in November 1995 (WT/L/93).

⁸ Document WT/L/753.

⁹ (BISD 31S/20).

¹⁰ WT/L/104.

¹¹ WT/L/753.

Hemispheric Opportunity through Partnership Encouragement Act of 2008, and the Haitian Economic Lift Program Act of 2010 expand the preferences the United States extends under the CBERA;

Considering further the exceptional situation of the CBERA and CBTPA beneficiary countries, and the stated objective of the CBERA as amended to assist the trade and economic development and recovery of Caribbean Basin countries by encouraging the expansion of productive capacity in those countries in response to more liberal access and to new trading opportunities;

Considering further that the preferential treatment provided for under the CBERA as amended is designed to promote the expansion of trade and economic development of beneficiary countries in a manner consistent with the objectives expressed in paragraphs 1, 2, and 3 of the Preamble to the WTO Agreement;

Considering further that the preferential treatment provided under the CBERA as amended will not alter benefits provided under the US Generalized System of Preferences to other developing countries;

Considering, moreover, that the duty-free treatment provided under CBERA should not prejudice the interests of other Members not benefiting from such treatment, and that it is expected that the extension of such duty-free treatment will not cause a significant diversion of United States imports of products eligible under CBERA originating in Members who are not beneficiary countries;

Considering that the duty-free treatment provided under CBERA by the United States Government shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

Noting the assurances given by the United States that it will promptly enter into consultations, on request, with any interested Member with respect to any difficulty or matter that may arise as a result of the preferential treatment provided under the CBERA as amended;

Decides, in view of these exceptional circumstances, as follows:

1. Subject to the terms and conditions set out hereunder, paragraph 1 of Article I and paragraphs 1 and 2 of Article XIII of the GATT 1994 shall be waived through 30 September 2025, to the extent necessary to permit the United States to provide preferential tariff treatment to eligible products originating in beneficiary countries designated pursuant to the provisions of the CBERA as amended.
2. The United States shall submit to the General Council an annual report on the implementation of the trade-related provisions of the CBERA with a view to facilitating the annual review provided for in paragraph 4 of Article IX of the WTO Agreement. The United States shall promptly notify the General Council of any trade-related measure taken under CBERA, in particular, any changes in the designation of beneficiary countries, as well as any modification being considered in the list of eligible products and the duty-free treatment thereof, and shall furnish it with all the information it may deem appropriate relating to such action. The United States shall consult with regard to any modification being considered in the list of eligible products.
3. Such duty-free treatment shall be designed to facilitate and promote the trade of beneficiary countries and not to raise barriers to or create undue difficulties for the trade of any other Members.
4. The United States shall promptly enter into consultations, on request, with any interested Member with respect to any difficulty or matter that may arise as a result of the preferential treatment provided under the CBERA as amended. If a Member considers that any benefit accruing to it under the GATT 1994 may be or is being impaired unduly as a result of such implementation, such consultation shall examine the possibility of action for a satisfactory resolution of the matter.
5. This Decision does not affect Members' rights as set forth in the Understanding in Respect of Waivers of Obligations under the GATT 1994.

ANNEX I

PUBLIC LAW 114-27

Trade Preferences Extension Act of 2015

TITLE III--EXTENSION OF PREFERENTIAL DUTY TREATMENT PROGRAM FOR HAITI

SEC. 301. EXTENSION OF PREFERENTIAL DUTY TREATMENT PROGRAM FOR HAITI.

Section 213A of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703a) is amended as follows:

(1) Subsection (b) is amended as follows:

(A) Paragraph (1) is amended--

(i) <<NOTE: Time periods.>> in subparagraph (B)(v)(I), by amending item (cc) to read as follows:

"(cc) 60 percent or more during the 1-year period beginning on December 20, 2017, and each of the 7 succeeding 1-year periods."; and

(ii) in subparagraph (C)--

(I) in the table, by striking "succeeding 11 1-year periods" and inserting "16 succeeding 1-year periods"; and

(II) by striking "December 19, 2018" and inserting "December 19, 2025".

(B) Paragraph (2) is amended--

(i) in subparagraph (A)(ii), by striking "11 succeeding 1-year periods" and inserting "16 succeeding 1-year periods"; and

(ii) in subparagraph (B)(iii), by striking "11 succeeding 1-year periods" and inserting "16 succeeding 1-year periods".

(2) Subsection (h) is amended by striking "September 30, 2020" and inserting "September 30, 2025".
