U.S. Chamber of Commerce

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Mr. Donald W. Eiss
Acting Chair
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20008

Re: Docket USTR-2012-0028, Request for Comments: Granting Certain Trade Benefits to Aruba, Curaçao, Saint Maarten, Turks and Caicos Islands, Bahamas, etc.

The U.S. Chamber of Commerce—the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region—and its member companies welcome the opportunity to present comments to the Office of the U.S. Trade Representative on granting trade benefits to certain countries under the Caribbean Basin Economic Recovery Act (CBERA) and the Caribbean Basin Trade Partnership Act (CBTPA). Our comments will focus on Aruba's eligibility to be designated as eligible to receive benefits under CBTPA, as Aruba already receives benefits under CBERA.

Introduction

Since its enactment in 1983, the Caribbean Basin Economic Recovery Act (CBERA) has promoted export-led development in the Caribbean. It has been an effective tool to generate trade, growth, and jobs among the beneficiary countries. The program was expanded in 2000 through the Caribbean Basin Trade Partnership Act (CBTPA) by providing trade preferences for the region's exports through the duty-free or below normal tariff rates trade of textiles and apparel.

In 2011, U.S. imports from the 17 CBERA beneficiary countries totaled $16 billion, with petroleum and natural gas products accounting for $6 billion of total imports and apparel manufacturing products totaling $709 million. While apparel provisions under CBTPA are not fully utilized by many of the services-oriented Caribbean economies, other countries such as Haiti have seen tremendous benefits from unilateral preferences under CBTPA and the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act of 2006.

Since Congress first approved CBERA in 1983, the statute has included a number of eligibility criteria relating to the respect of internationally recognized workers' rights and the protection of intellectual property rights, including copyrights for film and television material.

The enhanced benefits of CBTPA led to additional eligibility criteria including WTO commitments, commitments to eliminate the worst forms of child labor, cooperation with the United States on counter-narcotics initiatives, implementation of an international anticorruption convention, and transparency in government procurement procedures. These provisions foster the development of a rules-based trading system in the region and integration into the global economy. One-way trade preference programs leading over time to two-way, fully-reciprocal trade agreements are proving to be a successful model for the gradual integration of developing countries into the global economy.

Eligibility Requirements: Aruba

As a beneficiary of CBERA, Aruba's exports to the United States have grown more than 300% in the past 10 years. One way in which Aruba has improved its competitiveness and thus exported more is by creating a large number of Free Trade Zone (FTZ) facilities. As the Chamber has stated in previous testimony, we strongly support the expansion of unilateral trade preference programs to facilitate the economic development and export diversification of the Caribbean Basin economies for countries that comply with the appropriate criteria. While Aruba has complied with the specific criteria, major problems in Aruba's FTZs still need to be addressed.

The companies that currently operate in the FTZs of Aruba conduct mainly trade or light business activities and specialize in the distribution of branded products, excise goods, and other products exported mainly to Venezuela, Colombia, and the Caribbean region. As has transpired in many other countries, the proliferation of FTZs due to the incentives offered, combined with growing economies in the region, can result in a reduction of controls and enforcement and can create opportunities for illicit trade and money laundering activities.

Cigarettes, alcohol, and other high duty items are more vulnerable to smuggling and contraband due to the increased revenue that can be generated evading taxes. At the same time, the high volume of containers, the possibility to repackage and re-label shipments, and the lack of oversight make FTZs more vulnerable to smugglers attempting to avoid high duty and tax rates on cigarettes and alcohol.

Historically, some jurisdictions such as Aruba have developed a parallel market for cigarettes, in this case for the Colombian market. Although the goods purchased by Colombia generally leave Aruba's FTZs legally, they are then smuggled mainly into Colombia.[1] In the mid 1990s, Aruba's FTZs received very bad international press, with allegations ranging from mafia presence and money laundering to smuggling. In response to this situation, the Government of Aruba, jointly with the Netherlands, developed a series of recommendations and actions to ensure the integrity of its FTZs and protect them from being used for illegal activities. They focused on prevention and on how to make it more difficult to launder illegal proceeds and developed a program based on promoting integrity, prevention, transparency, and risk assessment in line with international best practices.[2]

Despite these improvements, Aruba's FTZs continue to be used as a base to divert illegal cigarettes or other merchandise to Colombia and other countries in the region. In fact, in the

Bureau of International Narcotics and Law Enforcement Affairs May 2012 report, the Bureau stated the following about Aruba: “It is still believed that smuggling (using smuggled bulk cash to buy products which are shipped to South America and sold) could be a problem.”[3] And the Working Paper on “Illegal trade in tobacco in the MERCOSUR countries,” by Alejandro Ramos MSc and partners, for CIET Uruguay, analyzing illicit tobacco trade in the MERCOSUR countries, notes that, “Most of the illegal production is centered in Paraguay, and about nine in ten illicit cigarettes are consumed in Brazil. In addition, another 30 billion cigarettes leave the MERCOSUR region for other countries, often through Panama or Aruba.”[4]

We are convinced that Aruba has made significant progress in recent years to protect its FTZs from illicit trade. New legislation has been introduced which has increased transparency significantly—laws and regulations now exist in Aruba to help stop the flow of illicit products. Nevertheless, the typical vulnerabilities of FTZs, such as relaxed oversight, inadequate record-keeping and inadequate coordination and cooperation between Zone and Customs authorities continue to be a major risk. Considering the volume of cigarettes entering the FTZs in Aruba proceeding from countries such as Paraguay, which are found as illegal products in final destination countries such as Colombia or Venezuela, more efforts should be required to address this issue.

Conclusion

The U.S. Chamber recommends a continuation of trade preferences under CBERA and CBTPA, including for Aruba. Until the countries of the Caribbean region are ready to move forward with a reciprocal trade agreement, unilateral preferences should be renewed and extended to the region that satisfy the criteria requirements. However, this program also provides an opportunity to address major issues, such as the one in Aruba regarding FTZs.

Ultimately, preference programs promote stability and growth while creating economic development opportunities. They allow the United States to promote development in the region while instilling a tradition of respect for workers’ rights, intellectual property rights, and child labor standards at little cost to U.S. domestic industries and guiding the region toward integration into the global economy.

Sincerely,

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[1] “Money laundering Vulnerability of FTZ”, FATF, Financial Action Task Force, March 2010
[2] “Money laundering Vulnerability of FTZ”, FATF, Financial Action Task Force, March 2010
[3] “2012 International Narcotics Control Strategy Report (INCSR),” Bureau of International Narcotics and Law Enforcement Affairs, May 30, 2012
[4] “Illegal trade in tobacco in the MERCOSUR countries,” Alejandro Ramos MSc, Ciet Uruguay, Working Paper, June 2009