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Democratization and Economic Development in Haiti: A Review of the Caribbean Basin Initiative**

On Sunday, December 16, 1990, in fair and peaceful elections held in ravaged Haiti, the people made what appeared to be a decisive change for democratic rule and social justice. Newly elected President Jean Bertrand Aristide was a shining specter of hope for the Haitian people. His task to lead Haiti to some kind of orderly democracy was onerous. While the new constitution had provided for decentralized government, the enthusiastic vote for Aristide contrasted sharply with the parliamentary races.

On September 30, 1991, a military coup ousted Aristide. Since then, the 6,000-man Haitian army and police have carried out a campaign of terror and intimidation against supporters of Aristide, who was popular with Haiti's poor people.[1] In addition, since then, more than 16,000 refugees have fled the island, mostly in response to the political chaos and economic turmoil.[2] Those who escaped by sea, however, were intercepted by the United States Coast Guard and held at Guantanamo Naval Station.

On January 31, 1992, the United States Supreme Court cleared the way for the Coast Guard to forcibly return about 10,000 Haitian boat people to their strife-torn island nation.[3] On February 4, 1992, cutters returned the first 381 Haitians.[4]

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1. Lee Hockstaden, *Cutters Return First 381 of Fleeing Haitians*, WASH. POST, Feb. 4, 1992, at A11.

2. As of March 19, 1992, an estimated 16,464 Haitians had been interdicted. *See* Haitian Centers Council, Inv. v. McNary, 789 F. Supp. 541 (E.D.N.Y. 1992).

3. Baker v. Haitian Refugee Center, 112 S. Ct. 1073 (1992).

4. Hockstaden, *supra* note 1.

Many of the returnees, who were denied political asylum in the United States, were Aristide supporters and feared violence and prosecution.

In addition, a number of attempts to reinstate Aristide have been rejected. For instance, on March 27, 1992, a Haiti Supreme Court rejected an agreement brokered by the Organization of American States (OAS) seeking the return to power of Aristide.[5] The Supreme Court ruled that the agreement was unconstitutional and could not be ratified by the Haitian parliament.[6] The ruling was a setback to a February 23, 1992, agreement between Aristide and leaders of Haiti's legislature that called for an end to international sanctions on Haiti if a new prime minister was installed.[7] Further, the United States had partially lifted an embargo, whose purpose was to cause economic hardship to those who orchestrated the coup.

In considering the difficulties Haiti has faced, the question remains whether Aristide's *Lavalas* (cleansing torrent) movement could have led the country to some kind of orderly democracy. What is clear, however, is that strict conservative measures must be employed to bring this impoverished nation to economic freedom. In doing so Haiti must put into place a strong rule of law, which in any civilized nation is based on the premise that the rule is accessible, fair, and predictable to produce economic and political stability. While the populace is hungry for some sign of positive change, the desire for a "quick fix" will halt any significant gains. In addition, the introduction of long-term solutions may also prove disastrous. Moreover, prior bilateral trade agreements, such as the Caribbean Basin Initiative (CBI), continue to offer very little positive economic advancement for this island nation.

The overthrow of Aristide presents another interesting dilemma in the tumultuous history of Haiti. The conflict arising in the reluctance of the army and the upper class to recognize the needs of the majority poor continues to impact upon Haitian progress. While President Aristide was the first president to be selected in a free democratic election, the powers that have always controlled Haiti are still entrenched. The strength of the Duvalier army still exists and possibly has now forged an alliance with the bourgeoisie. The cost of democracy and freedom is perhaps too great a price for the Haitian people to pay.

This article focuses on the historical impact of Haiti's past, the democratic rule of law, Haitian political policy, and an examination of the CBI and its effect on the Caribbean in general, and the Haitian nation in particular. Additionally, some suggestions are offered for a new island order.

5. J.P. Slavin, *Court Rejects Pact for Aristide's Return*, WASH. POST, Mar. 28, 1992, at A16.
6. *Id.*
7. *Id.*

I. The Significance of Rules

An autonomous individual is one who is rational and free with respect to his own conduct. Rationality and freedom, when taken together, confer moral responsibility for one's behavior. Thus, as described by Kant, autonomous individuals are self-legislating beings who act in accordance to laws derived from their own reason. The newly freed Haitian slave in 1804 lacked this requisite, a lacuna exacerbated by the absence of a governmental model. Slavery was replaced by bewilderment and self-promotion. Further, in analyzing the political climate of the time, government was by force and fear. Thus the slave mentality persisted, and the individual continued to be one who was not self-legislated.[8] In addition, the body politic had no mutual consent between men to maintain a government. From 1804 to the present, Haiti has been a country governed by men who have enacted and enforced their own laws as they saw fit. Government, in its purest sense, is in fact the coercion through threat and force of the many by a few.[9]

The revolt of the slaves could be characterized as a "negative revolution"; even as it rejected the old, repressive order it failed to provide for a new order. The continuation of revolutions and *coups d'état* in Haitian history merely formed a foundation for the eventual military dictatorship of Duvalier.[10] Although the overthrow of the dictatorship provided a perfect opportunity for change, it has merely fostered fractionalization among the various political groups. Additionally, the lack of a central figure, such as Castro in Cuba, immediately after the overthrow of Duvalier left the country politically adrift. President Aristide is a charismatic figure who was sorely needed in Haiti. He represented the majority of Haitians who believed in both his political philosophy and in him as a leader. Again, Haiti is in a similar predicament in 1992 as it was in 1804: it has removed the master, but has failed to decide internally what will be the replacement.[11]

If a government is to be successful, it must have a moral basis for legal order. Whenever this moral basis is lacking, and consequently justification is lacking, the government is merely a group of people who rule by sheer force. If a government is to be viable, "the governed" will assume that the legal order is justified because

8. RICHARD TAYLOR, FREEDOM, ANARCHY, AND THE LAW 48 (1973).

9. [It is interesting to note] how continental European police systems came to be so highly centralized and came to be associated with the repressive violence of autocratic monarchial regimes. Their legitimacy was derived from the traditional legitimacy of the sovereign . . . for economic success, that is to say prosperity, has been a legitimizing ground for centuries and in many kinds of societies.

CARL FRIEDRICH, THE PATHOLOGY OF POLITICS 22 (1972).

10. *See* SAMUEL HUNTINGTON, POLITICAL ORDER IN CHANGING SOCIETIES (1968), *cited in* FRIEDRICH, *supra* note 9.

11. For a discussion of elements necessary for a successful change in the political order, see FRIEDRICH, *supra* note 9, at 55. Every political order is subject to change, and unless means are provided for adaptation of the institutions and processes to change as occur in the social substructure, such change will lead to violence, either sporadic, as in much resistance, or all-engulfing, as in political revolution.

the laws and the judicial apparatus that manage them contain certain general principles of morality such as respect for human life, the rights of the individual, the sanctity of property, and fairness. The quality of the legal order turns on governmental protection, which promotes and upholds justice and morality.[12] The political power comes from the people and legitimizes the government. Based on Rousseau's theory of social contract, popular consent is given by the people to the government. Rousseau believed that at one time people lived without government and were governed by natural law in the natural state.[13]

The question, then, is what has prevented the Haitian republic from developing into a modern nation? The problem is twofold. First, Haitians generally mistrust the people in the government since historically a strong central government that can provide both safety and a finite safeguard of the rule of law has been nonexistent. Second, the attempt to establish a democracy in a country that is 90 percent illiterate is an extraordinary feat. The time has come to reevaluate the governmental and ideological concept called democracy, vis-à-vis a third-world country such as Haiti. Can an underdeveloped country newly freed from dictatorial rule, which views traditional democracy through media exposure, expect to attain such a goal so quickly without pain? The answer is obvious. Unfortunately, however, the major thrust in U.S. foreign policy is to ensure democracy at any and all cost.

Haitians, through the media, know how others live and expect that democracy will be the magic wand that will immediately provide them the typical standards of living enjoyed by other democratically ruled countries. The result is a revolution of the rising expectations syndrome; the expectations escalate at a faster rate than the institution can handle, and instability again results. In order for a country to wipe away decades of inactivity, corruption, illiteracy, health-care problems, and housing shortages, it must assemble democracy in stages. New services, infrastructure, and institutions must be overhauled and recreated to achieve this goal. Simply holding elections will not suffice. If a country is to achieve long-

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12. The notions of justice and morality have been the subject of philosophers throughout the ages. Plato thought that the right to rule coincides with the degree of philosophical acumen necessary for the understanding of justice. Locke and others of his era posited that men have certain natural rights which government must respect and protect. *See also* THOMAS AQUINAS, SUMMA THEOLOGIC, THE BASIC WRITINGS OF SAINT THOMAS AQUINAS (1945); RAY C. MACRIDIS, CONTEMPORARY POLITICAL IDEOLOGIES (1986).

13. LEON P. BARADAT, POLITICAL IDEOLOGIES—THEIR ORIGINS AND IMPACT 47 (1988). While Hobbs, Locke, and Rousseau agreed on many points, they also differed on many others. They agreed that the individual should be free, but they disagreed on the definition of freedom.

> The conservative Hobbs made a significant contribution to the development of democracy by supporting the notion that political power comes from the people and by insisting on the separation of church and state. Even so, he believed that the evil nature of people made them prisoners of their own greed. . . . The liberal Locke, on the other hand, thought that because people were basically good, freedom was greatest when the individual was left alone. The radical Rousseau believed that people were timid and peaceful in the state of nature. They became greedy only after they entered a society that had become perverted by private property. Freedom from the captivity of their own passion could be achieved only through the creation of a new society where equality was the dominant principle. . . . While Hobbs held that the monarch was this authority, Rousseau asked individuals to surrender themselves to the community, or general will.

Id.

lasting peace and prosperity, it must first reestablish the rule of law, and the governed must legitimize the government. It must also give assurances that order and protection will uphold the rights of the individual. Then, and only then, will the atmosphere permit the first step towards the establishment of a democracy. At this point a call should also go out to those of the Haitian diaspora to return home to provide managerial, educational, medical, and business expertise to get the country moving again. This return can only be achieved if those emigrés feel that their safety will be assured.

II. Haitian Political Policy

Haiti presents a special case in the historical evolution of the Caribbean because it was the first country to successfully revolt against the white plantocracy. The newly emancipated slaves had only two models for governance: the plantation and the tribe. The new leadership imposed no new social order. In essence, the Haitian people rebelled against slavery and replaced it with nothing. Moreover, external help was not forthcoming from Europe or from the emerging American republic that maintained slavery within its borders. Thus, Haiti bobbed and weaved through history with corrupt leadership and a serious internal color caste problem, which plagues it to this day.

The United States became interested in Haiti in the late nineteenth century due to its paranoia with European expansion into the Caribbean and South America. United States chauvinism reached its peak with the occupation of Haiti, and later the fear of communism brought with it support to any dictator who cried "communist insurgency" regardless of the cost to its citizenry. François Duvalier was a master at crying the "communist wolf" to the United States whenever it was practical and when his coffers were running low. Duvalier's experience during the U.S. occupation shaped the *noiriste* philosophy that, had it been presented in a positive fashion, could have brought the country to a new philosophical level. Instead, this ideal caused havoc, exiled the educated class, and consumed the country in an atmosphere of fear and chaos. Duvalier's policies, and the U.S. support of them, further catapulted the country into economic, political, educational, and social decline. François Duvalier's death in 1971 was not a reprieve from corruption, but a continuation of it in the form of his heir to the presidential chair—Jean Claude. Although the violence was somewhat subdued, the family's wholesale and blatant theft of the government's coffers continued.

The exile of Jean Claude Duvalier and his family in 1986 was to be the final chapter in dictatorial politics and a new beginning for the ravaged country. However, Haitian blood continues to be shed, and political unrest is the only constant. Since the exit of Jean Claude, Haiti has had six presidents: General Namphy, President Manigat, General Avril, Ertha Pascal Trouillot (who accepted the position after three other men turned it down), Bertrand Aristide, and Judge Joseph Nerette, who was installed shortly after the coup. Perhaps by expecting a country to go from a dictatorship to a democracy in one step is asking too much. We have seen time and time again that the U.S. version of democracy when employed in the third-world environment simply does not work. A new definition of democracy must be found for countries such as Haiti where chaos, greed, and fear have been the rule of law. This author suggests the following steps:

(a) Dispatch a United Nations peacekeeping team to Haiti.
(b) Eliminate all weapons on the island for a period of years.
(c) Rule by a coalition of people representing the various factions.
(d) Pass emergency legislation that would permit foreign contracts to develop infrastructure projects and build factories for economic development projects. In exchange the government would provide tax incentives where project developers provide school and housing for workers and their families. A "company town" concept should be implemented whereby all the company towns' developers would form a coalition and would provide stability and uniformity for the people.
(e) Implement a plan whereby after ten years a general election could be held for a president and a legislature. By then the country should be economically stable, the population more educated and employed, and the new generation would have had ten years of peace and prosperity. This government would usher in the next phase of democracy, which would replace the U.N. peacekeeping forces, who would have assisted with the development of a new army and the democratic election of a new president. The political coalition would then be phased out.

Haiti is at a crossroads in its development; if the next step is not taken to do something constructive to move it into the twentieth century, it may never happen. The United States cannot dictate, but can cajole.[14] The "American Plan," the buzzword in Haiti, now has two strategies for development: one, the displacement of the rural population to work in U.S. industries in the urban areas; and two, a restructured agriculture that is owned by U.S. nationals. However noble, the intent to provide more low-paying jobs for the masses misses the mark.[15] While Haitians need jobs, they also need education, better health care, and decent shelter.

14. For an example of U.S. mismanagement in Haiti, see AMY WILENTZ, THE RAINY SEASON 271-72 (1989):

> In 1941, the United States and Haiti began a cooperative venture called the Société Häiiano-Américaine de Développ-ment Agricole (SHADA), the Haitian-American Company for Agricultural Development, a prototypical aid project run by Americans who ignored the protests of responsible Haitian experts. Financed by an Export-Import Bank loan of $5 million and later the recipient of another $7 million in U.S. credit, SHADA proposed to raise sisal and rubber. . . . SHADA was a bold project, and the Haitian government, also ignoring the indigenous experts, did everything it could to help implement the plans of the American agronomist who had developed the idea. . . . In the end, according to the summary in *Written in Blood* and in other reports of the SHADA debacle, some forty thousand families were kicked off their property, although the project never cultivated even half of that land. For four years, SHADA had managed more than 5 percent of Haiti's finest agricultural lands, yet when the project was over, only five tons of rubber—a scandalously low return—had been harvested.

15. DeWind and Kunley point out in its 1982 Country Development Strategy Statement, USAID "anticipates that such a drastic reorientation of agriculture will cause a decline in income and nutritional status, especially for small farmers and peasants. . . . Even if transition to export agriculture is successful, AID anticipates a 'massive' displacement of peasant farmers and migration to urban centers."

Id. at 282.

A 1985 World Bank Report entitled "Haiti: Policy Proposals for Growth" advised "the Haitian government—and, by extension, foreign-aid donors—to cut back on social and health programs and use the monies thus saved to build up infrastructure."[16] In a chapter called "The Way Forward," the World Bank suggested that "capital expenditure not essential to increasing output . . . should be reduced and should be stabilized in the case of health and the social components within rural development projects."[17]

Clearly, cultural and political traditions stand in the way of progress and modernization in Haiti. The association of democracy with capitalism is not generally accepted in Haiti as the solution to its problems.[18] The deprivation and humiliation of slavery by the French, the occupation by the Americans, the dictatorship of the Duvaliers, and the continuation of the *tonton macoutes* have left Haiti in continuous chaos and turmoil.[19]

Although the U.S. plan stresses the need for social objectives to be related to economic growth, the larger question becomes, at whose expense? The purpose of the CBI was allegedly to encourage private enterprise investment by U.S. citizens in exchange for economic and military dominance in the region. Upon evaluation of the CBI, however, the entire Caribbean is no better off than it was before the enactment. The following section examines CBI, its impact overall, and its effect on Haiti in particular.

III. The Caribbean Basin Initiative

In a message to Congress on March 17, 1982, former President Reagan submitted a proposal entitled the Caribbean Basin Initiative (CBI). In August 1983 the

16. *Id.* at 274.

17. *Id.* The report goes on to state, "temporarily, less emphasis should be placed on social objectives which increase consumption, since the urgent need is to free a major share of GDP [gross domestic product] growth for export." *Id.* On the subject of education, the report states: "Education . . . is essential to long-term development. In the short term, however, it is a cost. This cost is necessary but should be minimized. . . . Thus, social objectives should be more strictly related to economic growth . . . and private sector participation in the achievement of social objectives should be pursued where possible." *Id.* This represents the classic trickle-down theory that simply does not work in the United States and certainly not in Haiti.

18. *Id.* at 275–76. A conversation with former President Aristide, a staunch anti-Duvalierist, revealed the following:

> You want to make sure it [an investment] gives you the best rate of return: stability and profit, in the case of the U.S. in Haiti. This is normal, capitalist behavior, and I don't care if the U.S. wants to do it at home. You can do whatever you want in your own home, right? But it is monstrous to come down here and impose your will on another people. Why should we advance the way you want us to advance? I understand the reality of the geographical situation, and the geopolitical situation, but I cannot accept that Haiti should be whatever the United States wants it to be. . . . but one thing Haitians have made clear, from Dessalines to Duvalier, good and bad alike, is that we do not bow to the will of other nations. We may pretend to, but we don't. We've never been a client state.

Id.

19. Neil A. Lewis, *What Can the U.S. Really Do About Haiti?* N.Y. TIMES, Dec. 6, 1987, sec. 4, at 2 ("What the United States said it wanted for the impoverished and largely illiterate population of that country was the first free election in 30 years. When the balloting was canceled by attacks on polling places. . . . there was a rush to debate what went wrong and whether the American ability to influence events in the region had been reduced. But a larger question that was underlined in Haiti is how far the United States can go in manipulating the affairs of other countries").

proposal was enacted into law as the Caribbean Basin Economic Recovery Act (CBERA).[20] The purposes of the CBERA are twofold: to encourage private enterprise from the United States by providing an atmosphere of investment safety for U.S. investors; and to enhance and preserve the military and economic dominance of the United States in the Caribbean region. President Reagan indicated in a speech to the Organization of American States (OAS) that the program would "integrate trade, aid, and investment"[21] and would serve as the basis of U.S. economic support to the political and economic problems of the region by establishing a long-term commitment to the beneficiary countries.

A close scrutiny of the CBERA, and an analysis of the past nine years of its existence, however, leave one asking whether the CBI beneficiary countries are any better off now then they were in 1983. The answer is a resounding "no." In reality the CBERA is nothing more than an attempt to provide safe legal environments for corporations to thrive in cheap labor societies. It has not and will not lead to the development of stable economies. Rather, it will result in continuation of increased debt and inequality between rich and poor nations.[22] CBI has been criticized as being "presented mainly as a means to counter Cuba, not primarily as a way to respond directly to the needs of the people of the Caribbean."[23] By the time Congress approved CBI the "United States preoccupations had shifted from the Caribbean to Central America, and from assistance to the private sector to military and economic support to friendly governments in Central America."[24]

IV. Beneficiary Status vs. Sovereignty

The seeds of CBI were sown by Edward Seaga in October 1979[25] in a speech that illuminated the need for a mini-Marshall Plan and a Puerto Rico-style special

20. Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983) (codified in scattered sections of 26 U.S.C.) [hereinafter Recovery Act]. A country listed by law as eligible for the program must also be designated by the President as a beneficiary on the basis of a set of criteria and conditions. At present, twenty-three countries are so designated: Antiqua and Barbuda, Aruba, Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Panama, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and the British Virgin Islands.

21. 18 Weekly Comp. Pres. Doc. 217-23 (Mar. 1, 1982) [hereinafter OAS Speech].

22. CBI was criticized in the foreign affairs community as ill-concerned. *See Caribbean Basin Initiative—1983: Hearing on Section 544 Before the Senate Comm. on Finance*, 98th Cong., 1st Sess. 140, 169 (1983) (statement of Joseph Pilgman) [hereinafter *Hearings*]. *See also* Sidney Weintraub, *A Flawed Model*, 47 FOREIGN POLICY 128 (1982); Richard E. Feinberg & Richard S. Newfarmer, *A Bilateral Gamble*, 47 FOREIGN POLICY 133 (1982).

23. *Hearings*, *supra* note 22, at 170 (statement of Abraham F. Lowenthal).

24. Kari Polanyi-Levitt, *The Origins and Implications of the Caribbean Basin Initiative; Mortgaging Sovereignty?* 1985 INT'L J. 229, 234.

25. Speech by Edward Seaga to Diplomatic Corps, Oct. 10, 1979, *in* SUNDAY GLEANER (Jamaica). Seaga became prime minister of Jamaica in 1980.

relationship between the United States and the Caribbean. Other proposals for a special trade and aid relationship were discussed during the Carter administration.[26] Later, when Reagan became president, the focus of the proposed relationship shifted from the Carter global and multilateral approach to gunboat economics.[27] Further, the disproportionate amount allocated to El Salvador and Costa Rica prompted critics to say that CBI was a means to further U.S. interests in Central America.[28] The Reagan administration continued to assert that the program would "help establish the conditions under which a free and competitive private sector could flourish."[29] However, upon closer scrutiny, the private sector is located in the United States, not in the Caribbean.

In the initial proposal, investors would receive investment tax credits. In order to participate, the countries would be forced to change their investment policies to attract foreign investment. The CBERA encompasses not only the countries of the Caribbean, but also expands into Latin America. The country seeking beneficiary status must assure the administration that the beneficiary is prepared to provide a virtually risk-free environment for U.S. business interests.[30] A country can fall from grace if it "has taken steps to repudiate or nullify a contract" or "has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures."[31] Thus, if the effect of the aforementioned activities is to nationalize, expropriate, or otherwise seize ownership or control of U.S. property,"[32] the country will lose its beneficiary status. In effect, a country mortgages its sovereignty to participate in the program.[33] Third-world countries contend that sovereignty of a nation over its resources is a basic rule of international law so long as it is for a public purpose and is nondiscriminatory. This position has been adopted by the United Nations and has gained support with a growing number of states to be considered a generally accepted principle of

26. *See* Jeane Kirkpatrick, *U.S. Security & Latin America,* COMMENTARY, Jan. 1981, at 29; Robert Pastor, *U.S. Security & Latin America,* COMMENTARY, Apr. 1981, at 4.

27. Jeffrey E. Garten, *Gunboat Economics,* 64 FOREIGN AFFAIRS 538-59 (1985).

28. Supplemental Appropriation for FY 1982, $350 million of which $128 million was earmarked for El Salvador, $70 million for Costa Rica. *See* Richard E. Feinberg, et al., *The Battle over the CBI. The Debate in Washington,* 12 CARIBBEAN REV. 12, 15-18 (1983).

> The CBI investment incentive provisions had the roughest treatment of all in Congress and were eventually dropped. Instead, businesses holding conventions in CBI countries were to be given tax deductions. To qualify for the convention concession, however, a country had to sign an agreement with the United States Treasury undertaking to disclose tax information. While this incentive might provide some stimulus to investment in the tourist sector, the condition appears to be aimed at the Bahamas and other Caribbean territories which specialize in offshore financial services and related tax haven activity.

Id.

29. *Id.*

30. If a country 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 is 50 percentum or more beneficially owned by United States citizens," the President is prohibited from conferring beneficiary status. Recovery Act, *supra* note 20, § 2702(b)(2)(A).

31. *Id.* § 2702(b)(2)(C).

32. *Id.*

33. A country can be "redeemed" if it pays "prompt, adequate and effective compensation" to aggrieved investors. *Id.* § 102(b)(2)(D).

international law.[34] Under CBERA, a country also will be denied beneficiary status if it fails to provide an economic and political environment to foster private enterprise.[35] Again, to receive the beneficiary status a country must be prepared to subordinate its sovereign rights.

The investment tax credit provision was subsequently replaced with an allowable deduction for reasonable business expenses for a tax resident of the United States who attends a convention in an eligible beneficiary country. In return, that country must agree to exchange information to enforce tax laws and not discriminate against U.S. convention sites in its tax law.[36]

In essence, beneficiary status achieves three goals: first, countries that participate in the program become increasingly economically dependent on the United States; second, it rewards and coerces countries to support U.S. policies even if in conflict with the countries' internal laws; and third, it isolates countries that are considered a threat to United States security from participation and the resulting economic benefits.[37]

V. Duty-Free Trade—Economic Assistance

The centerpiece of CBI is the provision for duty-free trade for Caribbean Basin products exported to the United States. Since 87 percent of exports from that region entered the United States duty free before CBI, then another question arises: What is there to be gained by the CBERA?[38] Certain articles deemed "import sensitive" are excluded from duty-free importation. These articles include: (1) textiles and apparel subject to textile agreements; (2) footwear, handbags, luggage, flat goods, work gloves, and leather apparel ineligible for duty-free status under the generalized system of preference (GSP); (3) canned tuna; (4) petroleum and its products; and (5) watches and watch parts containing any material originating in countries whose products are subject to nonconcessionary (full) duty rates (most communist countries). An import qualifies for duty-free

34. There are several fundamental problems between the American view and the Caribbean view. First, the concept of a nation's sovereignty to control its resources is an important issue. The United States contends it is unnecessary for the host country to expropriate, impose taxes, or nullify its agreement with a United States corporation. It is quite interesting that the host government is precluded from taxation whereas the American government remains clearly interested in taxing its nationals. Also, if there is a dispute, the host country tribunals should be prepared to side with the American corporation and repayment should be in convertible currency rather than in local currency. Again, this is an extra added burden for the host country and clearly outside the scope of internationally accepted methods of repayment in the event of expropriation. *Id.* § 2702(b)(3).

35. *Id.* § 2702(b)(1) (a Communist country is prohibited from participation).

36. *Id.* §§ 221-223, 27 U.S.C. § 274(h)(6).

37. Administration officials have stated that the Act's anticommunism provision applies only to Cuba; initially Grenada and Nicaragua were to be excluded as well but as of this writing Grenada is a beneficiary country. *See Hearings, supra* note 22, at 68 (statement of Stoessel), 72 (statement of Brock).

38. *The Caribbean Basin Policy Hearings Before the Subcommittee on Inter-American Affairs of the House Commission on Foreign Affairs*, 97th Cong., 1st Sess. 170 (statement of Stephen L. Lande).

status if it is made in the CBERA country of exportation and at least 35 percent of its value has originated in that or any other CBERA country (including also value originated in Puerto Rico or the U.S. Virgin Islands), but up to 15 percent of the 35 percent of its value also may have originated in the United States.[39]

Special rules also apply to sugar and beef products. Since sugar is the most important export of the majority of Caribbean countries, these restrictions (largely from the sugar lobby in Washington) deprive the sugar producers of a competitive edge in the U.S. market.[40] Thus, the CBERA is another ploy to induce countries to adopt economic policies that are consistent with U.S. interests and usually inconsistent with their own laws. The gains made by CBERA countries in the area of tariff savings have been negligible (see Appendix).

A proposed component of the CBI was "large and immediate infusions of foreign exchange for balance of payments support."[41] This goal was never accomplished because the administration failed to provide an adequate appropriation, and the region's foreign exchange shortfall for 1982 was roughly four billion dollars.[42] Thus, the decision was made to funnel the foreign exchange assistance funds "primarily to finance private-sector imports."[43] Therefore, the net result

39. Vladimir N. Pregely, *CRS Issue Brief, Expanding the Caribbean Basin Economic Recovery Act* (Libr. of Cong. CBI II) Apr. 25, 1990 (Cong. Res. Service, Econ. Div.) [hereinafter *CRS Issue Brief*].

40. *Id.* at 3:

> Duty-free treatment of these products is contingent on the beneficiary countries submitting a stable food production plan ensuring that the food production and nutritional level of the country will not be adversely affected by increases in the production of sugar and beef products for export in response to CBERA tariff benefits. Under this provision sugar and beef products of Antiqua and Barbados, Montserrat, Netherlands Antilles, St. Lucia and St. Vincent and the Grenadines are not eligible for CBERA duty-free treatment.

Restrictions also are placed on duty-free treatment of sugars, syrups, and molasses when measures to protect the price-support program for sugar beets and sugar cane are in effect in the United States. In such a situation, sugar products from most CBERA countries are subject to the same "competitive need" formula that applies under the GSP, whereby the duty-free status of a product imported from a beneficiary country is suspended if the imports of that product from that country exceed certain absolute or relative ceilings. Alternatively, a CBERA country may request that instead of the suspension of their duty-free status, its exports of sugar products to the United States remain duty free but subject to import quotas. This choice does not apply to three Caribbean countries (Dominican Republic, Guatemala, and Panama) whose exports of sugar products to the United States were not eligible in 1981 for duty-free status under the GSP because of having already exceeded the "competitive need" limits; imports of their sugar are subject to absolute, but duty-free annual quotas under the CBERA, unless lower ceilings are imposed under some other law. *Id.*

41. *Statement of AID Administrator M. Peter McPherson on the Caribbean Basin Initiative*, 5 AGENDA 4 (1982).

42. *Caribbean Basin Initiative: Hearings on S. 2237 Before the Senate Comm. on Foreign Relations*, 97th Cong., 2d Sess. 220 (1982) (statement of Richard E. Feinberg and Richard S. Newfarmer).

43. The Economic Support Fund (ESF) is administered by the United States Agency for International Development (AID). The "[ESF] provides loans and grants to selected countries of special political and security interest to the United States . . . in turn the recipients purchase goods and services from the U.S. institutions and firms." U.S. Agency for International Development, *Facts About AID*, 5 AGENDA (inside front cover) (1982).

Also created under the aegis of AID is the Bureau for Private Enterprise. The Bureau will "provide technical assistance to the host country governments, providing policy guidance, and where required and requested, recommending changes to improve the investment 'climate' of the host country. . . ." McPherson, *supra* note 41, at 4.

has been and continues to be increased dependence upon imports, which further frustrates the foreign exchange problems the CBERA seeks to cure.

President Bush, a day before the Houston economic summit in July 1990, offered an olive branch to Latin American and Caribbean nations. The package had three key elements: "a free-trade zone, reduction or cancellation of $12 billion in U.S. government loans to the region, and a new effort to stimulate foreign investment."[44] Assessing the impact this initiative will have on the economic health of the region and its relationship to CBERA would be premature. Suffice it to say that the olive branch will have a price.

VI. CBI II—The Future

Congress is considering a substantive revision of the original CBI (H.R. 1233, H.R. 1594 and S. 504). "Both [House] bills in their current versions omit the original provision of CBI I (still present in S. 504) allowing duty-free quotas for nontextile, import-sensitive articles."[45] The common points of both bills follow.

(1) CBERA is permanent.[46]
(2) In order for a country to qualify for beneficiary status it must recognize international worker rights for its workers. Presidential review of workers' rights in CBERA countries is also required.[47]
(3) Commencing October 1, 1992, and every three years thereafter, the President is required to submit a report on the operation of CBERA to Congress.[48]
(4) English-speaking countries will receive special consideration regarding CBERA benefits.[49]
(5) Duty-free allowance will be granted for U.S. residents returning from CBERA countries. The $600 allowance will increase from $400. One additional liter of alcoholic beverages will be duty- and excise-free if the product is produced by a CBERA country. Returnees from U.S. possessions are allowed to bring $1,200 into the United States.[50]
(6) Articles (excluding textiles and apparel) assembled or processed in a CBERA country entirely from U.S.-made components or ingredients will receive duty-free and quota-free treatment.[51]
(7) The Secretary of Commerce is required to complete a study regarding tourism development for the Caribbean.[52]

44. Hobart Rowen, *Giving Latin Economics a Lift*, WASH. POST, July 8, 1990, at H1, H3.
45. *CRS Issue Brief*, *supra* note 39, at 8.
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*

(8) A U.S. preclearance customs pilot program will test the assistance of such operations in the development of tourism. This program is contingent on a bilateral agreement for the protection of U.S. personnel and of U.S. immigration preinspection operations.[53]

H.R. 1233 contains the following additional provisions (not included in H.R. 1594).

(1) Preferential duty treatment is included for certain import-sensitive articles ineligible for it by law. Duty-free treatment extends to the full value of textile articles assembled in a CBERA country from U.S., or specifically named foreign-made, cut fabric and imported under bilateral guaranteed-access level (GAL) agreement. It can contain foreign trimmings and bindings up to 25 percent of import value.[54] Under a separate preference, any textile or apparel article imported from a CBI country under a regular bilateral quota (not GAL) agreement would be dutied at a rate equal to the lower of either 50 percent of the trade-weighted average duty rate or its concessional rate.[55]

(2) Sugar's quota allocation is 371,449 metric tons (the actual 1988 allocation). The provision also allows for the reallocation of any unutilized country quota allocations or "those suspended or terminated under a law authorizing such action for the purposes of dealing with a threat to the national security or foreign policy of the United States."[56]

(3) The President has authority to proclaim new rules of origin for imports from CBERA countries, subject to consultations, a report to Congress, and a ninety-day waiting period for additional consultations with congressional committees.[57]

(4) A special provision concerns antidumping and countervailing investigations regarding imported goods from CBERA countries.[58]

(5) The Agency for International Development (AID) establishes a program for scholarship assistance for students from CBERA countries.[59]

(6) The Secretary of Agriculture in coordination with AID should develop programs to encourage improvements in transportation and cargo handling facilities in CBERA countries and duty-free reimportation of Puerto Rican products processed in a CBI country without being substantially transformed. However, the materials added must be of U.S. or CBERA country origin.[60]

53. *Id.*
54. *Id.* at 9.
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*

The initiation of trade agreements rarely yields equality for all parties concerned, and CBERA is no different. However, for progress to continue, the agreement should provide true economic advantages for the beneficiary nation as well as the United States. If the countries involved are to continue to participate, the United States must present a more balanced program. If the financial interests of U.S. investors are to be protected by requesting a nation to change its taxing or expropriation authority and support U.S. military and political interests, the economic carrot must be worthwhile. CBERA presents a flawed economic construct, and the new CBI II does not contain significant improvements. The diversity of the Caribbean makes it difficult to unify it into one compact package. The CBERA fails to provide adequate aid and respect for a nation's sovereignty. Furthermore, it will only exacerbate the immigrant problem.[61]

VII. CBI and Haiti

In the Executive Summary of the CBI by the General Accounting Office,[62] case studies were performed in Haiti, the Dominican Republic, Dominica, St. Vincent (and the Grenadines), Grenada, and Belize. The study attempted to evaluate the effectiveness of CBI in the areas of debt service problems, employment opportunities, and overall economic growth. The legislative and policy considerations of CBI, which accord preferential trade and investment treatment to the participating Caribbean countries, were paramount in assessing the impact of CBI.

Haiti is the poorest country in the Western hemisphere and has lacked economic and political stability. Thus, one should not be alarmed when viewing the minimal impact CBI has had on this country. Prior to CBI, the United States was the major trading partner of Haiti; exports to the United States after the enactment of CBI for the years 1983 to 1986 rose a mere .93 percent from 76.06 percent to 76.99 percent.[63] Undoubtedly economic development operates in tandem with democracy in a safe environment. If Haiti is to prosper financially, it must develop a plan to provide an atmosphere where foreign business can invest in a relative comfort level in terms of governmental support and physical safety for foreign nationals. The Eastern bloc countries provide additional stress on already scarce U.S. foreign development monies and private business capital. They stand ready to provide a supportive atmosphere conducive to foreign business.

61. *Hearings, supra* note 22, at 1. "The region forms the third border of the United States, contains vital sea lanes through which three-quarters of our oil imports must flow, is an important market for U.S. exports, and is our second largest source of illegal immigration." Special Report No. 97, in *Hearings, supra* note 22. *See* John Dilin, *Immigration Issues Land in Clinton's Lap*, CHRISTIAN SCI. MONITOR, Nov. 18, 1992, at 7 (economic need and political tyranny could prompt hundreds of thousands of Haitians to attempt to reach Florida next year and that low wages and joblessness in Mexico still force millions to migrate to California, Texas, and Sun Belt states).

62. GAO/NSIAD 88-177, CBI Impact 1988, at 1.

63. *Id.* at 14.

The U.S. foreign policy toward the third world has always been criticized in terms of exploitation of the indigenous population, which can certainly be a criticism of CBI. However, third-world countries are in direct competition with the newly emerging second world and must come to grips with the importance of what impact that will have on their economic development. Why should businessmen invest in countries that are fragile politically? If countries like Haiti do not come to an understanding of the fiscal realities that businesses must assess before becoming involved in a venture, then Haiti will continue to be the poorest republic in the Western hemisphere. Furthermore, the legislative policies of countries, such as the United States, serve to protect their nationals, and rightly so. Thus, Haiti must politically, through some orderly mechanisms, carve out financially lucrative deals that will benefit the country at large and those who provide the investment capital. Haiti can no longer be a country politically controlled by a few at the expense of the masses. President Aristide presented the fresh opportunity in which Haiti had waited for so long. Possibly his successor, through creative democratic management, can accomplish democratic and economic development goals. Although CBI and other programs like it present a flawed construct, they do offer a new beginning whereby Haiti and other countries in the Caribbean can finally make some inroads that will later allow them to gain greater control over their destinies. An opportunity is better then none at all.

APPENDIX
U.S. Imports from CBERA Countries, 1983–1988;
by Type of Tariff Treatment (in millions of dollars)

	1983	1984	1985	1986	1987	1988
Total	8,764	8,649	6,687	6,065	6,039	6,061
Duty-Free Value:						
Regular (MNF)	1,750	2,171	2,070	2,340	2,056	1,928
Special Rate	254	155	81	49	47	107
GSP	567	155	533	476	301	353
CBERA	—	576	493	671	768	791
TSUS 806.30/807.00[1]	519	588	547	612	756	906
of this: "Super 807"	—	—	1	58	162	
Subtotal	3,090	4,082	3,275	4,148	3,928	4,085
Dutiable Value[2]	5,674	4,567	2,962	1,917	2,111	1,976
of this: Petroleum and its Products	5,004	4,215	2,370	1,376	1,377	1,059
Memorandum Item:						
Non-petro Products	3,760	4,434	4,317	4,689	4,662	5,002
of this: Dutiable[2]	670	352	592	541	734	917
CBERA elig prod:	3,327	3,889	3,630	3,838	3,470	3,457
CBERA inelig prod:	5,437	4,760	3,057	2,227	2,569	2,604
Petroleum & Products	5,004	4,215	2,370	1,376	1,377	1,059
Textiles & apparel[3]	398	512	658	818	1,149	1,499
Leather, flat goods, etc.	20	23	20	22	30	31
Footwear	15	10	9	11	13	16
Canned tuna	*	*	—	—	*	*

Due to rounding, detail may not add to total.

* Less than $500,000. — Nil.

[1]Excludes dutiable portion of TSUS 806/807 imports.

[2]Includes dutiable portion of TSUS 806/807 imports.

[3]Includes total (duty-free and dutiable) value of 807 imports.

Source: U.S. International Trade Commission, Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers: Third Report, 1987, USITC Publication 2122, Sept. 1988, 1-8, 1-11; Fourth Report, 1988, USITC Publication 2225, Sept. 1989, 1-8, 1-13. Computations by CRS.[64]

64. *CRS Issue Brief, supra* note 39, at 6.