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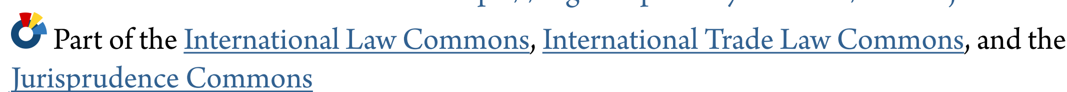

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RECENT LEGISLATIVE DEVELOPMENTS AFFECTING U.S.-MEXICO TRADE AND INVESTMENT

LESLIE ALAN GLICK, ESQ.*

I. INTRODUCTION

I have been asked to discuss legislative developments that affect U.S.-Mexico trade and investment, other than the North American Free Trade Agreement (NAFTA) itself. There are two principal areas that I would like to discuss that have an impact on Mexico. The first is the so-called NAFTA parity legislation that will give equivalent NAFTA benefits to other developing countries. The second area is the short and long term extension of the Generalized System of Preferences (GSP). Mexico has been one of the major beneficiaries of the GSP program and is now among the leading recipients of GSP benefits. The extension of GSP and its inter-relationship with NAFTA raise some thought-provoking questions that I will address below.

II. NAFTA PARITY

Before the ink on NAFTA was dry, efforts began to extend NAFTA benefits to other countries, particularly those in the Caribbean and Central America which are countries covered by the Caribbean Basin Initiative program (CBI). Representatives of these countries expressed concern that NAFTA, with its elimination of tariffs on all products from Mexico, would dilute the benefits given to their respective countries under the CBI because the CBI program is not as extensive as NAFTA.

On March 18, 1993, Congressman Sam Gibbons, Chairman of the Subcommittee on International Trade of the House of Representatives Ways and Means Committee, introduced a bill entitled, "The Caribbean Basin Free Trade Agreements Act," H.R. 1403. The purpose of this bill, commonly referred to as the "Gibbons Bill," is to extend the benefits that Mexico will receive under NAFTA to the twenty-four Caribbean and Central American CBI beneficiary countries. Congressman Gibbons, in introducing the bill on the floor of the House of Representatives, indicated that he felt that NAFTA will adversely impact these countries by attracting existing and potential investment from the region to Mexico. Gibbons noted that "the Bill I introduced today would provide so-called NAFTA

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parity to these countries by granting them the same tariff and quota treatment that will apply to imports from Mexico of textiles and apparel and other products currently excluded from the CBI program once the NAFTA enters into force."[1]

There are a number of products that currently are excluded from the duty-free benefits of the CBI program that are not excluded from NAFTA. The products include textile and apparel products, footwear, handbags, luggage, work gloves, leather apparel, canned tuna, petroleum and petroleum products, and wrist watches. Many of these products are important exports from both the CBI countries and Mexico, particularly textiles and leather goods.

At present, CBI products exported to the United States are subject to duties. Also, their textile products are subject to quotas. NAFTA eliminates quotas immediately and phases out duties on textile and apparel products over a ten-year period. If passed, H.R. 1403 would extend these same benefits to the CBI countries under the same timetable as NAFTA.

It may be argued, certainly by Mexico, that such parity legislation is unfair since it dilutes the negotiated advantages received by Mexico under NAFTA. Moreover, Mexico in effect bargained for these tariff preferences by removing its own duties and making changes in its trade and investment laws desired by the United States. The CBI countries, therefore, would be getting these benefits for free under the "parity legislation." The CBI countries do not have to remove their duties or make other concessions relating to United States investment (other than those already required under the CBI Act) for at least the first three years, after which they would be expected to negotiate accession to NAFTA. From Mexico's viewpoint, there is certainly a cause for concern in extending NAFTA benefits unilaterally to other developing countries that compete with Mexico, even for three years.

The Gibbons bill addresses this concern in part. It allows the NAFTA parity for a three-year period, during which time the President of the United States is authorized to negotiate a reciprocal trade agreement with CBI countries under the fast track procedure. This negotiation will ostensibly require these countries to make concessions in tariff and investment laws equivalent to Mexico's, although this is not specifically written in the bill. The bill requires the United States Trade Representative to negotiate reciprocal trade agreements with CBI countries that "contain comparable provisions to the NAFTA and achieve applicable objectives under existing CBI and trade agreement authorities."[2]

Alternatively, the CBI countries would be encouraged to "accede to the NAFTA and the supplemental agreements on environmental, labor and import issues, as appropriate."[3] Thus, the Gibbons bill does not address whether all twenty-four CBI countries would have to accede to

1. 139 CONG. REC. E698 (1993) (statement of Rep. Gibbons).
2. H.R. 1403, tit. II, § 201(2); 103d Cong., 2d Sess. (1993).
3. *Id.* § 201(1).

NAFTA with all its provisions and supplemental agreements, or negotiate a separate agreement which might not be as extensive as NAFTA. The United States Trade Representative is directed to study this issue under Title II of the Gibbons bill. The CBI countries, if they are smart, will lobby for a weaker trade agreement that does not require removal of their duties or adoption of the NAFTA provisions relating to investment, intellectual property, labor standards, and the environment to which Mexico has agreed. The argument should be that the CBI countries are at a lower state of economic development than Mexico and should not be required to make the same concessions.

My feeling is that since NAFTA passed, the parity legislation has a good chance of passing as well. Congressman Gibbons' leadership on the trade subcommittee is a sign that the bill will move through the House of Representatives quickly and without many obstructions. The Senate version of the Gibbons bill is being sponsored by Senator Phil Gramm of Texas, a Republican, which indicates bipartisan sponsorship for the bill. Finally, there is likely to be an effort to expand NAFTA parity to other countries, perhaps those covered by other preference programs such as the Andean Trade Preference Act (ATPA - Ecuador, Peru, Bolivia and Columbia).

III. THE GENERALIZED SYSTEM OF PREFERENCES

As noted earlier, Mexico had been one of the largest beneficiaries of the Generalized System of Preferences (GSP). This program provides duty-free treatment to over 2,000 products from Mexico. In fact, 53.8% of all Mexican products were already duty-free under GSP and remained duty-free when NAFTA took effect on January 1, 1994. The GSP was due to expire on July 4, 1993. The Clinton administration, committed to extending GSP, unfortunately did not send the GSP extension legislation to Capitol Hill until May. The delay was due to an internal disagreement between the United States Trade Representative's Office (USTR) and the Office of Management and Budget (OMB) because OMB did not know where to allocate the revenues needed to cover the loss of duties resulting in a GSP extension. Consequently, OMB estimated approximately $800 million would be needed to cover the extension.

The GSP renewal package sent to Capitol Hill in May only provided a fifteen month renewal period for the program. The previous renewal had been for eight years. The strategy behind the fifteen month renewal period was that a short term renewal would not receive as much opposition, and by submitting only an interim renewal proposal opponents of GSP would save their lobbying efforts to oppose the program until a long term renewal was introduced.

The administration's strategy in introducing an interim renewal of GSP was successful because there was no serious opposition to the GSP extension by members of Congress. The main problem was finding a fast and efficient way to move the renewal package through Congress. Ultimately, it was decided that the Budget Reconciliation Bill would be

amended to include the GSP extension and would certainly be passed by Congress. The United States House of Representatives passed the budget bill which included the GSP extension, but the United States Senate did not agree that the GSP legislation should be part of the budget bill. The Senate adopted its own version of the budget bill which did not contain GSP renewal legislation. As a result, the budget bill went to a joint House/Senate Conference Committee that resolved the differences between the House and Senate versions of the Budget Reconciliation bill. This byzantine process involves deal-making between parties regarding the trade provisions of the bill and reached a final compromise. I was retained by several Mexican firms in the automotive industry, including divisions of Grupo ICA and the Spicer Group, to lobby for GSP extension. Needless to say, the GSP extension was approved in the Conference Committee and the budget package was passed by a small margin in the House and only a one vote margin in the Senate with Vice-President Al Gore voting to break a tie vote.

By the time this process ended, the GSP program had expired. Consequently, Mexican exporters had to start paying duties for the first time in many years on GSP eligible products. There was a gap of approximately six weeks from the time that GSP expired to when it was renewed. Fortunately, as a result of extensive lobbying efforts, the GSP renewal was made retroactive and procedures were established whereby Mexican exporters could receive refunds with interest. Yet, despite the retroactive provision, there was still extensive disruption and concern among Mexican exporters up to the expiration date of the program, during the period when GSP expired, and for the amount of money that had to be paid by importers from Mexico.

We must now look on the horizon to the long-term extension of GSP. The implementation of NAFTA ended GSP benefits for Mexico. I think this provision in NAFTA is a mistake. For example, Israel has continued as a GSP eligible country despite the fact that it has a bilateral free trade agreement with the United States. For Mexico, however, passage of NAFTA meant all GSP eligible products immediately became duty-free, and Mexico was removed from the program.

For most countries, the long-term extension of GSP is crucial. The passage of a long-term renewal is likely to be a tough fight. The last long-term renewal authorization in Congress resulted in a number of restrictions on the GSP program, and there is certainly going to be an effort by many United States Congressmen to continue limiting and restricting the GSP program. Also, there are likely to be efforts to remove larger advanced developing countries such as Brazil from the program entirely.