Executive Summary

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Textile Parity in the Dominican Republic

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I. Legal basis: US Trade and Development Act 2000.

On January 24th the United States Congress passed the Trade and Development Act 2000, with the main purpose of determining the commercial policy of the United States in relation to certain groups of developing countries and of granting new commercial benefits to such countries. Apart from other trade-related provisions, this legislation contains the African Growth and Opportunity Act, which grants commercial benefits and economic cooperation to Sub-saharian African countries, as well as the US-Caribbean Basin Trade Partnership Act, which enlarges the Caribbean Basin Initiative by establishing the textile parity with Mexico (Title II).

A. Nature and purpose

The legislation passed by the US Congress on behalf of African and Caribbean countries is an instrument of unilateral cooperation, and as such can be considered as the only law of its kind approved by the US Congress during this decade and as the first commercial law passed after the adoption of the North American Free Trade Agreement (NAFTA).

Pursuant to Section 202 of the US-Caribbean Basin Trade Partnership Act, its main purpose is to promote the economic development of the region by expanding the international trade relations of the US with the countries of the area, in accordance with the committment made in the Caribbean Basin Initiative and in consideration of the damages caused by the hurricanes Georges and Mitch, in the understanding that this policy will contribute to the prosperity of such countries, while increasing export opportunities for US producers and contributing to the formation of the Free Trade Agreement of the Americas (FTAA) expected to be completed by the year 2005.

B. Legal background

The Trade Act 1974 established the Generalized System of Preferences (GSP), which grants developing countries throughout the world, including Caribbean countries, preferential access rights with respect to a wide range of manufactured and semi-manufactured products that may therefore enter the US territory without paying custom duties.

In 1983 the Caribbean Basin Initiative (CBI) allowed the nations of the region to benefit from a preferential regime far larger than that provided by the GSP, and since then most of the export products of the area have been exempted from tariff barriers when entering the US market. Under the CBI and its further expansion in 1986 (CBI II), products originating in one or more CBI countries (apart from textiles/apparels, footwear, petroleum, tuna and watches) may enter freely the US market provided that such products have been wholly obtained, produced or manufactured in one or more CBI countries, and exported directly to the United States.

In addition, a special access program (SAP) is in effect for apparel assembled in a CBI country and imported under the „production sharing" or „offshore production" tariff, which applies regular duty rates to a duty-base excluding the value of US components, provided it is assembled from fabric formed as well as cut in the United States.

With the implementation of the textile parity on behalf of CBI countries the measure has exempted these and other textile products made with US materials from the payment of custom duties, which may thus in the future enter freely the US market, under the conditions set forth by the legislation.

II. Textile parity defined.

A. Purpose of parity

The textile and apparel sector is one of the economic milestones of the Caribbean region. For many years, and thanks to the preferential tariff treatment established by the United States on behalf of the area, textile exports to the US market showed continuing growth rates which contributed to the development of the sector and the economic growth of these countries.

In the year 1994 this situation changed drastically with the implementation of the NAFTA, which grants commercial benefits to Mexico that are much wider than those provided under the CBI,

by eliminating gradually tariff barriers to Mexican textile products, while textiles originating in CBI countries continued being subject to reduced but still positive rates, as well as to import quotas.

The adverse effects of the NAFTA were felt rapidly by the Caribbean economies and, in accordance with a report prepared by the National Free Zone Council, by the year 1996 the growth rate of Mexican and Caribbean exports to the US, that had been more or less the same (20%) for both, showed a significant change on behalf of Mexico, whose exports were growing at a rate of 37%, while CBI exports grew only by 10%.

Textile parity responds thus to the need of a legal formula capable of preventing that the provisions of the NAFTA affect the economic and social development that since the year 1983 the US Caribbean Basin Initiative had helped to promote.

In this regard, the aim of the new legislation is to grant the countries of the region the parity with Mexico, thus allowing such nations to benefit, as regards textiles and other products, from a similar tariff treatment than the one granted to Mexico under the NAFTA, and to recover the competitive position that they had held with that country before the implementation of such agreement.

B. Reach and duration of preferential treatment

Pursuant to Section 211 of the US-Caribbean Basin Trade Partnership Act, the different categories of textile products described therein will be eligible to benefit from a preferential access scheme under which such products may enter the United States free of custom duties, quantitative restrictions, limitations and consultation levels.

The assimilation of the treatment granted to CBI countries to that granted to Mexico under the NAFTA is not limited to the apparel sector, and in addition to the textile parity the new law grants all other products originating in CBI countries that do not enjoy preferential treatment under the CBI the right to benefit from the same tariff treatment granted to Mexican products under the NAFTA.

The benefits conferred to CBI countries have a provisional nature and thus apply only during the transition period set forth in the law, which will run for eight years, from October 1st, 2000, through September 30th, 2008, or, if earlier, the date the Free Trade Agreement of the Americas (FTAA) or similar free trade agreement between the United States and a beneficiary country enters into force.

III. Beneficiary countries.

The countries that benefit from the textile parity are the nations of the Caribbean Basin, which include those of the Central American Economic Integration System (Costa Rica, El Salvador, Honduras, Nicaragua y Guatemala), as well as the following Caribbean islands: Antigua and Barbuda, Antillas Holandesas, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, Panama, St. Christopher and Nevis, St. Lucia, St. Vincent and The Grenadines, and Trinidad and Tobago.

The benefits granted to such countries have a unilateral but not an unconditional nature. The law sets forth certain requirements that such countries have to comply with in order to make their products elegible to enjoy the preferential tariff treatment provided therein.

In this regard, the designation of CBI countries as beneficiary countries is not automatic but has on the contrary to be made by the President of the United States for each CBI country in particular, after verifying that such country complies with the established conditions. The President may also withdraw or suspend the designation of any CBI country as a beneficiary country upon evidence showing that such country does not satisfy anymore the elegibility criteria set foth in the law.

Therefore, the CBI countries that will be designated as beneficiary countries and whose products will be thus elegible to benefit from the textile parity, will be those which can prove to have complied, or to have taken sufficient steps to comply, with the following requirements:

(i) to undertake, within or ahead of schedule, the committments made before the World Trade Organization (WTO), including the Uruguay Round Agreements, and to participate in the negotiations towards the completion of the FTAA or similar agreement;

(ii) to grant adequate protection to intellectual property rights, pursuant to the provisions of the Agreement on Trade Related Issues of Intellectual Property Rights (TRIPS);

(iii) to recognize and enforce internationally recognized worker's rights, including the right of association, the right to organize and bargain collectively, a prohibition to use any form of forced or compulsory labor, a minimun age for the employment of children and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(iv) to eliminate the worst forms of child labor, as defined by the 1974 Trade Act;

(v) to fulfill the counter-narcotics certification criteria under the 1961 Foreign Assistance Act;

(vi) to adopt and implement the Inter-American Convention Against Corruption; and

(vii) to apply transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement of the Uruguay Round of Agreements Act, and to contribute to efforts in international fora to develop and implement international rules in transparency in government procurement.

IV. Elegible products.

A. Categories of products

Preferential tariff treatment is provided to the following categories of textile apparels:

(i) Apparels assembled in CBI countries. In this case textile apparels must be assembled out of fabrics wholly obtained and cut in the

United States. The materials used in the production of the fabrics (yarn) must also be of US origin.

(ii) Apparels assembled and processed in CBI countries. Apparel articles that, besides having been assembled in CBI countries from fabric produced and cut in the US, have been embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes, are also eligible for preferential treatment.

(iii) Apparel cut and assembled in CBI countries. In this case the articles must in addition be sewn together with thread of US origin.

(iii) Certain knit apparels. This category includes the following articles:

1. Apparel articles knit to shape in a CBI country (except for socks) from yarn wholly produced in the United States.
2. Knit apparel articles (except for t-shirts) cut and assembled in a CBI country from fabric made in a CBI country or the US out of yarn of US origin.
3. T-shirts (except for underwear) produced in CBI countries from fabric made in CBI countries from US-made yarn.

Import quotas apply for this category of products. During the first annual period (from October 1st, 2000 to September 30th, 2001) the annual limit for the first two categories together will be 250 million square meters, and 4.2 million dozens for the third. These limits will be increased yearly by 16% during the first three years (until September 30th, 2004), and will thereafter remain the same until the termination of the transition period.

The quotas will be distributed among the CBI countries by granting specific quantities to each country in accordance with its respective production capacity and export record.

(iv) Brassieres cut and assembled in CBI countries. In this case the product does not have to be made from fabric or yarn totally produced in the US, but the aggregate cost of US materials must account for at least 75% of the aggregate value of the product.

Duty-free treatment of these products is not automatic, but may be conferred by the US Customs Service on a yearly basis to each producer in particular, and only from October 1st, 2000, after having verified that the cost of the US-made fabric components used by each individual producer during the preceding year is indeed at least 75% of the custom value of all the products exported by such producer to the US. The US Customs Service shall develop and implement any procedures to ensure ongoing compliance with these requirements.

(v) Apparels made with fabric or yarn not available in the US. Apparel articles cut and sewn, or knit to shape, in a CBI country, from fabrics or yarns not produced in the US, may be eligible for preferential treatment after determination, pursuant to the procedure prescribed in the law, that such fabric or yarns cannot be supplied by the US industry in commercial quantities in a timely manner.

(vi) Handloomed, handmade and folklore products. These products are eligible for preferential treatment when they have been designated as such by the competent authorities of their country of origin.

(vii) Textile luggage. Both the assembly and cutting of textile luggage in CBI countries is eligible for preferential treatment, provided that US-made fabric has been used in the production. Cutting operations in a CBI country are sufficient to make the product eligible for preferential treatment, regardless of the country where the product has been assembled, which does not necessarily have to be a CBI country.

(viii) Other products. Other import-sensitive articles which are, like textiles, ineligible for CBI duty-free treatment (footwear, tuna, petroleum and watch parts) are also to be dutied at Mexico-NAFTA rates (if lower than CBI rates), and thus benefit from an intermediate preferential treatment entailing a reduction of custom duties when entering the US.

B. Rules of origin

Two different types of origin rules must be taken into account at the moment of determining whether a product is eligible for preferential treatment: those which provide when a product has been manufactured in a CBI country and those which provide when such product has been manufactured with materials coming from the United States.

In general, a textile product has been obtained in a CBI country when all of its components have suffered a substantial transformation entailing a change in the respective tariff treatment of each of such components. The product must comply with the rules of origin set forth in Chapter 4 of the NAFTA, which are somewhat stricter that those applicable under the CBI. The law extends the application of this chapter to CBI countries, providing that for such purposes CBI countries shall be considered as a part of the NAFTA in the same way as Mexico.

The law provides however that the product may have foreign components (not originating in a CBI country or the US), such as thread, buttons, decorative tape, lace, zippers, labels, etc., as long as such components do not exceed 25% of the total cost of the product components.

On the other hand, apparels must be made out of fabric wholly made in the US from yarn wholly produced in the US, apart from yarn or fiber not exceeding 7% of the total weight of the product, except for elastomeric yarn, which must be always wholly produced in the US. Furthermore, fabrics may contain nylon filament yarn originating from Mexico or Canada.

C. Effects of textile parity

The treatment of textile exports coming from CBI countries to the US has been deeply modified in order to benefit a large series of products that previously had to pay duties when entering the US market, being exempted from payment, not only the assembly in CBI countries, but also the operations of cutting and additional processing in such

countries, and being furthermore allowed in some cases that apparels be made out of materials produced, or partially originating, in countries other than the US.

This amendment entails significant implications for the textile industry of the region, particularly: (i) the leveling the position of textile producers of the region with that of Mexico and its Asian competitors, (ii) the creation and/or moving to the region of cutting and processing industries, and (iii) the installation and expansion of fabric producers in the region.

On the other hand, CBI countries are given incentives to use US fabric and yarn in their production, and this will benefit the US textile industry by leading to an increase of demand of such products from CBI countries that have to comply with the rules of origin in order to enjoy the preferential treatment granted by the law.

V. Procedures and penalties

A. Customs procedures in the US

Exporters of products eligible for preferential treatment must provide the US importer with a certificate of origin evidencing that the product has been produced in a CBI beneficiary country and that such product complies with the relevant origin rules.

In this regard, the law sets forth that the eligibility to enjoy preferential treatment is subject to a determination made by the President of the United States in respect to each CBI country that such country has implemented, or has made substantial progress towards implementing, similar procedures to those established in chapter 5 of the NAFTA.

This entails mainly that CBI countries have to set custom controls comparable to those provided in such chapter, and must for instance regulate the issuance of certificates of origin by the exporters, who should be obliged to give notice thereof to custom authorities and be subject to sanctions in the event of having made false or wrong declarations.

B. Penalties for transshipment

Textile parity has been adopted for the benefit of CBI countries, and thus applies only when the exported products comply with the applicable origin rules. Therefore transshipment, defined as the claiming of preferential treatment 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, is subject to sanctions at both individual and State level.

Exporters who incur in such activities may be sanctioned with the withdrawal of trade benefits for a period of two years. Furthermore, CBI countries that do not take appropriate measures to prevent such activities from taking place in their territory may be subject to a reduction in the quantities of apparels that may be exported to the US from such country, up to three times the quantity of transshipped articles.

VI. Impact on the Dominican textile industry

A. Structure and importance of the sector

The Dominican textile industry is organized almost in its entirety under the free zone regime established by Law 8-90, which grants ample tax and duty-free incentives to free zone companies. Most textile companies are dedicated to the assembly of clothes, and the country is the largest apparel producer and exporter in the region with national, North American and, in a lesser degree, Asian, investments. In contrast to Central American countries, the production of cotton, yarn and fiber is extremely limited, as well as the number of fabric producers, which have just recently started to develop.

The textile sector is highly important for the Dominican Republic, being one of the economic milestones of the country in respect to levels of exports and employment. Close to 70% of the Dominican free zone companies are textile companies, and from the 200,000 jobs generated by free zones, around 140,000 correspond to textile industries.

The Dominican Republic was thus one of the countries that resulted more affected with the entry into force of the NAFTA. Until the year 1993 the Dominican nation ranked as sixth among the largest textile exporters to the United States and its exports showed a growth rate of more than 20% per year. After the implementation of the NAFTA the country was overtaken by Mexico, and for the year 1996 the growth rate of exports had decreased to 1.3%. In this regard, the National Council of Free Zones estimates that the adverse effects of the NAFTA led to the closing down of several companies that were moved to Mexico, thus causing the loss of thousands of jobs.

B. Perspectives

In terms of volume of exports and production capacity, the Dominican Republic is perhaps the country that will obtain greater advantage from the textile parity, whose implementation is expected to increase the growth of the sector by 20% to 30%.

The Dominican textile industry will benefit mainly from the categories related to the cut, assembly and processing of clothes, which will promote the return of companies that had moved to Mexico, as well as the moving of cutting and termination companies to the country. In fact, since the implementation of the textile parity the National Free Zone Council has started to receive several applications from companies wishing to install themselves in, or move to, the Dominican Republic.

As to local fabric production, the textile parity will strengthen the process of vertical integration that had lately started to develop, but which had been hindered by the lack of preferential access to the US. Already now there are a few companies in the country that are starting to produce the fabric they use in their production.

The expansion of the textile industry will also contribute to the development of other economic sectors, such as the textile complementary industry like thread, zippers and hangers producers, which have already shown an interest to establish themselves in the country, as well as economic sectors like banking, transport and

telecommunications, which will thus experience an increase in their productive and commercial activities.

C. Compliance with requirements

The implementation of the textile parity would certainly have very positive effects for the country's economy, and it is thus necessary to pay special attention to the conditions from which its implementation, with respect to Dominican Republic, depends.

(i) FTAA negotiations. The Dominican Republic was one of 34 nations that in 1994 assumed the joint commitment of building the FTAA by the year 2005. Thereafter the country has participated in all the meetings set up as discussion forums of free trade related topics. Furthermore, through the execution of free trade agreements with Central America and CARICOM the country has started a process of regional integration as a way to prepare its insertion in the FTAA.

(ii) WTO obligations. Since the beginning of the 90's the country has been carrying out a process of reform and economic modernization in order to jump on the train of economic globalization and comply with the commitments made before the WTO. This process has led to the passing of several laws intended to liberalize the different economic sectors and modernize the legal framework of trade related activities. Pending reforms include the bills for a Monetary and Financial Code and a Market Regulation Code, which are in agenda to be adopted by the Dominican Congress before the end of this year.

(iii) Intellectual property protection. The Dominican Congress passed recently the Law No. 20-00 on Industrial Property, which regulates the registration of patents and trademarks pursuant to the provisions of the TRIPS. Furthermore, the National Congress is currently discussing a new copyrights law that will ensure an adequate and effective protection of copyrights in the country.

(iv) Worker rights. The Labor Code of the Dominican Republic was drafted in accordance with the recommendations and parameters set by the International Labor Organization (ILO) and in cooperation with experts from that organization. Therefore the Dominican code protects all internationally recognized worker rights, including all of those mentioned in the parity law. The Ministry of Labor and labor courts ensure the effective enforcement of such rights.

(v) Child labor. The Dominican Republic, both in the Labor Code and in the Minors Code, forbids the employment of minors, applying severe sanctions to persons who employ children in forced labor, illegal activities, prostitution and any other activity that may be harmful to them.

(vi) Counter-narcotics certification. Through the National Office of Narcotics Control, and in cooperation with US and European authorities, the country makes continuing efforts to fight drug trafficking activities, having always fulfilled the certification criteria set forth in the US Foreign Assistance Act of 1961.

(vii) Inter-American Convention Against Corruption. The Dominican Republic has already ratified this convention and, in implementation thereof, the past government created the Office for Corruption Prevention, and the new government has proposed to create the National Attorney's Office Against Corruption, with national jurisdiction.

(viii) Government procurement. All of the laws passed by Congress in the last years have included provisions ensuring that impartial and transparent procedures are carried out by the public administration (Law of Reform of Public Enterprises, General Telecommunications Law, etc.). The new government has drafted and submitted to Congress a bill for the amendment of Law 322 of 1981 on Construction, in order to eliminate completely the possibility of private negotiations between government officials and contractors allowed therein, which for many is the main reason for the absence of transparent and public procedures in some cases of public contracting.

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