1. At the meeting of the Working Party on 10 April 1984, the United States as well as several members made general observations concerning the Caribbean Basin Economic Recovery Act (CBERA), various of its provisions and the United States request for a waiver. In addition, members asked a number of questions which together with the general observations will be reflected in the report of the Working Party to be issued at the conclusion of the deliberations. The replies of the United States representatives to the questions raised by members as well as outstanding questions and comments have been summarized hereunder and are related to the questions and replies reproduced in document L/5620 for easier reference. A summary of the general observations made at the beginning of the meeting will be provided in the draft report of the Working Party and is not provided in the present document.

GENERAL QUESTIONS
Questions 1-18
CBERA

2. In response to one member who had said that it would be desirable that the beneficiary countries make an assessment of the benefits provided by the Act, the representative of the United States noted that although trade was the cornerstone of the CBERA, the Caribbean Basin Initiative (CBI) programme included also investment incentives, increased aid and provisions for technical assistance. The CBI was designed to increase both domestic and foreign investment and to achieve reasonable levels of sustained growth in the region. The United States, other countries in the region and contracting parties generally would benefit from the economic development of the countries in the Caribbean Basin.

3. The representatives of some beneficiary countries expressed support for the CBERA and the trade benefits provided therein. One of these representatives said that the basic thrust of the CBI was to broaden the economic base of the countries in the region and to encourage trade and investment as part of an integrated approach with aid and technical assistance. The CBI would also benefit trading partners other than the United States because the rules of origin provided were quite generous.

4. One member said that on the question of benefits of the CBERA, his delegation deferred to the judgment of the beneficiary countries. Another member reiterated that the CBI was justified as an initiative aimed at promoting economic development in a region which had enormous needs. It was to be considered whether this kind of initiative should or should not become a precedent in GATT. In his view, the approach and presentation chosen by the United States were not very fortunate and it was desirable that the Act be applied in as flexible a manner as possible. Even though the CBI presentation appeared to be maladroit, the beneficiary countries had expressed interest in the approval by the CONTRACTING PARTIES of the United States request for a waiver. This member said that his delegation would examine the trade data provided by the United States before adopting a position. The CBERA impact on trade and its potential effects should not be underestimated.
5. In response to some comments concerning possible amendments to the CBERA, the representative of the United States said that it was not customary to include in any legislation provisions with respect to future amendments. The question was asked whether improvements in the Act could be foreseen in the light of requests made by the beneficiary countries or suggestions made by other contracting parties. The representative of the United States said that he would not like to speculate as to what Congress might or might not do. As the Act itself called for a review by the International Trade Commission after two years, he did not rule out that lawmakers might wish to amend it in the future. However, trade legislation in the United States was very difficult to pass and to amend.

6. One member said that absolute transparency with regard to the implementation of the Act and its effects was the best way to counteract the unilateral character of the Act and to safeguard the trade interests of contracting parties which might be affected by the provisions of the CBERA. This member suggested that the Working Party might reflect on the best method for achieving such transparency. The representative of the United States assured the Working Party that the Act would be administered in a transparent manner. It was expected that the transparency would include periodic reports on the operation of the Act by the United States and a major review by the CONTRACTING PARTIES after a few years of its operation.

Enabling Clause

7. One member asked how would the United States comply with paragraph 3 of the Enabling Clause which provides, inter alia, that differential and more favourable treatment under the Enabling Clause shall if necessary be modified to respond positively to the development, financial and trade needs of developing countries. The representative of the United States said that if any problems arose in this respect, it would be necessary to consider what action might be appropriate under the circumstances.

Question 2

8. In connection with the reply to question 2 in document L/5620, one member said that, in his opinion, the CBERA was inconsistent with the provisions of Part IV of the General Agreement, the Framework Agreement and the 1982 Ministerial Declaration.

Question 3

9. With reference to question 3 in document L/5620, one member stated that, in his view, the implementation of the Act without prior approval by the CONTRACTING PARTIES was a violation of the rules of the General Agreement. Moreover, in the light of the provisions of Article XI, the United States should also notify to GATT the "Sense of the Congress Regarding Sugar Imports" which appeared in Subtitle C of the CBERA.
Waiver

Questions 5 and 6

10. With reference to the answers to questions 5 and 6 in L/5620, the United States representative reaffirmed that a waiver had been requested pursuant to footnote 2 of paragraph 2 of the Enabling Clause and paragraph 5 of Article XXV of the General Agreement because even though the CBI, as a programme to assist the economic growth of developing countries in the Caribbean region was consistent with the objectives of paragraph 3 of the Enabling Clause, the application of duty free treatment to eligible articles from beneficiary countries as provided in the Act was not specifically covered by paragraph 2 of the Enabling Clause. The fact that the CBI programme met the criteria of paragraph 3 of the Enabling Clause but was outside the scope of paragraph 2 gave rise to the exceptional circumstances which warranted the granting of a waiver under Article XXV paragraph 5.

11. The member who had asked this question said that compliance with the criteria in paragraph 3 of the Enabling Clause could not be construed as justifying the existence of exceptional circumstances and a departure from the principles of the General Agreement.

12. Another member said that he disagreed with the United States interpretation of footnote 2 of paragraph 2 of the Enabling Clause. This member said that his delegation interpreted the reference to "the GATT provisions for joint action" by the CONTRACTING PARTIES in footnote 2 of paragraph 2 as referring to Part IV in particular paragraphs 1 and 2 of Article XXXVIII of the General Agreement. He added that in this case the granting of a waiver from the provisions of Article I would allow the United States to discriminate against contracting parties for reasons which his delegation considered to be political.

13. In the view of the United States, the provisions for joint action in footnote 2 to paragraph 2 of the Enabling Clause did not cover joint action under Article XXXVIII: 1 and 2 or other provisions in Part IV of the General Agreement which referred to voluntary actions by the contracting parties and not to waivers under Article XXV.

14. One other member said that his delegation did not share the United States interpretation of footnote 2 of paragraph 2 of the Enabling Clause.

15. In response to a request for clarification, the Director of Legal Affairs pointed out that the interpretation of GATT provisions was not within the competence of the secretariat; only the CONTRACTING PARTIES could give legally valid interpretations. On that understanding he said that, although in his opinion the words "the GATT provisions for joint action" in footnote 2 could be interpreted as referring to the provisions of Article XXV, paragraph 1, he had been assured that the drafters of the text had intended the phrase to refer to the waiver procedure in Article XXV, paragraph 5, as being appropriate to cover such special and differential treatment. He recalled, however, that the only agreement which had previously been notified with reference to the footnote, SPARTECA, had not been dealt with as a waiver case. He did not think that the footnote should be interpreted as referring to Article XXXVIII which did not contain any procedural provisions.
16. Another member noted that while it was laudable that the United States had requested a waiver to implement the CBERA, regrettably there was no reference to a waiver anywhere in the Act. In his view, the exercise of national sovereignty also had to consider international obligations.

Conditions of the waiver

17. The United States representative said that his authorities were willing to submit annual reports to the CONTRACTING PARTIES on the implementation of the Act and to carry out reviews of the effects of the Act on the trade interests of contracting parties on a periodic basis. In this connection one member said that if annual reviews were not seen as very productive by the United States, a major review mid-way in the time period of the waiver might be useful. The United States representative said that his authorities would also be ready to afford opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise in relation to the implementation of the Act.

Duration of the waiver

18. The representative of the United States said that the request for a waiver related to the period of duration of the CBERA which was 11 and 3/4 years. This time period was the maximum which the United States Congress would accept for the Act and was intended to coincide with the proposed termination of the extension of the validity of the GSP legislation currently under consideration in the United States Congress.

Question 7

19. With reference to question 7 in L/5620, one member asked whether the preferential duty free treatment provided by the Act could be considered as complementary to other trade liberalization efforts that might be carried out during the duration of the Act.

Questions 8 and 9

20. One member asked whether the United States could confirm the replies to questions 8 and 9 in document L/5620 to the effect that the United States had neither requested nor was receiving any preferential access for U.S. products or investments in any beneficiary country and did not intend to use the waiver requested as a means to contravene the principle of non-discriminatory allocation of import quotas and that this undertaking would continue to be observed in the future. The representative of the United States, in confirming the reply to question 8, noted that the CBI programme was limited in scope and time and that the United States had no intention of seeking trade concessions from the beneficiary Caribbean countries.

Question 10

21. With reference to question 10 in L/5620, one member said that eligible countries could only be granted beneficiary status on the basis of a decision by the President of the United States. The criteria applied by the President of the United States were in his opinion discriminatory and permitted arbitrariness. Furthermore, in his opinion the CBERA was of doubtful benefit for the CBI countries. The duty-free treatment related
to only 8.7 per cent of trade. The existence of a safeguard clause created a degree of uncertainty to investors. There was no compensatory mechanism in the case of a reduction in the beneficiary countries' export income from primary products. The CBERA not only weakened the functioning of the CACM but also increased the dependence of the countries of the region on the United States.

Questions 11 and 12

22. With reference to questions 11 and 12 in L/5620 and the quantification of benefits accruing to beneficiary countries, one member said that considering the data in the trade matrix provided by the secretariat, the five categories of products excluded from the CBI and the situation of sugar, it appeared that all that the beneficiary countries would get was a five per cent duty preference on a very limited number of products. Perhaps the CBI countries were looking for trade promotion measures rather than minimal margins of preference which might at the most attract limited investment opportunities. However, in terms of a cost/benefit analysis, the net benefits for the beneficiary countries appeared limited if compared to the damage to the principles of international trade.

23. The representative of the United States noted that existing trade covered by the CBERA was approximately US$600 million. Even though the trade aspect was the centerpiece of the CBERA, it was only one element of an expanded cooperation effort which included investment incentives, aid and technical assistance with the objective of reaching sustained growth by the countries in the region.

24. In response to a question raised by one member, the representative of the United States noted that all contracting parties would benefit from the expanded economy of the region and the additional investment opportunities created by the Act.

Question 16

25. One member noted that the set of instruments provided by the Act, trade, investment and aid possibilities which were mutually reinforcing and interacting might have a mixed impact on the interests of all concerned in terms of trade flows and investment flows and enquired whether the United States delegation had any comments in this respect.

26. With reference to question 16 in L/5620, one member noted that there might be some trade diversion to the detriment of his country's exports to the United States. In such case consultations might not be sufficient. He asked whether the United States had envisaged a mechanism for compensating affected contracting parties. A similar concern was expressed by another member who recalled the provisions of paragraph 3 of the Enabling Clause and said that in such situation mere consultations would not be adequate. The representative of the United States stated that this was a very delicate issue and said that no compensatory mechanism had been envisaged. The economies of the CBI countries were rather small and could not constitute a challenge to external markets. The United States did not believe that there were likely to be any significant negative effects on the trade of the other countries of the region as a result of the implementation of the Act. Nevertheless, transparency would be insured and consultations would take place as necessary. The member who had raised this issue said that the consultations should be linked to some form of action in case there were negative effects for contracting parties.
27. Another member referring to the question of compensation raised by some members said that, in his view, a donor country could not be expected to pay twice for the benefits accorded to some countries. If the trade interests of some contracting parties were affected negatively by preferential arrangements of this kind, he thought that the donor country might be expected to review the manner of application of the preferences in question to avoid causing further injury to the interests of third countries. In his opinion, it would not be realistic for third countries to expect compensation in this situation.

BENEFICIARY COUNTRIES
Questions 19-26

28. Some members enquired why the list of beneficiary countries had not included all the countries and territories in the region. Noting that a purpose of the CBERA was to promote the economic and political stability of the region, the rationale for establishing eligibility conditions was questioned. In response, the representative of the United States said that the United States Congress had determined the list of beneficiary countries and given no discretion to the President in this respect. Certain countries in the Caribbean Basin such as Colombia, Mexico and Venezuela, which had been excluded were envisaged as possible donor countries. The French overseas departments had been left out because they had not wished to be included. The beneficiary countries had geographical and historical ties of long standing with the United States.

29. The representative of the United States added that the mandatory requirements concerning eligibility had been determined by the United States Congress and were similar to the requirements established in the GSP legislation with the addition of one requirement concerning the protection of United States copyright. These requirements were preconditions for the designation of a country as a beneficiary country under the Act and not commitments required from the beneficiary countries. Eligible countries were designated as beneficiaries only if they applied for such status. Up to the present time, twenty out of the twenty-seven countries that could be designated as beneficiaries had requested beneficiary status.

Question 19

30. With reference to paragraph 3 of the reply to question 19 in L/5620 concerning the President's discretion to designate beneficiary countries, one member said that the reply of the United States was not satisfactory. In his view, these provisions of the CBERA were inconsistent with the principle of non-discrimination and Part IV of the General Agreement.

Question 26(f)

31. With reference to the reply to question 26(f) in L/5620, one member enquired whether beneficiary countries which did not accede to GATT or to MTN Agreements would be excluded from the CBERA. In his view non-participation in the MTN Agreements should not be an obstacle to be designated as a beneficiary country. The representative of the United States said that non membership of the beneficiary countries in the GATT or the MTN Codes did not have any effect on their beneficiary status.
Question 26(g)

32. Referring to GATT's rights and obligations one member noted that many beneficiary countries were not contracting parties. He enquired what was the status of GATT rights and obligations between the United States and these beneficiary countries in terms of the CBI. He also asked what was the position of these countries and the United States on the question of terms of accession to GATT and the MTN Agreements. Would these countries get special and preferential treatment when acceding to the MTN Codes or would they be subject to the same criteria and level of commitments expected from other developing countries? The representative of one beneficiary country which is a contracting party said that in this connection no effects negative or otherwise were anticipated from the CBI for countries which were members of GATT. The CBI did not modify the rights and obligations of contracting parties. The representative of the United States said that nothing in the CBI would prejudice the process of accession to GATT or the MTN Codes. Beneficiary countries when acceding would be expected to undertake similar obligations to those undertaken by other contracting parties at similar levels of development.

ELIGIBLE ARTICLES
Questions 27-41
Question 28

33. One member said that the rules of origin referred to in question 28 of L/5620 would cause trade diversion in favour of the United States and to the detriment of third countries. The representative of the United States replied that what was anticipated from the CBERA was trade creation and not a displacement of trade from some countries.

Sugar
Questions 32-40

34. One member referring to the United States import regime for sugar which established quotas and to the improbability of an increase of sugar imports, requested that the United States justify the statement that the treatment for sugar in the CBERA was conducive to trade liberalization.

35. In referring to the replies to questions 32, 34, 36 and 38 concerning the treatment of sugar in the CBERA, one member said that the use of expressions such as: "If and when U.S. quotas are increased or eliminated,...the three countries will probably still be subject to these quantitative limits,... at no time...would the three countries be likely to have unlimited access..., CBERA sugar producers remain subject to the quantitative limits as long as there is a restrictive quota system in effect" were ambiguous with respect to the situation where global sugar quotas might be increased over the current levels. Referring to question 36, another member expressed concern that if and when the United States support system for sugar was removed, the Dominican Republic, Guatemala and Panama would be able to ship duty-free sugar to the United States in excess of their traditional levels of exports. These countries would enjoy guaranteed duty-free access in a shrinking market. This member requested explicit guarantees from the United States that the interests of third suppliers would be safeguarded. Another member asked whether section 213(d)(4) of the CBERA referred to the quota system applied by the United States to sugar imports.
Question 36

36. With reference to the reply to question 36 in L/5620, one member said that in accordance with paragraph (g) of the proclamation, sugar quotas for each fiscal year (1.10 to 30.9) would not exceed 6.9 million short tons. He enquired whether these quotas would only be distributed pursuant to current criteria of market share and share in the United States market. Another member asked about the meaning of the expression not "likely to have unlimited access" in the reply to question 36.

37. In response to several questions concerning the treatment of sugar and the CBERA, the representative of the United States said that the restraint system on sugar imports was entirely separate from the CBI. Quotas were not set or affected by the CBI legislation but under another authority. Under the GSP sugar was imported duty-free from a number of countries but the quantitative limits were set by the sugar headnote and the relevant legislation. Sugar was not a key or major element in the CBI from the point of view of the United States and the beneficiary countries. One of the major objectives of the CBERA preferences was the diversification of exports away from dependency on one or a few commodities.

38. The representative of the United States then proceeded to describe the sugar import regime of the United States. Sugar imports which were classified under tariff item 15520 and syrup and molasses under tariff item 15530 were subject to quantitative limits, to fees and to duties. In addition, sugar was covered by the GSP and CBI programmes. With respect to quantitative limits, the United States sugar imports were subject to limits set by Presidential proclamation pursuant to headnote 2 Subpart A of Part 10 Schedule 1 of the Tariff Schedules. The quotas under headnote 2 were allocated on a country by country basis. Quotas were not set under the CBI. The duties applied to sugar imports were also set pursuant to the authority of headnote 2. The current tariff rate of 2.8125 cents per pound was the maximum duty allowable. Under headnote 2 the President retained the authority to reduce duties to as low as 0.625 cents per pound. In addition to the quotas and the tariff under headnote 2, United States sugar imports were also subject to fees pursuant to section 22 of the Agricultural Adjustment Act. Currently such fees had been set at zero but they were reviewed quarterly. Under this authority the President could impose fees or quotas to protect the sugar price support programme but he could not impose both fees and quotas simultaneously under section 22. At the current time, sugar imports were subject to quotas allocated by countries and to a tariff under the headnote. Sugar imports under the GSP were subject to both the section 22 fees which were currently zero and the headnote 2 country quotas. The quotas were lower than the competitive need limits and thus duty-free treatment under the GSP was limited to the quota level established by the headnote. Sugar imports under the CBERA were also subject to section 22 fees which were currently zero and like the GSP entered duty free up to the headnote 2 country quota levels. Under the CBI the quotas set by the headnote determined the duty-free entry the same as in the case of the GSP.

39. The representative of the United States referred then to possible changes in the sugar import regime. If there were no quotas imposed under headnote 2 but there was a Presidential proclamation imposing either a fee or a quota under section 22 in order to protect the domestic sugar price support, CBI sugar imports would enter duty-free up to the competitive need limit unless it was higher than the quota established under section 22. If
there were more restrictive quotas in effect, CBI duty-free imports would be covered by such quotas. In this situation, the Dominican Republic, Guatemala and Panama would be entitled to duty-free entry up to the quota levels specified in the CBPRCA assuming that these levels did not exceed the section 22 quota levels. If there was no section 22 proclamation in effect and no headnote 2 quotas in effect, CBI sugar imports would enter the United States duty-free subject only to the rules of origin, safeguards, food plan requirements and other provisions of the Act. As indicated in the reply to question 36, it was unlikely that these three countries would have unlimited access to the United States market. Under the CBPRCA the most severe quota in effect would be applied. That was the meaning of section 213 (d)(4) of the CBPRCA. The United States could reaffirm the response to question 9 in L/5620 that it did not intend to use the waiver as a means to contravene the principle of non-discriminatory allocation of import quotas. The provisions for imports of sugar under the CBI did not preclude future liberalization of sugar imports by the United States.

40. With respect to sugar one member noted and welcomed the following comments and assurances given by the United States: (i) that the waiver would not be used to contravene the principle of non-discriminatory allocation of import quotas (question 9); (ii) that it was not expected that the United States President would use his authority to increase the limits on duty-free access for sugar from the Dominican Republic, Guatemala and Panama (question 35); (iii) that it was not expected that the trade of non-Caribbean suppliers would suffer as a result of the CBPRCA (question 40). This member interpreted these assurances as an implicit undertaking that the United States would envisage remedying any adverse effects caused by the Act on the sugar trade of non-Caribbean suppliers. The preceding comments and assurances were determinant for this member's position on the waiver request and it was expected that they would be fully observed throughout the life of the Act.

41. In response to some additional comments, the representative of the United States noted that the International Sugar Agreement was under renegotiation. The United States would meet any commitments which it might undertake under a renegotiated ISA. Returning to question 36, he reiterated that if there were no restrictions under the sugar programme either under the headnote or a proclamation by the President under section 22, the three countries would have duty-free access to the United States market. However, there were limitations to the volume of exports because of their limited production capacity and the need to observe a food plan which ensured that production would not be diverted from food into other areas such as sugar. One member noted that the Dominican Republic was the largest exporter of sugar to the United States market.

42. In response to a further question relating to the basic allocation of the United States sugar quotas under headnote 2, the representative of the United States said that the CBI had no effect on the setting of the quotas. The CBI only allowed duty-free access within certain limits. However, for any given country, the most limiting quota in effect took precedence over quotas established under the CBI.

Emergency action
Question 41

43. With reference to section 213(e) of the CBPRCA which authorizes the President to suspend the duty-free treatment with respect to eligible articles, one member enquired how would safeguard action under the CBPRCA
affect duty-free imports of that same item under the GSP. The representative of the United States said that the provisions were the same except in one case: for certain specified perishable products the CBI established a special emergency safeguard procedure with short time limits for examination of a request for emergency relief by the Secretary of Agriculture and determination by the President. Emergency relief under this procedure remained in effect until the ongoing section 201 procedure was concluded or the President determined that emergency relief was no longer warranted.

44. One member noted that the GSP had competitive need limitations which did not exist in the CBI. If exports increased to the point of threatening the United States industry, under section 213(e)(1) the President could suspend the duty-free treatment provided by the CBERA. He enquired what would be the effect of such situation on GSP beneficiaries.

45. The representative of the United States said that the CBI legislation excluded import sensitive items while in the case of the GSP the President had more discretionary authority. The notion of competitive need limits was tied to the notion of graduation on a product specific basis. Except for the case of sugar, this factor was not relevant to CBI because of the low stage of development of the beneficiary countries. It would not be inconsistent with Article XIX of the General Agreement if the President were to take a tariff action in the context of an escape clause. This kind of action would be covered by a waiver from the m.f.n. provisions of paragraph 1 of Article I. It would be for the CONTRACTING PARTIES to decide what conditions should apply to any other action. The President did not have the intention of invoking the authority in section 213(e)(1) in any pending section 201 cases.

46. The representative of the United States added that in all cases of safeguard action there had to be an injury test. This was basic to the safeguard procedures in the United States. Under the CBERA, the President had the authority to modify or terminate the relief with respect to CBI imports at an earlier date than was provided for in the proclamation itself.

47. One member reserved his position and rights with respect to the response of the United States on this matter and reserved his rights concerning the answer to question 41(c) in document L/5620. Another member said that safeguard measures created instability for investors. Article XIX of the General Agreement did not permit discriminatory safeguard action. Consequently, the response of the United States was not satisfactory.

TRADE DATA

Questions 43-44

48. With reference to question 44 in L/5620, one member reiterated that in addition to the questions of principle his delegation attached great importance to the trade consequences of the Act and would examine in detail the printouts and computer tapes deposited with the secretariat. The representative of the United States said that in order to respond in an efficient manner to the requests for information submitted by contracting parties, a trade data tape had been provided with complete data collected, catalogued and cross-referenced in such a way that the secretariat could produce any data on trade of the region with the United States which might be required. Any member desiring a particular tabulation could obtain from the secretariat the information required.