



# Generalized System of Preferences: Background and Renewal Debate

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## Summary

The U.S. Generalized System of Preferences (GSP) program provides non-reciprocal, duty-free tariff treatment to certain products imported from designated beneficiary developing countries (BDCs). The United States, the European Union, and other developed countries have implemented similar programs since the 1970s in order to promote economic growth in developing countries by stimulating their exports. The U.S. program was first authorized in Title V of the Trade Act of 1974, and was most recently extended until December 31, 2010, in P.L. 111-124 for all GSP beneficiary countries not covered by the African Growth and Opportunity Act (AGOA). Since GSP expired at the end of 2010, this and other trade preference programs may continue to be a the focus of congressional attention in the 112<sup>th</sup> Congress.

The GSP is one of several trade preference programs that provide non-reciprocal, duty-free access to goods from developing and least-developed beneficiary countries. Other U.S. trade preference programs include the African Growth and Opportunity Act (AGOA), the Andean Trade Preference Act (ATPA), and the Caribbean Basin Initiative (CBI).

In recent years, renewal of trade preferences programs in general, and of the GSP program in particular, has been somewhat controversial in Congress. Some members have expressed the view that some of the more advanced BDCs, such as Brazil and India, continue to receive benefits even while they actively contribute to the impasse in multilateral World Trade Organization (WTO) Doha Development Agenda (DDA) talks. Some members have also questioned whether more “advanced” developing countries should be receiving benefits under unilateral preference programs at all, and propose ending or limiting their benefits in favor of providing a greater share of benefits to least-developed countries (LDCs). Other members have proposed granting duty-free, quota-free access (DFQF) to developing countries under the African Growth and Opportunity Act (who are also GSP beneficiaries), which could potentially also be extended to other GSP countries.

On December 15, 2010, the House approved H.R. 6517, the Omnibus Trade Act of 2010, which, in part, sought to extend the GSP program through June 30, 2012. However, the amended version of H.R. 6517 that subsequently passed the House and Senate (P.L. 111-344) did not contain the language extending GSP. Thus, the GSP program expired on December 31, 2010, and has not yet been renewed. On September 7, 2011, the House passed H.R. 2832, a bill seeking to extend the GSP through July 31, 2013. Other bills in the 112<sup>th</sup> Congress seeking to extend the GSP program include H.R. 913, S. 308, and S. 433.

This report presents, first, a brief history, economic rationale, and legal background leading to the establishment of the GSP. A brief comparison of GSP programs worldwide, especially as they compare to the U.S. system, is also presented. Second, the report presents a discussion of U.S. implementation of the GSP, along with the present debate surrounding its renewal and legislative developments to date. Third, an analysis of the U.S. program’s effectiveness and the positions of various stakeholders is presented. Fourth, implications of the expiration of the U.S. program and possible options for Congress are discussed.

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## Introduction

The Generalized System of Preferences (GSP) program provides preferential tariff treatment to certain products imported from designated developing countries. The United States, the European Union, and other developed countries have implemented such programs since the 1970s in order to promote economic growth in developing countries by stimulating their exports.

The U.S. program (as established by Title V of the Trade Act of 1974) was last extended through December 31, 2010, in P.L. 111-124. A move to extend GSP until June 30, 2012, as part of the Omnibus Trade Act of 2010 (H.R. 6517, became P.L. 111-344) failed when the Senate passed an amendment in the nature of a substitute that did not contain the GSP provision, and the House subsequently passed the amended version. Thus, the GSP program expired on December 31, 2010, and has not yet been renewed. On September 7, 2011, the House passed H.R. 2832, a bill seeking to extend the GSP through July 31, 2013. Other bills in the 112<sup>th</sup> Congress seeking to extend the GSP program include H.R. 913, S. 308, and S. 433.

The African Growth and Opportunity Acceleration Act of 2004 (P.L. 108-274) previously extended GSP preferences for all beneficiary developing sub-Saharan African countries under the African Growth and Opportunity Act (AGOA) through September 30, 2015.<sup>1</sup> Therefore, even though the GSP program has lapsed, AGOA beneficiaries that are also eligible for GSP will continue to receive GSP preferences.

In the 111<sup>th</sup> Congress, the House Ways and Means and Senate Finance Committees (the committees with primary jurisdiction) expressed interest in examining the effectiveness of the GSP and other trade preference programs, and both held hearings—Ways and Means in November 2009 and Senate Finance in March 2010—on the effectiveness of, and suggested modifications to, the GSP and other preference programs.

This report presents, first, a brief history, economic rationale, and legal framework behind establishment of the Generalized System of Preferences, and a brief comparison of GSP programs worldwide. Second, the report presents a description of U.S. implementation of the GSP program, along with recent legislative developments and the debate surrounding its renewal. Third, it provides a brief analysis of the U.S. program's effectiveness and the positions of various stakeholders. Fourth, the report analyzes implications of GSP expiration and options for Congress.

## History and Rationale of the GSP

The basic principle behind the GSP is to provide certain goods originating in developing countries with preferential market access to developed-country markets in the form of lower tariff rates (or as in the U.S. case, duty-free status) in order to spur economic growth in the poorer

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<sup>1</sup> 19 U.S.C. § 2466b, as amended by section 7 of the AGOA Acceleration Act of 2004 (P.L. 108-274). AGOA-designated countries in 2009 are Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Comoros, Congo (DROC), Congo (ROC), Djibouti, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Uganda, Zambia.

countries. The program was first adopted internationally in 1968 by the United Nations Conference on Trade and Development (UNCTAD) at the UNCTAD II Conference.<sup>2</sup>

## **Economic Basis**

The GSP was established based on an economic theory that preferential tariff rates in developed country markets could promote export-driven industry growth in developing countries. It was believed that this, in turn, would help to free beneficiaries from heavy dependence on trade in primary products, whose slow long-term growth and price instability contributed to chronic trade deficits.<sup>3</sup> It was thought that only the markets of industrialized trading partners were large enough to provide enough economic stimulus to attain these goals.<sup>4</sup>

Some economists also mention that the GSP was established, in part, as a means of reconciling two widely divergent economic perspectives of trade equity that arose during early negotiations on the General Agreement on Tariffs and Trade (GATT).<sup>5</sup> Industrialized, developed nations argued that the most-favored-nation principle<sup>6</sup> should be the fundamental principle governing multilateral trade, while less-developed countries believed that equal treatment of unequal trading partners did not constitute equity, and called for “special and differential treatment” for developing countries. GSP schemes thus became one of the means of offering a form of special treatment that developing nations sought while allaying the fears of developed countries that tariff “disarmament” might create serious disruptions in their domestic markets.<sup>7</sup>

Due to differences in developed countries’ economic structures and tariff programs—as well as different domestic industries and products each wanted to shield from such competition—it proved difficult to create one unified system of identical tariff concessions. Therefore, the GSP became a system of individual national schemes based on common goals and principles—each with a view toward providing developing countries with generally equivalent opportunities for export growth.<sup>8</sup> As a result, the preference-granting countries implemented various individual schemes of *temporary, generalized, non-reciprocal, non-discriminatory* preferences under which tariffs were lowered or eliminated on certain imports from developing countries.

As a condition for providing such tariff preferences, GSP preference-granting countries reserved the right to (1) exclude certain countries; (2) determine product coverage; (3) determine rules of

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<sup>2</sup> U.N. Conference on Trade and Development, “About GSP,” at <http://www.unctad.org>. In addition to the United States, the European Union and 11 other developed countries—Australia, Belarus, Bulgaria, Canada, Japan, New Zealand, Norway, Switzerland, and the Russian Federation—currently have GSP programs.

<sup>3</sup> OECD Secretary-General. *The Generalized System of Preferences: Review of the First Decade*. Organization of Economic Cooperation and Development, 1983, p. 9 (hereinafter OECD GSP Review).

<sup>4</sup> Ibid.

<sup>5</sup> Sapir, A. and L. Lundberg, “The U.S. Generalized System of Preferences and its Impacts,” in R. Baldwin and A. Krueger (eds.) *The Structure and Evolution of Recent U.S. Trade Policy*, Chicago: The University of Chicago Press, 1984.

<sup>6</sup> The most-favored-nation principle means that countries must treat imports from other trading partners on the same basis as that given to the most favored other nation. Therefore, with certain exceptions (including GSP, regional trading arrangements, and free trade agreements), every country gets the lowest tariff that any country gets, and reductions in tariffs to one country are provided also to others. The term “most-favored-nation” has been changed in U.S. law to “normal trade relations.”

<sup>7</sup> OECD GSP Review, p. 11.

<sup>8</sup> Ibid., p. 10.

origin governing the preference; (4) determine the duration of the scheme; (5) reduce any preferential margins accruing to developing countries by continuing to lower or remove tariffs as a result of multilateral negotiations; (6) prevent the concentration of benefits among a few countries; (7) include safeguard mechanisms or “escape” clauses; and (8) place caps on the volume of duty-free trade entering under their programs.<sup>9</sup>

Although GSP programs were intended to be temporary, an international legal framework under the GATT (as discussed below) was developed to allow these programs to continue. Additionally, many developed countries have also decided to grant additional market access, through GSP or other preferential programs, to products of countries they designate as least-developed countries (LDCs). At the sixth World Trade Organization (WTO) Ministerial Conference in Hong Kong in December 2005, developed country WTO members and “developing country members declaring themselves in a position to do so” agreed to deepen this commitment by providing “duty-free and quota-free market [DFQF] access on a lasting basis, for all products originating from all least developed countries by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.”<sup>10</sup> Members “facing difficulties” with providing such access would be permitted to exempt 3% of all tariff lines, provided they take steps to achieve the goal of total duty-and quota-free access by incrementally building on the list of covered products.<sup>11</sup> Since DDA talks have been suspended, this duty-free/quota-free offer seems to be in jeopardy, at least on a multilateral basis.

## **International Legal Framework<sup>12</sup>**

Because it is a preference program, by its very nature, the GSP posed a problem under the GATT in that the granting of preferences would be facially inconsistent with the fundamental obligation placed on GATT Parties in GATT Article I:1 to grant most-favored-nation (MFN) tariff treatment to the products of all other GATT Parties. As noted, however, preference programs were viewed as vehicles of trade liberalization and economic development for developing countries. Thus, GATT Parties accommodated them in a series of joint actions.

In 1965, the GATT Parties added Part IV to the General Agreement, an amendment that recognizes the special economic needs of developing countries and asserts the principle of non-reciprocity. Under this principle, developed countries forego the receipt of reciprocal benefits for their negotiated commitments to reduce or eliminate tariffs and restrictions on the trade of less developed contracting parties.<sup>13</sup> Because of the underlying MFN issue, GATT Parties in 1971 adopted a waiver of Article I for GSP programs, which allowed developed contracting parties to

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<sup>9</sup> Wall, David. “Problems with Preferences.” *International Affairs*, vol. 47, October 1971, p. 95.

<sup>10</sup> World Trade Organization. Ministerial Declaration, Annex F. December 18, 2005, WT/MIN(05)/DEC.

<sup>11</sup> *Ibid.*

<sup>12</sup> This section was written by Jeanne J. Grimmett, Legislative Attorney, American Law Division. For further discussion of trade preference programs in light of obligations under the General Agreement on Tariffs and Trade (GATT), see CRS Report RS22183, *Trade Preferences for Developing Countries and the World Trade Organization (WTO)*, by Jeanne J. Grimmett [hereinafter CRS Report RS22183, *Trade Preferences for Developing Countries and the World Trade Organization (WTO)*].

<sup>13</sup> Edmond McGovern, International Trade Regulation ¶ 9.212 (updated 1999). Part IV is generally viewed as non-binding, though some have argued otherwise with regard to certain of its provisions. *Id.*; John H. Jackson, William J. Davey & Alan O. Sykes, Jr., *Legal Problems of International Economic Relations* 1171 (4<sup>th</sup> ed. 2002).



accord more favorable tariff treatment to the products of developing countries for 10 years.<sup>14</sup> The GSP was described in the decision as a “system of generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries.”

At the end of the Tokyo Round of Multilateral Trade Negotiations in 1979, developing countries secured adoption of the Enabling Clause, a permanent deviation from MFN by joint decision of the GATT Contracting Parties.<sup>15</sup> The Clause states that notwithstanding GATT Article I, “contracting parties may accord differential and more favorable treatment to developing countries, without according such treatment to other contracting parties” (¶1) and applies this exception to:

- (a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences;
- (b) Differential and more favorable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;
- (c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reductions or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES for the mutual reduction or elimination of non-tariff measures, on products imported from one another;
- (d) Special treatment on the least developed among the developing countries in the context of any general or specific measures in favour of developing countries (¶ 2).

To describe the GSP, the Clause refers to the above-quoted description in the 1971 waiver (i.e., a “system of generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries”).<sup>16</sup> Among other things, the Clause further provides, at ¶ 3(c), that any differential and more favorable treatment provided under the Clause “shall in the case of such treatment accorded by developed contracting parties to developing countries be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries.”

In addition, if a GATT Party (now WTO member) who has instituted a GSP program subsequently takes action “to introduce modification or withdrawal of the differential treatment so provided,” the member is required to notify and consult with other WTO members. Specifically, ¶ 4(a) requires the acting member to notify WTO members as a whole and to “furnish them with all the information they may deem appropriate relating to such action.” Further, under ¶ 4(b), the member must “afford adequate opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise.” If requested by any such interested party, WTO members must as a whole consult with all WTO members concerned over the issue at hand with the aim of reaching a solution that is

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<sup>14</sup> GATT, Generalized System of Preferences; Decision of 25 June 1971, L/3545 (June 28, 1971), available at [http://www.wto.org/gatt\\_docs/English/SULPDF/90840258.pdf](http://www.wto.org/gatt_docs/English/SULPDF/90840258.pdf).

<sup>15</sup> GATT, Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; Decision of 28 November 1979, L/4903 (December 3, 1979)(footnotes omitted)(hereinafter Enabling Clause), available at [http://www.wto.org/gatt\\_docs/English/SULPDF/90970166.pdf](http://www.wto.org/gatt_docs/English/SULPDF/90970166.pdf)

<sup>16</sup> *Id.* ¶ 2, n.3.



satisfactory to all such members. This requirement does not affect any member's rights under the GATT.<sup>17</sup>

Paragraph 7 of the Clause provides that the less-developed WTO members “expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with their progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.” This paragraph is generally considered to support the “graduation” of a beneficiary country out of a grantor's GSP program by the grantor, either entirely or with respect to particular products, once the beneficiary country has attained a certain level of economic development.<sup>18</sup> The Enabling Clause does not contain express criteria or procedures for graduation, however, leaving grantor countries to establish criteria on a unilateral basis.

The Enabling Clause also states that it “would remain open for the CONTRACTING PARTIES to consider on an ad hoc basis under the GATT provisions for joint action any proposals for differential and more favorable treatment not falling within the scope of this paragraph,” that is, a program that does not fit within one of the four categories described above.<sup>19</sup> This provision suggests the use of GATT waivers for more ambitious programs; in practice, waivers have been adopted for a variety of such programs, including several U.S. non-GSP tariff preferences.<sup>20</sup>

The Enabling Clause was incorporated into the GATT 1994 upon the entry into force of the Uruguay Round agreements on January 1, 1995.<sup>21</sup> In 1999, the WTO General Council adopted a decision, captioned “Preferential Tariff Treatment for Least-Developed Countries,” which waived GATT Article I:1 until June 30, 2009, “to the extent necessary to allow developing country Members to provide preferential tariff treatment to products of least-developed countries (LDCs), designated as such by the United Nations, without being required to extend the same tariff rates to like products of any other Member.”<sup>22</sup> Along with setting out various standards and notification

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<sup>17</sup> Id. ¶ 4, n.1.

<sup>18</sup> Note also notification requirements under ¶ 4 of the Enabling Clause, discussed in the text. See generally Simon Lester, *The Asian Newly Industrialized Countries to Graduate from Europe's GSP Tariffs*, 36 Harv. Int'l L. J. 220 (1995); Gregory O. Lunt, *Graduation and the GATT: The Problem of the NICs*, 31 Colum. J. Transnat'l L. 611 (1994); Robert E. Hudec, *GATT and the Developing Countries*, 1992 Colum. Bus. L. Rev. 67.

<sup>19</sup> Enabling Clause, *supra* note 15, at ¶ 2, n.2.

<sup>20</sup> CRS Report RS22183, *Trade Preferences for Developing Countries and the World Trade Organization (WTO)*, *supra* note 12, at 3. On May 27, 2009, the WTO General Council approved U.S. requests for waiver renewals for two non-GSP preference programs and an initial waiver for a third program, this being the final WTO action needed for the waivers to enter into effect. The waiver renewals cover the Caribbean Basin Economic Recovery Act (as amended by the United States-Caribbean Trade Partnership Act) and the Andean Trade Preference Act (as amended by the Andean Trade Promotion and Drug Eradication Act), each through December 31, 2014. Earlier waivers for these programs had expired in 2005 and 2001, respectively. The new waiver covers the African Growth and Opportunity Act through September 30, 2015. Some WTO Members (e.g., China and Pakistan), had expressed concerns regarding U.S. treatment of textiles in these programs, while Paraguay objected to the U.S. request in part because of its exclusion from the Andean preference scheme.

<sup>21</sup> Agreement Establishing the World Trade Organization, Annex 1A, General Agreement on Tariffs and Trade 1994, ¶ 1(b)(iv); see Appellate Body Report, *European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries*, ¶ 90.3, WT/DS246/AB/R (April 7, 2004)(hereinafter EC Preferences AB Report).

<sup>22</sup> Preferential Tariff Treatment for Least-Developed Countries; Decision on Waiver, WT/L/304 (June 17, 1999) (adopted June 15, 1999), at <http://docsonline.wto.org/DDFDocuments/t/WT/L/304.DOC>; see also discussion in WTO Committee on Trade and Development, *Note on the Meeting of 2 March 1999*, at 2-6, WT/COMTD/M/24 (April 27, (continued...))

and procedural requirements, the waiver, at paragraph 6, provides that it “does not affect in any way and is without prejudice to rights of Members in their actions pursuant to” the Enabling Clause. The waiver was recently extended until June 30, 2019.<sup>23</sup>

In addition, in a WTO dispute proceeding brought by India challenging special GSP benefits maintained by the European Communities (EC), *European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries* (WT/DS246), the WTO Appellate Body addressed the issue of the extent to which a granting country may accord such benefits within a GSP program to countries meeting a separate set of criteria. The dispute stemmed from an EC Regulation which awarded tariff preferences to a closed group of 12 beneficiary countries on the condition that they combat illicit drug production (Drug Arrangements). India claimed that the Drug Arrangements were inconsistent with GATT Article I:1 and could not be justified by the Enabling Clause. In its 2004 report, the Appellate Body ruled that developed countries may grant preferences beyond those provided in their GSP to countries with particular needs, but only if identical treatment is available to all similarly situated GSP beneficiaries.<sup>24</sup> Among other things, the Appellate Body cited ¶ 3(c) of the Enabling Clause, providing that any differential and more favorable treatment provided under the Clause “shall ... be designed and, if necessary modified to respond positively to the development, financial and trade needs of developing countries.”<sup>25</sup>

## Comparison of International GSP Programs

One economist has referred to the Generalized System of Preferences as a non-homogeneous set of national schemes sharing certain common characteristics.<sup>26</sup> Generally, each preference-granting country extends to qualifying developing countries (as determined by each benefactor) an exemption from duties (reduced tariffs or duty-free access) on most manufactured products and certain “non-sensitive” agricultural products. Product coverage and the type of preferential treatment offered vary widely.<sup>27</sup>

Although most GSP schemes (including the U.S. program) admit eligible products duty-free, some countries provide tariff reductions, rather than complete exemption from duties.<sup>28</sup> The Australian system, for example, is based on a five percentage point margin of preference. When the Australian General Tariff (GT) is 5% or higher, the amount of the tariff is reduced by 5% for products of beneficiary countries. When the GT rate is 5% or less, the preferential rate is zero.<sup>29</sup>

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(...continued)

1999).

<sup>23</sup> Preferential Tariff Treatment for Least-Developed Countries; Decision on Extension of Waiver, WT/L/759 (May 29, 2009)(adopted May 27, 2009).

<sup>24</sup> EC Preferences AB Report, *supra* note 21.

<sup>25</sup> *Id.* at ¶¶ 162-165. For further discussion of the Appellate Body report, see CRS Report RS22183, *Trade Preferences for Developing Countries and the World Trade Organization (WTO)*, *supra* note 12, at 4-5.

<sup>26</sup> Sanchez Arnau, Juan C. *The Generalized System of Preferences and the World Trade Organization*. London: Cameron May, Ltd., 2002, p. 187.

<sup>27</sup> *Ibid.*

<sup>28</sup> World Trade Organization. Committee on Trade and Development. The Generalized System of Preferences: A Preliminary Analysis of the GSP Schemes in the Quad. WTO Document WT/COMTD/W/93, October 5, 2001.

<sup>29</sup> United Nations Conference on Trade and Development. Generalized System of Preferences on the Scheme of Australia. UNCTAD Technical Cooperation Project on Market Access, Trade Laws and Preferences, June 2000 (INT/97/A06), p. 5. [http://www.unctad.org/en/docs/itcdtsbmisc56\\_en.pdf](http://www.unctad.org/en/docs/itcdtsbmisc56_en.pdf).

In the WTO, developing country status is generally based on self-determination. However, with regard to GSP, each preference-granting country establishes particular criteria and conditions for defining and identifying developing country beneficiaries. Consequently, the list of beneficiaries and exceptions may vary greatly between countries. If political or economic changes have taken place in a beneficiary country, it might be excluded from GSP programs in some countries (such as the United States) but not in others. Most countries, including the United States, also exclude countries if they have entered into another kind of commercial arrangement (e.g., a free trade agreement) with any other GSP-granting developed country.

In terms of additional GSP product coverage for LDCs, the European Community program, which offers duty-free access or reduced tariffs for “everything but arms,”<sup>30</sup> is currently perhaps the most inclusive. GSP-granting countries may also have incentive-based programs that provide enhanced benefits for beneficiary countries that meet certain additional criteria. For example, in 2007 the European Community implemented a regulation that grants additional GSP benefits to those countries that have demonstrated their commitment to sustainable development and internationally recognized worker rights.<sup>31</sup>

Each preference-granting nation also has safeguards in place to ensure that any significant increases in imports of a certain product do not adversely affect the receiving country’s domestic market. Generally, these restrictions take the form of quantitative limits on goods entering under GSP. Under Japan’s system, for example, imports of certain products under the preference are limited by quantity or value (whichever is applicable) on a first-come, first-served basis as administered on a monthly (or daily, as indicated) basis. For other products, import ceilings and maximum country amounts are set by prior allotment.<sup>32</sup> The United States quantitatively limits imports under the GSP program by placing “competitive need limit” (CNL) thresholds on the quantity or value of commodities entering duty-free, as discussed in more detail below.

Each GSP benefactor also has criteria for graduation—the point at which beneficiaries no longer qualify for benefits because they have reached a certain level of development. Most preference-granting countries require mandatory graduation based on a certain level of income per capita based on World Bank calculations. Some programs, such as the European Union’s, also specifically provide for graduation of certain GSP recipients with respect to individual sectors of the economy.

## **U.S. Implementation**

Congress first authorized the U.S. Generalized System of Preferences scheme in Title V of the Trade Act of 1974 (P.L. 93-618), as amended.<sup>33</sup> P.L. 93-618 authorizes the President to grant

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<sup>30</sup> European Communities. See Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007. Published in Official Journal of the European Communities (OJ) OJ L 211 of 6 August 2008. The “Everything but Arms” provision applies to all goods except arms and munitions, husked rice (80% of duties revoked until total suspension in September 2009), and white sugar (total suspension of duties planned for October 2009).

<sup>31</sup> Ibid.

<sup>32</sup> World Trade Organization. Committee on Trade and Development. *Notification by Japan* June 21, 2000, WT/COMTD/N/2/Add.9.

<sup>33</sup> Trade Act of 1974, P.L. 93-618, Title V, as amended, 19 U.S.C. § 2461-2467. The GSP Program was reauthorized (continued...)

duty-free treatment under the GSP for any eligible product from any beneficiary developing country (BDC) or least-developed beneficiary developing country (LDBDC), provides the President with economic criteria in deciding whether to take any such action, and also specifies certain criteria for designating eligible countries and products.<sup>34</sup>

Based on the statutory requirements which countries must meet—and continue to practice—while participating in the program, the U.S. GSP program might be characterized as a foreign policy tool as well as an international trade program. Although GSP benefits are non-reciprocal, certain criteria speak to important U.S. commercial interests, such as ensuring “equitable and reasonable” access in the beneficiaries’ market to U.S. products, protecting intellectual property rights, and preventing the seizure of property belonging to U.S. citizens or businesses. In addition, since certain “import sensitive” products are excluded from eligibility and quantitative/value limitations apply to any eligible imports, the economic costs of the preference are quite small.

## Beneficiary Countries

When designating BDCs and LDBDCs, the President is directed to take into account certain mandatory and discretionary criteria. The law prohibits (with certain exceptions) the President from extending GSP treatment to certain countries, as follows:<sup>35</sup>

- other industrial countries (Australia, Canada, European Union member states, Iceland, Japan, Monaco, New Zealand, Norway, and Switzerland are specifically excluded);
- communist countries, unless they are a WTO member, a member of the International Monetary Fund and receive Normal Trade Relations (NTR) treatment; must also not be “dominated or controlled by international communism;”
- countries that collude with other countries to withhold supplies or resources from international trade or raise the price of goods in a way that could cause serious disruption to the world economy;
- countries that provide preferential treatment to the products of another developed country in a manner likely to have a significant adverse impact on U.S. commerce;
- countries that have nationalized or expropriated the property of U.S. citizens, or otherwise infringe on U.S. citizens’ property rights, including patents, trademarks, or copyrights; countries that have taken steps to repudiate or nullify existing contracts or agreements of U.S. citizens (or corporations, partnerships, or associations that are 50% or more owned by U.S. citizens) in a way that would nationalize or seize ownership or control of the property; or countries that have imposed or enforced taxes or other restrictive conditions on measures on the

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(...continued)

and amended by the Trade and Tariff Act of 1984 (P.L. 98-573), and again by Subtitle J (the GSP Renewal Act of 1996) of P.L. 104-188. Six laws have authorized GSP with relatively minor modifications, most recently through December 31, 2006 (P.L. 107-210). See **Table B-1**, “GSP Implementation and Renewal 1975-2009.”

<sup>34</sup> 19 U.S.C. § 2461.

<sup>35</sup> 19 U.S.C. § 2462.

property of U.S. citizens; *unless* the President determines that compensation is being made, good faith negotiations are in progress, or a dispute has been handed over to arbitration in the Convention for the Settlement of Investment Disputes or another forum;

- countries that have failed to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of U.S. citizens (or corporations, partnerships, or associations that are 50% or more owned by U.S. citizens); and
- countries that grant sanctuary from prosecution to any individual or group that has committed an act of international terrorism, or has not taken steps to support U.S. efforts against terrorism.

Mandatory criteria also require that beneficiary countries:

- have taken or be taking steps to grant internationally recognized worker rights (including collective bargaining, freedom from compulsory labor, minimum age for employment of children, and acceptable working conditions with respect to minimum wages, hours of work, occupational safety and health); and
- implement their commitments to eliminate the worst forms of child labor.<sup>36</sup>

The President is also directed to consider certain discretionary criteria (“factors affecting country designation”), such as the following:

- the country’s expressed desire to be designated a beneficiary developing country for purposes of the U.S. program;
- the level of economic development of the country;
- whether or not other developed countries are extending similar preferential tariff treatment to the country;
- its commitment to a liberal trade policy;
- the extent to which it provides adequate protection of intellectual property rights;
- the extent to which it has taken action to reduce trade-distorting investment policies and practices, and to reduce or eliminate barriers to trade in services; and
- whether or not it has taken steps to grant internationally recognized worker rights.<sup>37</sup>

The law further authorizes the President, based on the required and discretionary factors mentioned above, to withdraw, suspend or limit GSP treatment for any beneficiary developing country at any time.<sup>38</sup>

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<sup>36</sup> 19 U.S.C. § 2462(b). The most recent amendments required the support of U.S. efforts against terrorism and expanded the definition of internationally recognized worker rights (Section 4102 of P.L. 107-210). See also United States Trade Representative. *U.S. Generalized System of Preferences Guidebook*, January 2006, p. 19 (hereinafter USTR Guidebook).

<sup>37</sup> 19 U.S.C. § 2462(c). *Ibid.*, p. 20.

<sup>38</sup> 19 U.S.C. §2462(d).

## Reporting Requirements

The President must advise Congress of any changes in beneficiary developing country status, as necessary.<sup>39</sup> The President must also submit an annual report to Congress on the status of internationally recognized worker rights within each BDC, including findings of the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.<sup>40</sup>

## Least-Developed Beneficiaries

The President is also authorized by statute to designate any BDC as a least-developed beneficiary (LDBDC), based on an assessment of the conditions and factors previously mentioned.<sup>41</sup> Although factors such as per capita income level, economic stability, and quality of life indicators (on which the United Nations-designated list of LDCs is based) are taken into account,<sup>42</sup> the U.S. administration also assesses the level of compliance with other GSP statutory requirements and comments from the public (as requested in the Federal Register) before identifying a country as "least-developed" for purposes of the GSP.<sup>43</sup>

## Products

The Trade Act of 1974 authorizes the President to designate certain imports as eligible for duty-free treatment under the GSP after receiving advice from the ITC.<sup>44</sup> "Import sensitive" products specifically excluded from preferential treatment are most textiles and apparel goods; watches; footwear and other accessories; most electronics, steel, and glass products; and certain agricultural products subject to tariff-rate quotas.<sup>45</sup> The lists of eligible products and the list of beneficiary developing countries are reviewed and revised annually by the GSP Subcommittee.<sup>46</sup> Any modifications to these lists usually take effect on July 1 of the following calendar year.<sup>47</sup>

In terms of product coverage, more than 3,400 products are currently eligible for duty-free treatment, and about 1,400 additional articles originating in LDBDCs may receive similar treatment (see **Table A-1**). Leading imports in 2009 under the GSP program included petroleum products, especially crude oil; silver and gold necklaces; radial tires; and aluminum alloy plates, sheet, and strip.<sup>48</sup>

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<sup>39</sup> 19 U.S.C. § 2462(d)(3).

<sup>40</sup> 19 U.S.C. § 2464.

<sup>41</sup> 19 U.S.C. § 2462(a)(2).

<sup>42</sup> 19 U.S.C. § 2462(c)(2).

<sup>43</sup> See 71 F.R. 43543.

<sup>44</sup> 19 U.S.C. § 2463(a)(1).

<sup>45</sup> 19 U.S.C. § 2463(b).

<sup>46</sup> The GSP Subcommittee is a sub-group of the Trade Policy Staff Committee, given jurisdiction over designating beneficiary countries and covered products in the GSP program in Executive Order 11846, 40 F.R. 14291, as amended.

<sup>47</sup> USTR Guidebook, p. 8.

<sup>48</sup> USTR Guidebook and **Table A-1**, Appendix A.



**Table 1. Dutiable and Duty-Free Tariff Lines in Harmonized Tariff Schedule of the United States by Product Category**

<b>HTS Product Category</b>	<b>Total Tariff Lines in Category</b>	<b>MFN Duty-free Tariff Lines</b>	<b>Duty-free under GSP</b>	<b>Duty-free under GSP for LDC</b>	<b>Additional Duty-free under other trade preferences</b>
Animal and plant products	1,096	304	282	402	16
Prepared food, beverages, spirits, tobacco	741	137	267	200	11
Chemicals and plastics	2,211	742	1,021	441	6
Wood and paper products	481	407	60	10	4
Textiles, leather, and footwear	1,320	257	176	30	223
Glassware, precious metals and stones, jewelry	388	144	177	51	6
Base metals and articles of base metals	855	491	321	41	2
Machinery, electronics, and high-tech apparatus	1,893	988	810	85	10
Aircraft, autos, and other transportation	240	123	77	40	0
Miscellaneous manufacturing	543	201	186	89	66
Fuels	72	41	7	24	0
Apparel	667	44	22	0	0
<b>Totals</b>	<b>10,507</b>	<b>3,879</b>	<b>3,406</b>	<b>1,413</b>	<b>344</b>

**Source:** U.S. General Accountability Office. *International Trade: U.S. Trade Preference Programs Provide Important Benefits, But a More Integrated Approach Would Better Ensure that Programs Meet Shared Goals*. GAO 08-443, March 2008.

## Competitive Need Limits

The law establishes “competitive need limits” (CNLs) that require the President to automatically suspend GSP treatment for BDCs (LDBDCs and sub-Saharan beneficiaries are exempt) if imports of a product from a single country reach a specified threshold value (\$140 million in 2009, \$145 million in 2010, and \$150 million in 2011), or if 50% or more of total U.S. imports of a product entering under the preference come from a single country.<sup>49</sup>

<sup>49</sup> 19 U.S.C. § 2463(c)(2)(A). See also USTR Guidebook, p. 10.



CNL waivers for products imported from BDCs may be granted on the basis of certain criteria. In deciding whether to grant a waiver, the President must (1) receive advice from the ITC as to whether a U.S. domestic industry could be adversely affected by the waiver; (2) determine that the waiver is in the U.S. economic interest; and (3) publish the determination in the Federal Register.<sup>50</sup> The President is also required to give “great weight” to the extent to which the BDC opens its markets and resources the United States, provides internationally recognized worker rights, and protects intellectual property rights.<sup>51</sup>

Waivers for BDCs may also be provided (in some cases automatically) if total U.S. imports of a product from all countries is small or “*de minimis*” (not to exceed \$19 million in 2008 and \$19.5 million in 2009),<sup>52</sup> or if the GSP-eligible article was not produced in the United States on January 1, 1995 (known as a 504(d) waiver).<sup>53</sup>

## Rules of Origin

Eligible goods under the U.S. GSP program must meet certain rules of origin (ROO) requirements in order to qualify for duty-free treatment. First, duty-free entry is only allowed if the article is imported directly from the beneficiary country into the United States. Second, at least 35% of the appraised value of the product must be the “growth, product or manufacture” of a beneficiary developing country, as defined by the sum of (1) the cost or value of materials produced in the beneficiary developing country (or any two or more beneficiary countries that are members of the same association or countries and are treated as one country for purposes of the U.S. law) plus (2) the direct costs of processing in the country.<sup>54</sup>

## Annual Review

The U.S. GSP program is subject to annual review by the GSP Subcommittee of the Trade Policy Staff Committee (TPSC), a body chaired by the Office of the U.S. Trade Representative (USTR), and including representatives from the Departments of Agriculture, Commerce, the Interior, Labor, State, and the Treasury.<sup>55</sup> The GSP Subcommittee (also responsible for making initial country eligibility recommendations) considers and makes recommendations to the President concerning the continued eligibility of countries to receive benefits. The GSP Subcommittee also resolves questions regarding BDC’s and LDBDC’s observance of country practices (such as worker rights, or protection of intellectual property rights); investigates petitions to add or remove items from the list of eligible products; and considers which products should be removed on the basis that they are “sufficiently competitive” or “import sensitive.” In preparation for the annual review, the USTR may also seek an investigation by the ITC for the purpose of providing advice concerning any possible modifications to the GSP.<sup>56</sup>

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<sup>50</sup> 19 U.S.C. § 2463(d).

<sup>51</sup> 19 U.S.C. § 2463(d)(2).

<sup>52</sup> 19 U.S.C. § 2463(c)(2)(F).

<sup>53</sup> 19 U.S.C. § 2463(c)(2)(E).

<sup>54</sup> 19 U.S.C. § 2463(a).

<sup>55</sup> Regulations for implementation of the GSP program were issued by the Office of the United States Trade Representatives at 15 C.F.R. § 2007. Provisions for the GSP Annual Review are set out at 15 C.F.R. § 2007.2(c)-(h).

<sup>56</sup> 19 U.S.C. § 1332(g), 19 U.S.C. § 2463.

## 2009 Annual GSP Review Results<sup>57</sup>

Results of the 2009 annual review, as published in the Federal Register (Proclamation 8539 of June 29, 2010), included the following:

- Frozen beans (HTS 0710.22.40) and frozen vegetable mixtures (HTS 0710.90.91) were added to the list of eligible products for the GSP.
- A request for a CNL waiver for new pneumatic radial tires (HTS 4011.10.10) imported from Thailand was denied.
- Duty-free status was removed for gold mixed necklaces and neck chains (HTS 7113.19.25) imported from India. A CNL waiver previously granted to India for the same product was revoked. Another type of gold neck chain (HTS 7113.19.21) from India reached the CNL threshold, therefore becoming ineligible for GSP status.
- Over 100 products were granted *de minimis* waivers (provided when U.S. imports of a product from all countries are small or *de minimis*), including products from Thailand, Ecuador, India, Brazil, Pakistan, and Uruguay.
- A request that certain types of sleeping bags (HTS 9494.30.80) be removed from GSP eligibility was denied.
- Investigations on country practice issues, such as worker rights (Bangladesh, Niger, Philippines, and Uzbekistan) and intellectual property violations (Lebanon, Philippines, Russia, Uzbekistan, Lebanon) were continued beyond the annual review date, with progress to be reviewed “in [a] specific timeframe.” Two new investigation requests, one on worker rights in Sri Lanka and one on arbitral awards in Argentina, were accepted for review.

On July 15, 2010, the USTR announced the initiation of the 2010 annual product review and solicited petitions from the public.<sup>58</sup> The deadline for petitions (originally August 3, 2010) was subsequently extended until August 13, 2010.<sup>59</sup> On October 26, 2010, the USTR announced that, the GSP Subcommittee TPSC had reviewed the product petitions and said that it would consider removing the GSP status of certain sleeping bags and certain kinds of self-adhesive plastic tape.<sup>60</sup> On December 29, 2010, the USTR announced the products that the GSP Subcommittee had selected for CNL waivers.<sup>61</sup>

## Graduation

The President may remove a beneficiary developing country from GSP eligibility because the country is determined to be sufficiently competitive or developed that it no longer requires GSP benefits.<sup>62</sup> The President may graduate a BDC completely, or may do so with respect to the

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<sup>57</sup> Presidential Proclamation 8539 of June 29, 2010 (75 F.R. 38905); and United States Trade Representative, “Results of the 2009 GSP Annual Review,” .

<sup>58</sup> 75 F.R. 41274.

<sup>59</sup> 75 F.R. 50033.

<sup>60</sup> 75 F.R. 65700.

<sup>61</sup> 75 F.R. 82130.

<sup>62</sup> In this case, the discretionary eligibility criteria under 19 U.S.C. 2462(c)(2) applies.

country's individual products or industries. Mandatory country graduation occurs when the BDC is determined to be a "high income country" (as defined by official International Bank for Reconstruction and Development statistics), or as a result of a review of the BDC's advances in economic development and trade competitiveness.<sup>63</sup> In December 2009, the President announced the mandatory graduation of Equatorial Guinea and Croatia, effective January 1, 2011.<sup>64</sup>

Countries also become ineligible for GSP benefits if they formally enter into a bilateral trading relationship with another developed country.<sup>65</sup> Bulgaria and Romania were the last countries to become ineligible for this reason, "effective for each of the countries when it becomes a European Member State" as of January 1, 2007 (Presidential Proclamation 8098, December 29, 2007).<sup>66</sup>

## Legislation

### 111<sup>th</sup> Congress

In previous years that the GSP was set to expire, its subsequent renewal was generally considered non-controversial. At times that it was not renewed prior to repeal, it was widely expected that Congress would retroactively renew the preference as it did in the Trade Act of 2002.<sup>67</sup> Since its renewal in December 2006, however, the extension of the GSP program and other trade preferences continues to be a matter of some debate. Some in Congress have mentioned that certain "more advanced" developing countries (such as Brazil and India) are receiving GSP benefits to the exclusion of lesser-developed countries. The consideration of Vietnam as a potential GSP beneficiary — initially proposed by the Bush Administration — is also a matter of debate for some in Congress, largely due to concerns over the country's record on worker rights.<sup>68</sup>

### GSP Extension

A measure seeking to extend the GSP for one year was introduced on December 11, 2009 (H.R. 4284), and passed the House under suspension of the rules on December 14. The measure subsequently passed the Senate on December 22 by unanimous consent, and was signed by the President on December 28, 2009. Reportedly, a short-term extension was enacted so that

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<sup>63</sup> 19 U.S.C. § 2462(e).

<sup>64</sup> Presidential Proclamation 8467 of December 23, 2009, 74 F.R. 69221, December 30, 2009.

<sup>65</sup> Although not specifically stated in the statute, the United States has generally removed countries from GSP eligibility that sign FTAs with it as well.

<sup>66</sup> 72 F.R. 459. USTR officially announced the graduation of Bulgaria and Romania on January 22, 2007 (72 F.R. 2717).

<sup>67</sup> In each instance since 1993 (the last time that the program expired) it was allowed to lapse and was extended retroactively from the expiration date to the date of enactment. P.L. 107-210, for example, applied the preference to any goods entering the United States between September 30, 2001 and August 6, 2002. See **Table B-1**, "GSP Implementation and Renewal 1975-2009." The 2006 renewal (until December 2008) was the first time since 1993 that the program had not been allowed to lapse prior to renewal.

<sup>68</sup> CRS Report RL34702, *Potential Trade Effects of Adding Vietnam to the Generalized System of Preferences Program*, by Vivian C. Jones and Michael F. Martin.

Congress could continue to discuss possible legislative options for trade preference reform in the second session of the 111<sup>th</sup> Congress.<sup>69</sup>

On December 15, the House passed H.R. 6517, the Omnibus Trade Act of 2010, which, among other things, sought to extend the GSP through June 30, 2012. On December 22, 2010, the Senate passed an amendment in the nature of a substitute to H.R. 6517 that did not include GSP renewal. The amended version was passed by the House on the same date (P.L. 111-344). Therefore, the GSP program expired effective December 31, 2010 and has not yet been renewed. Thus, renewal of GSP may continue to be a legislative issue for the 112<sup>th</sup> Congress.

## **GSP for Vietnam**

Two related bills sought to prohibit the President from granting Vietnam GSP status. H.R. 1969, the Vietnam Human Rights Act of 2009, would have required the President certify to Congress that the government of Vietnam freely protects freedom of association in law and practice; and does not engage in or condone serious violations of worker rights, including detention, harassment, or arrest of labor activists or other individuals who write, speak, or otherwise disseminate information on worker rights before GSP status could have been granted. S. 1159 would have prohibited GSP for Vietnam unless the President determined and certified that Vietnam (1) fully protects “in law and practice” freedom of association, including formation of labor unions and collective bargaining; (2) does not engage in or condone the harassment, detention, or arrest of labor activists; (3) fully protects “in law and practice” internationally recognized worker rights, including prohibitions on forced labor and a statutory minimum age for child labor; and (4) has released all people who were detained for peaceful activities promoting the rights of workers to freely associate, including the formation of trade unions.

## **OPIC Reauthorization**

S. 705, the Overseas Private Investment Corporation (OPIC) Reauthorization Act of 2009, would have expanded OPIC project requirements so that it would not be able to “insure, reinsure, guaranty, or finance a project” unless the country in which the project is to be undertaken is eligible for designation as a BDC under the Generalized System of Preferences and the country has taken steps to afford its workers internationally recognized human rights, or the beneficiary country is not eligible for GSP designation but has taken steps to grant worker rights protections. This bill was ordered to be reported favorably by the Senate Committee on Foreign Relations.

## **New Preferences**

H.R. 4101, the New Partnership for Trade Development Act of 2009, sought to strengthen and improve the African Growth and Opportunity Act (AGOA), while extending similar enhanced trade benefits for other least-developed countries outside of Africa, such as Yemen, Afghanistan, and Bangladesh.

S. 1141, the Tariff Relief Assistance for Developing Economies Act of 2009, would have established a preference program similar to the GSP and AGOA, which would provide enhanced trade benefits for least-developed countries, including Yemen, Afghanistan, and Bangladesh.

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<sup>69</sup> “Senate Passes GSP, ATPDEA Extensions after Lautenberg Lifts Hold” *Inside U.S. Trade*, December 25, 2009.

## 112<sup>th</sup> Congress

Section 201 of S. 308, the “Trade Extenders Act of 2011” (introduced February 8, 2011), seeks, among other things, to renew GSP until June 30, 2012, and to apply the preference retroactively from the date of enactment to the previous expiration date (December 31, 2010). Section 202 would specify that certain sleeping bags are not eligible to receive GSP preferences. This section was included, reportedly, in response to opposition regarding certain sleeping bags being imported duty-free from Bangladesh under GSP.<sup>70</sup> Bills with similar provisions are H.R. 622, H.R. 913, S. 221, and S. 433.

On September 7, 2011, the House passed H.R. 2832, a bill seeking to extend the GSP program until July 31, 2013, under suspension of the rules, by voice vote.

## Effectiveness of GSP

The statutory goals of the GSP are (1) to promote the development of developing countries; (2) to promote trade, rather than aid, as a more efficient way of promoting economic development; (3) to stimulate U.S. exports in developing country markets; and (4) to promote trade liberalization in developing countries.<sup>71</sup> It is difficult to assess whether or not the program alone has achieved these goals, however, because the GSP is only one of many such foreign aid initiatives used by the United States to assist poorer countries. Economic success within countries is also related to internal factors, such as stability, wise policy decisions, availability of infrastructure to foster industry, and legal/financial frameworks that encourage foreign investment.

What follows, therefore, are general comments, rather than hard data, about the impact of GSP on developing countries, and possible economic effects on the U.S. market. The positions of various stakeholders regarding the value of the program are also discussed.

## Effects on Developing Countries

In the last 20 years, total U.S. imports from all GSP beneficiaries have increased dramatically, from \$150 billion in 2000 to a peak of \$378 billion in 2008 (see **Figure 1**). The general growth trend in total imports over the time series could indicate, in very general terms, that the GSP and other preferential programs have helped create some export-driven growth in developing countries. In 2009, total imports from all GSP beneficiaries dropped to \$236 billion—most likely due to the global economic recession. Total imports entering duty-free under the GSP preference also increased markedly from \$17 billion in 1996 to \$32 billion in 2008. From 2008 to 2009, the value of goods entering under GSP fell to about \$20 billion in 2009, and recovered slightly in 2010 to \$23 billion.

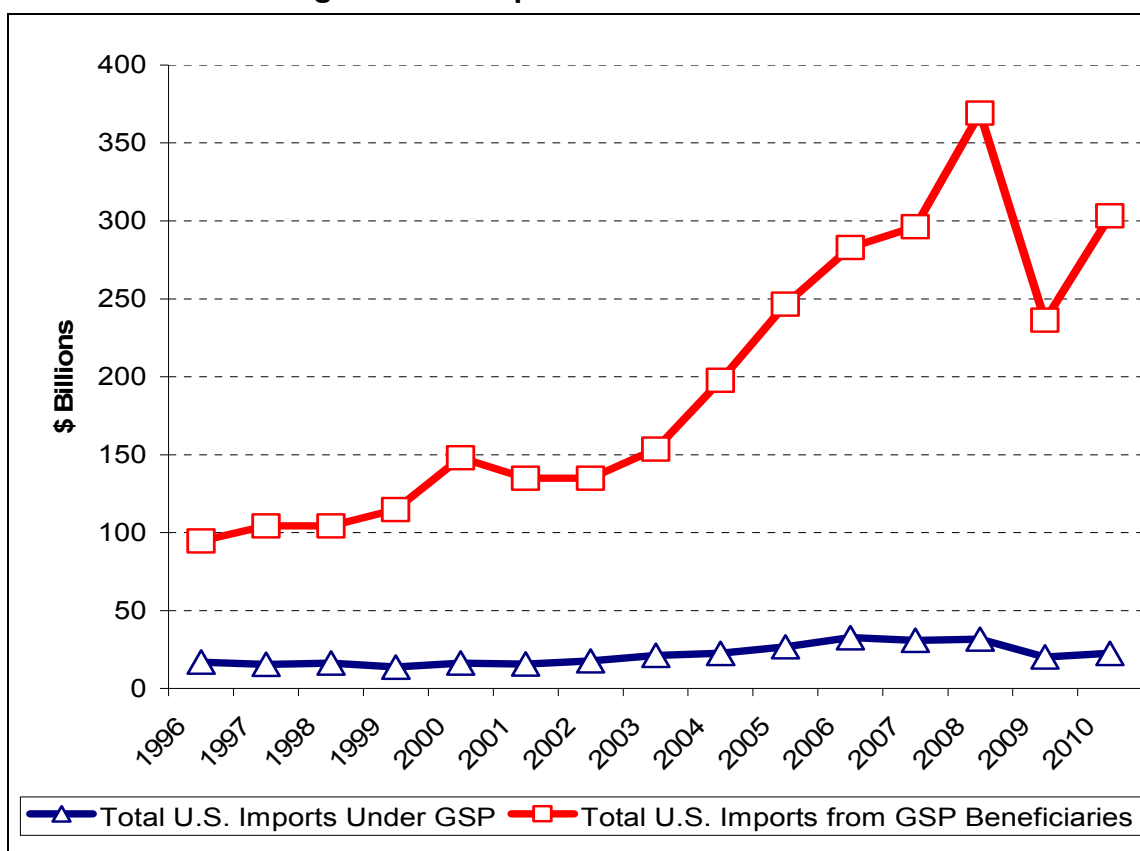
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<sup>70</sup> "Preference Reform Will Take Backseat to Renewal of ATPDEA, GSP," *Inside U.S. Trade*, January 20, 2011.

<sup>71</sup> P.L. 98-573, section 501(b), 19 U.S.C. § 2461 note. Additional factors are to allow for differences in developing countries; help developing countries generate foreign exchange reserves, further integrate developing countries into the international trading system; and encourage developing countries to eliminate trade barriers, guard intellectual property rights, provide worker rights; and address concerns of the United States with regard to adverse effects on U.S. producers and workers and compliance with GATT obligations.

However, the percentage of goods entering the United States duty-free under the GSP program, relative to total U.S. imports from BDCs (includes products that were imported under MFN rates), has remained relatively flat—at around 10% of total imports from beneficiaries. This could be due, in part, to the presence of the automatic CNLs on GSP-eligible products, combined with the mandatory graduation requirement that all “high income” beneficiaries exit the program.

**Figure 1. U.S. Imports from GSP Countries**



Source: ITC Trade Dataweb.

Another indicator of the GSP’s impact on developing countries is the utilization rate of the preference. At first glance, it seems that only a few beneficiary developing countries use GSP to a great extent. However, as one study pointed out, the apparent lack of utilization masks the fact that many GSP-eligible goods may also be imported duty-free under other U.S. regional preference schemes, such as AGOA.<sup>72</sup> The study also illustrated that, for certain industries in BDCs, the positive impact of GSP is quite significant. For example, for all agricultural commodities eligible for GSP treatment, the GSP utilization rate was approximately 58%.<sup>73</sup>

<sup>72</sup> Organization for Economic Cooperation and Development (OECD). *Agriculture and Food. Preferential Trading Arrangements in Agricultural and Food Markets The Case of the European Union and the United States: United States Preference Schemes*. Volume 2005, No. 1, p. 81. See also U.S. Government Accountability Office. *U.S. Trade Preference Programs Provide Important Benefits, but a More Integrated Approach Would Better Ensure Programs Meet Shared Goals*, March 2008, p. 19.

<sup>73</sup> Ibid.



Therefore, for individual industries in developing countries, the positive impact of the GSP could be seen as quite significant.

Many developing countries with a natural competitive advantage in certain products use trade preferences such as the GSP to gain a foothold in the international market. For example, India and Thailand have well-established jewelry industries, and Argentina enjoys an advantage in certain leather goods that are imported under the preference. Exporters in these industries have been able to expand their international reach through GSP programs. However, some countries may be encouraged by preferential programs to develop industry sectors where they would otherwise never be able to compete, thus diverting resources from other industries that might actually become competitive over time (trade diversion).<sup>74</sup> Although economic theory holds that trade diversion is not without efficiency costs, empirical evidence suggests that the overall effects of GSP are relatively small.<sup>75</sup>

The lack of reciprocity in the GSP program could also result in long-term costs for beneficiary countries. In multilateral trade negotiations, such as the Doha Development Round, countries may engage in reciprocal tariff reductions, meaning that all parties would agree to reduce their tariffs. By avoiding such reciprocal concessions, some developing countries may have tended to keep in place trade policies that may, in fact, impede their long-term growth. Moreover, these preferences can become an impediment to negotiations as developing countries seek ways of maintaining their preferences from eroding.

For this reason, some economists prefer multilateral, nondiscriminatory tariff cuts because preferential tariff programs, such as the GSP, can lead to inefficient production and trade patterns. When tariffs are reduced across-the-board, rather than in a preferential manner, countries tend to produce and export on the basis of their comparative advantage—thus exporting products that they produce relatively efficiently and importing products that others produce relatively efficiently. However, while some developing country producers (especially those whose products do not qualify under GSP) may benefit from multilateral tariff reductions, other industries may be hurt because their margin of preference under GSP is reduced.

## **Economic Effects on the U.S. Market**

Imports under the GSP program in 2010 represented about \$23 billion, in comparison to total U.S. imports of \$1.5 trillion (imports for consumption, customs value). This might indicate that the overall effects of GSP on the U.S. economy are quite small. In addition, while U.S. imports from GSP countries has grown rapidly, the rate of increase of imports actually entering under the GSP program has, in the past 10 years, been relatively flat (see **Figure 1**). This factor could indicate that there may be little impact on the U.S. market as a whole by extending the preference. In federal budgetary terms, the Congressional Budget Office cost estimate for H.R. 4284 (became P.L. 111-124), the GSP program would cost the United States \$532 million in 2010 and \$177 million in 2011 in tariff revenues.<sup>76</sup>

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<sup>74</sup> OECD. "Making Open Markets Work for Development." *Policy Brief*, October 2005, p. 2.

<sup>75</sup> Laird, Samuel and Andre Sapir. "Tariff Preferences." In Finger, J. Michael and Andrzej Olechowski, eds. *The Uruguay Round: A Handbook on the Multilateral Trade Negotiations*. Washington, World Bank, 1987, p. 105.

<sup>76</sup> Congressional Budget Office, H.R. 4284, An Act to Extend the Generalized System of Preferences and the Andean Trade Preference Act, and for Other Purposes, Cost Estimate, January 13, 2010, [http://www.cbo.gov/ftpdocs/109xx/doc10907/H.R.4284\\_pg.pdf](http://www.cbo.gov/ftpdocs/109xx/doc10907/H.R.4284_pg.pdf).



In addition, most U.S. producers of import-competing products are largely protected from severe economic impact. First, certain products, such as most textile and apparel products, are designated “import sensitive” and therefore most are ineligible for duty-free treatment. Second, “competitive need limits” (discussed in more detail above) are triggered when imports of a product from a single country reach a specified threshold value or when 50% of total U.S. imports of a product come from a single country.<sup>77</sup> Third, U.S. producers may petition the USTR that GSP treatment granted to eligible articles be withdrawn.<sup>78</sup> The fact that, as illustrated in **Figure 1**, the dollar amount of imports entering under GSP has remained fairly level for at least the past 10 years may also indicate that the GSP has little impact on most domestic producers.

Some U.S. manufacturers and importers also benefit from the lower cost of consumer goods and raw materials imported under the GSP program. U.S. demand for certain individual products, such as jewelry, leather, and aluminum, is quite significant.<sup>79</sup> However, it is difficult to gauge, other than anecdotally, the overall impact of the GSP program on the U.S. market when compared to similar imports from other countries that do not receive the preference. It is possible that some merchandise entering under the GSP could be competitive even without the preference, but it is also possible that the duty-free status is the primary factor that makes imports from these countries more attractive.

## **Stakeholders’ Concerns**

Supporters of the GSP include beneficiary developing country governments and exporters, U.S. importers, and some U.S. manufacturers who use inputs entering under GSP in downstream products. Some policymakers favor GSP renewal because they believe it is an important development and foreign policy tool. Those who oppose the program include U.S. producers who manufacture competing products and some in Congress who favor more reciprocal approaches to trade policy. What follows is a thematic approach to the major topics of discussion in the GSP renewal debate.

### **“Special and Differential Treatment”**

Developing countries have long maintained that “special and differential treatment,” such as that provided by the GSP, is an important assurance of access to U.S. and other developed country markets in the midst of increasing globalization.<sup>80</sup> Many of these countries have built industries (or segments of industries) based on receiving certain tariff preferences.

Those who oppose automatic renewal of GSP have expressed the desire to see some “reciprocity” and “appreciation” on the part of BDCs—in the form of offers of improved market access—in return for renewal of the program.<sup>81</sup> Some of these policy makers favor continued progress in

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<sup>77</sup> 19 U.S.C. § 2463(c).

<sup>78</sup> 15 C.F.R. 2007.0(b).

<sup>79</sup> In some product categories, imports under GSP account for 25% or more of total U.S. imports, including leather (45% of all U.S. leather imports), jewelry and jewelry parts (43%), ferroalloys (36%), copper wire (25%), and aluminum (25%).

<sup>80</sup> Women in International Trade (WIIT) event. The Value of Attending a World Trade Organization Ministerial Conference, January 20, 2006.

<sup>81</sup> “Sen. Grassley Warns Brazil, India, on GSP; Stops Short of Predicting Graduation,” *Inside U.S. Trade*, May 19, 2006. “Thomas Urges USTR to Shift from Lagging Doha Round to Completing FTAs.” *Inside U.S. Trade*, April 7, (continued...)

bilateral or multilateral negotiations in lieu of extending automatic, nonreciprocal benefits such as the GSP. Others have also charged some of the more advanced BDCs for obstructing multilateral trade talks, especially in the WTO Doha Round.

Some members are reportedly becoming more skeptical about the efficacy of any further trade concessions as they hear from constituents about lost jobs and other domestic hardships attributed to global competition.<sup>82</sup> Other members believe that extension and expansion of these programs “will send a signal to developing countries that we will stand with them as they grow.”<sup>83</sup>

## **Erosion of Preferential Margins**

Developing countries have expressed concern about the overall progressive erosion<sup>84</sup> of preferential margins as a result of across-the-board tariff negotiations within the context of multilateral trade negotiations such as the Doha Round. In 1997, a study prepared by the Organization for Economic Cooperation and Development (OECD) found that the degree of erosion of preferences resulting from Uruguay Round (1986-1994) tariff concessions by the Quad countries (Canada, European Union, Japan, United States) was indeed significant.<sup>85</sup> Some economists point out that if multilateral rounds of tariff reductions continue, the preference may disappear completely unless GSP tariff headings are expanded to include more “import-sensitive” products.<sup>86</sup>

One example of present concern of preference erosion is the aforementioned group of business and NGO groups that have proposed providing duty-free, quota-free (DFQF) U.S. market access to all least-developed countries. Many sub-Saharan African countries have expressed concern that an approach like this could place them in direct competition for U.S. market share with countries like Bangladesh, thus diluting the value of the preferential treatment that they receive through the African Growth and Opportunity Act (AGOA).<sup>87</sup>

Other economists say that preference erosion could be more than outweighed by the benefits of increased market access, even for developing countries, brought about by multilateral trade liberalization.<sup>88</sup> These economists say that, rather than continuing GSP and other preferential

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(...continued)

2006.

<sup>82</sup> Washington International Trade Association (WITA) event. “The 2006 Congressional Trade Agenda,” February 15, 2006.

<sup>83</sup> “Rangel Bill Would Extend Trade Benefits for Developing Countries,” Press Release, March 30, 2006.

<sup>84</sup> While overall multilateral preferences may be eroding, the tariff benefits for individual items is still quite significant. For example, the U.S. tariff on flashlights (eligible for duty-free access for all BDCs) is 12.5% *ad valorem*. Some GSP-eligible jewelry items have tariffs as high as 13.5%.

<sup>85</sup> Organization for International Cooperation and Development. *Market Access for the Least-Developed Countries: Where are the Obstacles?* Published by World Trade Organization, WT/LDC/HL/19, October 21, 1997, Table 12, p. 47. The study estimated that in 1997, the loss in the Canadian market was approximately 71%, in the EU 26%, in Japan 34%, and in the United States, 50% (hereinafter OECD study).

<sup>86</sup> Sanchez Arnau, Juan C. *The Generalized System of Preferences and the World Trade Organization*. London: Cameron May, Ltd., 2002, p. 282.

<sup>87</sup> Alliance to End Hunger, et al. Letter to House Ways and Means and Senate Finance Chairs and Ranking Members, April 22, 2009.

<sup>88</sup> Baldwin, R.E. and Murray, T. “MFN Tariff Reductions and Developing Country Trade Benefits Under the GSP,” *Economic Journal* 87:345, March 1977, p. 46.

programs (either through inertia or concern that removing them would be seen as “acting against” the world’s poorest populations), a better approach might be to “assist them in addressing the constraints that really underlie their sluggish trade and growth performance.”<sup>89</sup>

### **Under-Utilization of GSP**

Some who oppose the program say that the proportionately small amount of trade entering under the GSP means that the program is underused, and therefore easily eliminated. Some supporters agree that this is especially true for many least-developed country beneficiaries, who historically are not large users of the preference.

Others have suggested that the GSP may not be used by some countries because they are unfamiliar with the program, because some BDC governments do a poor job of promoting the existence of available opportunities under the preference, because of the lack of available infrastructure (for example, undeveloped or damaged roads and ports that impede the efforts to get goods into the international market), or a combination of all of these factors.<sup>90</sup> One option for addressing these factors is assistance through U.S. trade capacity building efforts.

### **Trade as Foreign Assistance**

No other U.S. preference program is more broadly based or encompasses as many countries as the GSP. As a result, the GSP program is supported by many observers who believe that it is an effective, low-cost means of providing economic assistance to developing countries. They maintain that encouraging trade by private companies through the GSP stimulates economic development much more effectively than intergovernmental aid and other means of assistance.<sup>91</sup> Economic development assistance through trade is a long-standing element of U.S. policy, and other trade promotion programs such as the AGOA and the Caribbean Basin Trade Partnership Act (CBTPA) are also based on this premise.

One example of support for GSP renewal occurred in April 2009, when a coalition of non-governmental organizations (NGOs) working to reduce world poverty and U.S. businesses interested in including developing countries in their sourcing plans, urged USTR Ron Kirk to “seek timely renewal of expiring preference programs for those countries found to fulfill each program’s eligibility criteria and to initiate review and reform of existing U.S. preference programs.”<sup>92</sup> The coalition mentioned that preference programs, like GSP, help to spur much-needed economic development and opportunity, and that quick renewal could help cushion beneficiary countries from the economic impact brought about by declines in trade flows during the global economic crisis.<sup>93</sup> The coalition also spoke to the effectiveness of preference programs

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<sup>89</sup> OECD study, p. 27.

<sup>90</sup> 2008 GAO Report, pp.33-35.

<sup>91</sup> September 21, 2006 DC Bar meeting.

<sup>92</sup> Letter to United States Trade Representative Ron Kirk on renewal of trade preferences, signed by representatives of the Alliance to End Hunger, the American Apparel and Footwear Association, the Business Roundtable, and other business groups and NGOs, April 22, 2009.

<sup>93</sup> Ibid.

in helping to address development challenges while taking into account the needs of U.S. companies and workers.<sup>94</sup>

## **Conditionality of Preferences**

Some supporters of the GSP and other non-reciprocal preferences believe that the conditions required (such as worker rights and intellectual property requirements) for GSP qualification provide the United States with international political leverage that can be used to preserve U.S. foreign and commercial interests.<sup>95</sup> However, some beneficiary countries actively object to these “country practice” provisions and regard them as penalties. Some countries (such as Brazil and India), that have been targeted for GSP eligibility review in the past, perceive that such action indicates that they are being penalized for advocating for their own national development goals in multilateral talks.<sup>96</sup>

Some U.S. intellectual property industry representatives, worker rights groups, and other constituencies oppose what they perceive to be the U.S. administration’s inconsistent enforcement of these provisions. For example, one lobbying group expressed that they were “shocked and dumbfounded” that the GSP is being annually renewed for such countries as Brazil, Russia, and Venezuela in spite of intellectual property rights violations.<sup>97</sup> This domestic opposition may indicate that, at times, the GSP as a tool is of limited usefulness. According to the USTR, however, U.S. officials favor working with beneficiary countries during country practice reviews to actively address compliance issues before removing a country from eligibility. Between 2001 and 2006, one country was removed from eligibility for GSP because of intellectual property rights concerns but was reinstated a few years later after taking steps to resolve the problem.<sup>98</sup>

## **Lower Costs of Imports**

U.S. importers of goods who import components, parts, or materials duty-free under the GSP maintain that the preference results in lower costs for these intermediate goods which, in turn, can be passed on to consumers. In a May 1, 2006, letter to the House Ways and Means and Senate Finance Committees, a coalition of importers and retailers warned that if the GSP was allowed to expire, or if its benefits were reduced, it “would impose a costly hardship on not only beneficiary countries, but their American customers as well.”<sup>99</sup> Industry representatives mentioned that smaller domestic manufacturers who regularly import inputs under the preference may be especially affected by a lapse or expiration of the program because they are less able to adjust to the increased costs that would result.<sup>100</sup>

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<sup>94</sup> Ibid.

<sup>95</sup> The Coalition for GSP. *The U.S. Generalized System of Preferences Program: An Integral Part of the U.S. Economy*. January 1997, p. 3.

<sup>96</sup> September 6, 2006 public comment letter to USTR from ActionAid International USA.

<sup>97</sup> “Grassley Throws Up Obstacle to Trade-Preference Renewal.” *Congress Daily*, September 18, 2006.

<sup>98</sup> United States Government Accountability Office. *U.S. Trade Preference Programs: An Overview of Use by Beneficiaries and U.S. Administrative Reviews*. GAO-07-1209, September 2007, p. 4.

<sup>99</sup> “U.S. Retailers, Importers Push for GSP Renewal Despite Opposition,” *Inside U.S. Trade*, May 5, 2006.

<sup>100</sup> Discussion with officials of the Joint Industry Group, August 18, 2006.

Even though most U.S. producers are shielded by the automatic safeguards triggered by increased imports under the GSP, some U.S. manufacturers and workers might be adversely affected by the program due to CNL waivers.<sup>101</sup> For example, in 2004, three U.S. producers of titanium complained that the Bush Administration refused to terminate duty-free market access for wrought titanium (ordinarily subject to a 15% duty assessment), despite a petition asking the government not to waive the import limits. Russian imports of titanium were allowed to continue to enter duty-free under the presidential waiver even though its sales made up more than 60% of U.S. imports.<sup>102</sup> This might be seen by some as another inconsistency in administration of the U.S. program.

## Conclusion and Options for Congress

The U.S. GSP program, as established by Title V of the Trade Act of 1974, was last extended for all countries through December 31, 2010, in P.L. 111-124. Congress may once again consider its extension (and that of other trade preference programs set to expire), during the 112<sup>th</sup> Congress. The African Growth and Opportunity Acceleration Act of 2004 (P.L. 108-274) had previously authorized an extension of GSP preferences for all beneficiary developing sub-Saharan African countries under the African Growth and Opportunity Act (AGOA) through September 30, 2015, therefore, whether or not the GSP program is renewed with respect to other countries, GSP benefits will continue to be extended to all AGOA countries.<sup>103</sup>

Several options are available to Congress with respect to the treatment of the GSP program. As explained more fully below, Congress could allow the GSP program to expire, support reciprocal tariff and market access benefits through free trade agreements, renew the GSP for least-developed beneficiaries only, renew the existing program for all beneficiaries without major amendments, or extend the program in a modified form. Although the GSP is a unilateral and non-reciprocal tariff preference, any changes to the program would need to be considered in light of the requirements of the WTO Enabling Clause, as it has been interpreted by the WTO Appellate Body. At a minimum, the United States would need to notify—and possibly consult—with other WTO members regarding any withdrawal or modification of GSP benefits, as required by paragraph 4 of the Clause. The United States could also pursue a WTO waiver were any modifications of the GSP program considered not to comport fully with U.S. WTO obligations.

### Allow GSP To Expire

The GSP statute automatically expired for all beneficiary developing countries (except AGOA-eligible countries) on December 31, 2010.<sup>104</sup> No legislative action would be required if Congress were to allow the expiration of GSP for BDCs and LDBDCS not otherwise granted GSP benefits through other preferential programs (such as AGOA).

Some in Congress have asserted that if the GSP were not renewed, it could spur positive movement in the DDA. This position was presented during the 2006 renewal debate by then-

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<sup>101</sup> 19 U.S.C. § 2463(c).

<sup>102</sup> “Administration Decides to Keep Russian GSP Benefits for Titanium,” *Inside U.S. Trade*, July 9, 2004.

<sup>103</sup> 19 U.S.C. § 2466b, as amended by section 7 of the AGOA Acceleration Act of 2004 (P.L. 108-274).

<sup>104</sup> 19 U.S.C. § 2465.

House Ways and Means Chairman Representative Bill Thomas and then-Senate Finance Committee Chairman Senator Charles Grassley.<sup>105</sup> A similar position was also advocated in early 2002 when, while testifying on intellectual property issues, then-USTR Robert B. Zoellick mentioned that “the threat of loss of GSP ... benefits has proven to be an effective point of leverage with some of our trading partners.”<sup>106</sup>

Other observers indicate that if GSP were allowed to expire, or be otherwise modified through country graduation or limitations on CNL waivers, these actions might also weaken the hand of U.S. negotiators in the DDA because GSP could no longer be used as an incentive for participation. Many developing nations already perceive the United States as generally unwilling to accept multilateral efforts to grant additional “special and differential treatment” for developing country WTO members (an important DDA goal) unless more reciprocal concessions for improved market access are made for U.S. products. As a result, GSP expiration could cause the negotiating positions of developing countries to harden, rather than soften, as they seek to make up for these lost benefits through the negotiations.

These observers say that the United States could also lose substantial leverage in addressing important trade-related foreign policy and development concerns that beneficiary nations must accept prior to BDC designation. Furthermore, interested domestic and international parties may now file petitions requesting the USTR to review the GSP status of BDCs based on the eligibility criteria in the statute (e.g., worker rights practices). If the GSP program were no longer in effect, these avenues of encouraging certain developing country practices would no longer be available.<sup>107</sup>

Some domestic manufacturers, such as the ailing U.S. automobile industry, may be additionally impacted by GSP expiration or modification, due to dependence on duty-free (thus lower-cost) manufacturing inputs imported under the preference, such as brake parts, vehicle transmissions, and tires. Smaller businesses could be disproportionately affected because they are less able to adjust to increased costs of factors of production. On the other hand, some U.S. manufacturers of import-competing products might, at least marginally, benefit.

## **Scrap GSP in Favor of Free-Trade Agreements or Regional Trading Arrangements**

Some members of Congress have suggested that the GSP should be abandoned in favor of free trade agreements (FTAs) or regional trading arrangements (RTAs) that would provide the United States with reciprocal benefits. Such arrangements could provide additional markets for U.S. exports, as well as stimulate the growth of industries in developing-country trading partners. Thus, U.S. exporters, as well as importers, could benefit from reciprocal tariff concessions. Since these tariff concessions under these agreements would probably apply to many more goods and industries than are covered by the existing GSP program, they might increase the likelihood of across-the-board economic stimulation in the developing country trading partner. In addition,

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<sup>105</sup> “Thomas Urges USTR to Shift from Lagging Doha Round Completing FTAs,” *Inside U.S. Trade*, April 7, 2006.

<sup>106</sup> U.S. Senate, Committee on Foreign Relations. “Examining the Theft of American Intellectual Property at Home and Abroad.” Hearing, February 12, 2002, S. Hrg. 107-457.

<sup>107</sup> 15 C.F.R. 2007.0(b).



absent a favorable conclusion to the DDA negotiations, FTAs and RTAs could also be used as a way to lead countries toward further multilateral trade liberalization.

However, such reciprocal agreements could actually harm import-competing U.S. manufacturers more than unilateral preferences under the GSP, because automatic safeguards written into the statute, such as competitive need limitations, might no longer apply. Any such agreement could also involve a greater number of U.S. tariff concessions, thus certain import-sensitive items ineligible for GSP status could also be on the table. On the other hand, other U.S. manufacturers might benefit from the increased market access that an FTA or RTA would provide.

Some developing countries could also be put at a greater disadvantage in free-trade or regional-trade agreement negotiations because they are ill-equipped to implement the additional standards that accompany a comprehensive U.S. free trade agreement.<sup>108</sup> For example, some countries such as South Africa and other countries in the South African Customs Union (SACU) have been unsuccessful in the past when negotiating such agreements with the United States due to their inability to conform to these standards. In addition, since the GSP is the largest U.S. preferential trading program, some developing countries that currently receive GSP benefits could easily be left out of such agreements, either because their markets are of little commercial value to U.S. interests, or because time constraints involved in the negotiating process do not make it worthwhile for U.S. negotiators to include them.

## **Authorize GSP Only for Least-Developed Countries**

Some in Congress favor modifying the GSP so that it applies only with respect to least-developed beneficiaries. Since many African least-developed beneficiaries will continue to receive the GSP preference until mid-2015 under AGOA, an LDC-only GSP extension would apply to the following LDCs: Afghanistan, Bangladesh, Bhutan, Cambodia, Central African Republic, Congo (Kinshasa), Haiti,<sup>109</sup> Kiribati, Madagascar, Nepal, Samoa, The Solomon Islands, Somalia, Tuvalu, Vanuatu, and Yemen.

Of these countries, only four (Bhutan, Congo (Kinshasa), Samoa, and Nepal) currently export goods under GSP that account for more than 8% of their total imports to the United States. Therefore, if the GSP program were to be renewed and extended to LDCs only (absent any other modifications), these four countries would be the primary beneficiaries in the short term. Arguably, U.S. efforts through trade capacity building could help other LDCs take greater advantage of the preference.

## **Modify GSP**

Another possible approach for Congress would be to modify the Generalized System of Preferences scheme as it applies to all beneficiary developing countries, including least-developed countries. Some of these options would have the effect of narrowing the application of the GSP program, while others would expand it.

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<sup>108</sup> Vamvakidis, Ahtanasios. "Regional Trade Agreements or Broad Liberalization: Which Path Leads to Faster Growth?" *IMF Staff Papers*, Vol. 46:1, March 1999, p. 42.

<sup>109</sup> Haiti was recently provided additional preference benefits through the Haiti Economic Lift Act of 2010 (P.L. 111-171). See CRS Report RL34687, *The Haitian Economy and the HOPE Act*, by J. F. Hornbeck



## **Restrict Application of Preference**

The following is a list of possible approaches if Congress desired to extend, but further restrict, imports under the GSP:

- Refine statutory criteria for GSP treatment. For example, make the existing discretionary criteria mandatory requirements.
- Strengthen the requirement that benefits under the preference may (or must) be terminated for non-compliance with mandatory or discretionary criteria. Add additional criteria to include movement toward sustainable development or environmental preservation.
- Reconsider criteria for graduation of countries from GSP, or strengthen the provision that allows graduation of individual industries within beneficiary countries. For example, the President could be required to grant BDC status only if a country (1) complies with all mandatory requirements and (2) has a per-capita income below a certain level.
- Modify the rules of origin requirement for qualifying products to require that a greater percentage of the direct costs of processing operations (currently 35%)<sup>110</sup> originate in beneficiary developing countries.
- Lower the threshold at which the President may (or must) withdraw, suspend, or limit the application of duty-free treatment of certain products (competitive need limitation).<sup>111</sup>
- Require the President to more frequently and actively monitor (currently an annual process) the economic progress of beneficiary countries, as well as compliance with mandatory and discretionary criteria.
- Weed out countries considered “unfriendly” to U.S. interests, such as Venezuela, India, and Brazil.

## **Expand Application of GSP**

Were Congress to expand or enhance application of the GSP, the following options could be exercised:

- Expand the list of tariff lines permitted duty-free access. Allow some “import sensitive” products (in which developing countries often have a competitive advantage) to receive preferential access.
- Improve rule of origin requirements to provide more predictability. Current rules provide no measurable definition of “substantial transformation,” therefore, U.S. officials often make eligibility decisions on a case-by-case basis; therefore BDCs

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<sup>110</sup> 19 U.S.C. § 2463(a)(2)(A)(ii)(II). The statute further specifies that a product may be made in one BDC or any two or more such countries that are members of the same association of countries and are treated as one under section 19 U.S.C. § 2467(2). For beneficiary countries under AGOA, this percentage may also include up to 15% (as to value) of U.S. origin (19 U.S.C. § 2466a(b)(2)).

<sup>111</sup> 19 U.S.C. § 2463(c).

sometimes have no predictable way of knowing before shipment whether certain foreign components can be included as part of the 35% domestic content.<sup>112</sup>

- Eliminate competitive need limitations or raise the thresholds that trigger them.
- Ensure uniform application of country practice requirements, or eliminate them.

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<sup>112</sup> GAO Report, p. 55.

## Appendix A. Trade Statistics

**Table A-1. Leading Product Imports Under GSP, 2010**

HTS	MFN Tariff Rate	Description	Value of Imports Under GSP
27090020	10.5 cents/bbl	Petroleum oils and oils from bituminous minerals, crude, testing 25 degrees A.P.I. or more	\$ 4,696,304,004
27090010	5.25 cents/bbl	Petroleum oils and oils from bituminous minerals, crude, testing under 25 degrees A.P.I.	\$736,731,150
71131150	5%	Silver articles of jewelry and parts thereof, nesoi, valued over \$18 per dozen pieces or parts	\$598,381,383
40111010	4%	New pneumatic radial tires, of rubber, of a kind used on motor cars (including station wagons and racing cars)	\$494,605,939
76061230	3%	Aluminum alloy, plates/sheets/strip, w/thick. o/0.2mm, rectangular (incl. sq), not clad	\$398,345,686
72024100	1.9%	Ferrochromium containing by weight more than 4 percent of carbon	\$376,940,924
72023000	3.9%	Ferrosilicon manganese	\$247,137,897
40112010	4%	New pneumatic radial tires, of rubber, of a kind used on buses or trucks	\$230,404,109
21069099	6.4%	Food preparations not elsewhere specified or included, not canned or frozen	\$217,386,372
71131929	5.5%	Gold necklaces and neck chains (o/than of rope or mixed links)	\$205,974,798
72022150	1.5%	Ferrosilicon containing by weight more than 55% but not more than 80% of silicon, not otherwise specified or indicated	\$197,786,992
40151910	3%	Seamless gloves of vulcanized rubber other than hard rubber, other than surgical or medical gloves	\$186,540,232
17011110	1.4606¢/kg less 0.020668¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.943854¢/kg	Cane sugar, raw, in solid form, not containing added flavoring or coloring matter, not otherwise specified or indicated, described in additional U.S. note 5 (Chapter 17) and provisional	\$185,649,026

HTS	MFN Tariff Rate	Description	Value of Imports Under GSP
71131950	5.5%	Precious metal (other than silver) articles of jewelry and parts thereof, whether or not plated or clad with precious metal, nesoi	\$160,490,974
68029900	6.5%	Monumental or building stone and arts thereof, not otherwise specified or indicated, further worked than simply cut/sawn, not otherwise specified or indicated	\$145,900,293

**Source:** USITC Trade Dataweb, <http://dataweb.usitc.gov>, and Harmonized Tariff Schedule, 2009.

**Notes:** Imports for consumption, actual U.S. dollars. Tariff rates are *ad valorem* unless otherwise specified.

**Table A-2. Leading GSP Beneficiaries and Total, 2010**

<b>Rank</b>	<b>Beneficiary Developing Country</b>	<b>GSP Duty-Free Imports (\$ millions)</b>	<b>Total Imports (\$ millions)</b>
1	Thailand	\$3,612	\$22,653
2	Angola	\$3,544	\$11,779
3	India	\$3,482	\$29,614
4	Brazil	\$2,124	\$23,402
5	Indonesia	\$1,856	\$16,330
6	Equatorial Guinea	\$1,275	\$2,324
7	South Africa	\$1,200	\$8,199
8	Philippines	\$913	\$7,958
9	Turkey	\$793	\$4,180
10	Russia	\$578	\$25,199
11	Argentina	\$529	\$3,739
12	Chad	\$454	\$2,038
13	Congo (DROC)	\$247	\$435
14	Pakistan	\$165	\$3,491
15	Colombia	\$159	\$15,673
<b>Imports from Top 15 Beneficiaries</b>		<b>\$21,585</b>	<b>\$43,027</b>
<b>Total Imports from all Beneficiaries</b>		<b>\$22,554</b>	<b>\$303,178</b>

**Source:** USITC Trade Dataweb, <http://dataweb.usitc.gov>.

## Appendix B. GSP Implementation and Renewal

**Table B-1. GSP Implementation and Renewal 1975-2009**

Public Law	Effective Date	Date Expired	Notes
P.L. 93-618, Title V, Trade Act of 1974	January 2, 1975	January 2, 1985	Statute originally enacted.
P.L. 98-573, Title V, Trade and Tariff Act of 1984	October 30, 1984	July 4, 1993	Substantially amended and restated.
P.L. 103-66, Section 13802 (in Omnibus Budget Reconciliation Act, 1993)	August 10, 1993	September 30, 1994	Extended retroactively from July 5, 1993 to August 10, 1993. Also struck out reference to "Union of Soviet Socialist Republics"
P.L. 103-465, Section 601 Uruguay Round Agreements Act	December 8, 1994	July 31, 1995	Extended retroactively from September 30, 1994 to December 8, 1994. No other amendments to provision.
P.L. 104-188, Subtitle J, section 1952 GSP Renewal Act of 1996 (in Small Business Job Protection Act of 1996)	October 1, 1996 (for GSP renewal only)	May 31, 1997	Substantially amended and restated. Extended retroactively from August 1, 1995 to October 1, 1996.
P.L. 105-34, Subtitle H, section 981 (in Taxpayer Relief Act of 1997)	August 5, 1997	June 30, 1998	Extended retroactively from May 31, 1997 to August 5, 1997. No other amendments to provision.
P.L. 105-277, Subtitle B, section 101 (in Omnibus Consolidated and Emergency Supplemental Appropriations, 1999)	October 21, 1998	June 30, 1999	Extended retroactively from July 1, 1998 to October 21, 1998. No other amendments to provision.
P.L. 106-170, section 508, (in Ticket to Work and Work Incentives Act of 1999)	December 17, 1999	September 30, 2001	Extended retroactively from July 1, 1999 to December 17, 1999. No other amendments to provision.
P.L. 107-210, Division D, Title XLI Trade Act of 2002	August 6, 2002	December 31, 2006	Extended retroactively from September 30, 2001, to August 6, 2002. Amended to (1) include requirement that BDCs take steps to support efforts of United States to combat terrorism and (2) further define the term "internationally recognized worker rights."
P.L. 109-432, Title VIII	December 31, 2006	December 31, 2008	Extended before program lapse.
P.L. 110-436, section 4	October 16, 2008	December 31, 2009	Extended before program lapse.
P.L. 111-124	December 28, 2009	December 31, 2010	Extended before program lapse.

## Appendix C. GSP Beneficiary Countries

**Table C-1. Beneficiary Developing Countries and Regions for Purposes of the Generalized System of Preferences (GSP), and Additional Qualifying Preference Programs, January 2011**

Individual Countries (columns continued on next page)		
Afghanistan <sup>A+</sup>	Guyana <sup>E</sup>	Seychelles <sup>D</sup>
Albania	Haiti <sup>A+ E</sup>	Sierra Leone <sup>A+ D</sup>
Algeria	India	Solomon Islands
Angola <sup>A+ D</sup>	Indonesia	Somalia <sup>A+</sup>
Argentina	Iraq	South Africa <sup>D</sup>
Armenia	Jamaica <sup>E</sup>	Sri Lanka
Azerbaijan	Jordan	Suriname
Bangladesh <sup>A+</sup>	Kazakhstan	Swaziland <sup>D</sup>
Belize <sup>E</sup>	Kenya <sup>D</sup>	Tanzania <sup>A+ D</sup>
Benin <sup>A+ D</sup>	Kiribati <sup>A+</sup>	Thailand
Bhutan <sup>A+</sup>	Kosovo	Togo <sup>A+ D</sup>
Bolivia <sup>J</sup>	Kyrgyzstan	Tonga
Bosnia and Hercegovina	Lebanon	Tunisia
Botswana <sup>D</sup>	Lesotho <sup>A+ D</sup>	Turkey
Brazil	Liberia <sup>A+ D</sup>	Tuvalu <sup>A+</sup>
Burkina Faso <sup>A+ D</sup>	Macedonia, Former Yugoslav Republic of	Uganda <sup>A+ D</sup>
Burundi <sup>A+ D</sup>	Madagascar <sup>A+ D</sup>	Ukraine
Cambodia <sup>A+</sup>	Malawi <sup>A+ D</sup>	Uruguay
Cameroon <sup>D</sup>	Maldives	Uzbekistan
Cape Verde <sup>D</sup>	Mali <sup>A+ D</sup>	Vanuatu <sup>A+</sup>
Central African Republic <sup>A+</sup>	Mauritania <sup>A+ G</sup>	Venezuela
Chad <sup>A+ D</sup>	Mauritius <sup>D</sup>	Republic of Yemen <sup>A+</sup>
Colombia <sup>J</sup>	Moldova	Zambia <sup>A+ D</sup>
Comoros <sup>A+ D</sup>	Mongolia	Zimbabwe
Congo (Brazzaville) <sup>D</sup>	Montenegro	
Cote d'Ivoire	Mozambique <sup>A+ D</sup>	
Djibouti <sup>A+ D</sup>	Namibia <sup>D</sup>	
Dominica <sup>E</sup>	Nepal <sup>A+</sup>	
	Niger <sup>A+ D</sup>	
	Nigeria <sup>D</sup>	
	Pakistan	



**Individual Countries (columns continued on next page)**

East Timor <sup>A+</sup>	Panama <sup>E</sup>
Ecuador <sup>J</sup>	Papua New Guinea
Egypt	Paraguay
Eritrea	Philippines
Ethiopia <sup>A+ D</sup>	Russia
Fiji	Rwanda <sup>A+ D</sup>
Gabon <sup>D</sup>	St. Kitts and Nevis <sup>E</sup>
Gambia, The <sup>A+ D</sup>	Saint Lucia <sup>E</sup>
Georgia	Saint Vincent and the Grenadines <sup>E</sup>
Ghana <sup>D</sup>	Samoa <sup>A+</sup>
Grenada <sup>E</sup>	Sao Tome and Principe <sup>A+ G</sup>
Guinea <sup>A+ D</sup>	Senegal <sup>D</sup>
Guinea-Bissau <sup>A+ D</sup>	Serbia

**Non-Independent Countries and Territories**

Anguilla	Gibraltar	Saint Helena
British Indian Ocean Territory	Heard Island and McDonald Islands	Tokelau
Christmas Island (Australia)	Montserrat <sup>E</sup>	Turks and Caicos Islands
Cocos (Keeling) Islands	Niue	Virgin Islands, British <sup>E</sup>
Cook Islands	Norfolk Island	Wallis and Fortuna
Falkland Islands (Islas Malvinas)	Pitcairn Islands	West Bank and Gaza Strip
		Western Sahara

**Source:** Harmonized Tariff Schedule of the United States, 2009.

**Note:** Symbols for Trade Preference Programs:

**A+** = GSP Least-Developed Beneficiary Developing Country

**J** = Beneficiary Country of Andean Trade Preference (ATPA). Peru is a beneficiary of the ATPA that has previously graduated from the GSP.

**E** = Beneficiary Country of Caribbean Basin Economic Trade Partnership Act (CBTPA) and/or Caribbean Basin Economic Recovery Act (CBERA). Additional beneficiaries of CBERA that have previously graduated from the GSP are Antigua and Barbuda, Aruba, Bahamas, Barbados, Netherlands Antilles, and Trinidad and Tobago.

**D** = Beneficiary Country of African Growth and Opportunity Act (AGOA)

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**Associations of Countries (treated as one country)**

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**Member Countries of the Cartagena Agreement (Andean Group)**

Bolivia  
Colombia  
Ecuador  
Peru

**Member Countries of the West African Economic and Monetary Union (WAEMU)**

Benin  
Burkina Faso  
Cote d'Ivoire  
Guinea-Bissau  
Mali  
Niger  
Senegal  
Togo

**Qualifying Member Countries of the Association of South East Asian Nations (ASEAN)**

Cambodia  
Indonesia  
Philippines  
Thailand

**Qualifying Member Countries of the Southern Africa Development Community (SADC)**

Botswana  
Mauritius  
Tanzania

**Qualifying Member Countries of the South Asian Association for Regional Cooperation (SAARC)**

Bangladesh  
Bhutan  
India  
Nepal  
Pakistan  
Sri Lanka

**Qualifying Member Countries of the Caribbean Common Market (CARICOM)**

Belize  
Dominica  
Grenada  
Guyana  
Jamaica  
Montserrat  
St. Kitts and Nevis  
Saint Lucia  
Saint Vincent and the Grenadines  
Trinidad and Tobago

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**Source:** Harmonized Tariff Schedule of the United States, 2009.

## **Author Contact Information**

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