

# CRS Report for Congress

## Generalized System of Preferences: Background and Renewal Debate

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Prepared for Members and  
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# Generalized System of Preferences: Background and Renewal Debate

## Summary

The Generalized System of Preferences (GSP) provides duty-free tariff treatment to certain products imported from designated developing countries. The United States, the European Union, and other developed countries implemented such programs in 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 extended until December 31, 2008, in section 8002 of P.L. 109-432 for all GSP beneficiary countries not covered by the African Growth and Opportunity Acceleration Act of 2004 (P.L.108-274, extended GSP benefits for AGOA beneficiary countries through September 30, 2015). On February 7, 2008, House Ways and Means Chairman Rangel introduced H.R. 5264, a bill seeking to further extend the Generalized System of Preferences and other trade preference programs, such as the Andean Trade Preference Act (ATPA), until September 30, 2010. As passed by the House on February 27 and the Senate on February 28, the law extends only the ATPA for an additional ten months, until December 31, 2008 (P.L. 110-191).

In the 109<sup>th</sup> Congress, renewal of the preference was somewhat controversial, owing, in part, to concerns of some that some of the more advanced beneficiary developing countries (such as India and Brazil) were contributing to the impasse in multilateral trade talks in the World Trade Organization (WTO) Doha Round. Compromise language worked out between the House and Senate extended the GSP for two years for all countries, while directing that the President “should” revoke “competitive need limitation” waivers for products from certain countries, based on the criteria specified. The Bush Administration favored GSP renewal, but also appeared willing to continue to review and modify the program in response to congressional concerns. To that end, during the process of the 2006 annual review, the USTR and other administration officials examined whether to limit, suspend, or withdraw the eligibility of 13 major GSP beneficiaries based on certain criteria. No countries lost overall GSP eligibility as a result of the review, but, as recommended in the legislation that reauthorized GSP, officials examined all 83 previously granted waivers of competitive need limits (triggered by import volumes) and withdrew several of them — including those granting duty-free imports of jewelry from India and Thailand, and brake parts from Brazil. New waivers granted included one for hooked rugs from India and one for radial tires from Thailand.

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 U.S. implementation of the GSP is discussed, 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 are presented. Fourth, possible implications of the expiration of the U.S. program and other possible options for Congress are discussed. This report will be updated as events warrant.

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# Generalized System of Preferences: Background and Renewal Debate

The Generalized System of Preferences (GSP) provides preferential tariff treatment to certain products imported from designated developing countries. The United States, the European Union, and other developed countries implemented such programs in 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 extended through December 31, 2008, in section 8002 of P.L. 109-432. The African Growth and Opportunity Acceleration Act of 2004 (P.L. 108-274) had 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>

Since Congress extended the GSP until the end of December 2008, its extension beyond that date will likely continue to be a legislative issue in the second session of the 110<sup>th</sup> Congress. In addition, both the House Ways and Means Committee and the Senate Finance Committee have expressed interest in examining the effectiveness of the GSP, as well as other trade preference programs. The Senate Finance Committee held a hearing on the effectiveness of all trade preference programs, including GSP, on May 16, 2007.

The December 2006 - enacted GSP extension, along with renewal of certain other preferential programs, was included in H.R. 6406 (Thomas), a tariff and trade bill introduced in the post-election session of the 109<sup>th</sup> Congress. The bill, as approved by the House, was appended to the engrossment of the House amendment of the Senate amendment to H.R. 6111 (see Title VIII). House and Senate compromise legislation extended the GSP for two years for all countries, while directing that the President “should” revoke “competitive need limitation” waivers that have been in effect for five years or more if imports under the waiver reached certain thresholds during the preceding calendar year.

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, a description of U.S. implementation of the GSP program is presented, along with recent legislative developments and the debate surrounding its renewal. Third, an analysis of the U.S. program’s effectiveness and the positions of various stakeholders are discussed.

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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).

Fourth, possible implications of GSP expiration and other options for Congress are mentioned.

## 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 (usually in the form of lower tariff rates or duty-free status) to developed country markets in order to spur economic growth. 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 larger 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 Generalized System of Preferences 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 lesser-developed countries believed that equal treatment of unequal trading partners did not constitute equity and called for “special

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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 industrialized 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.”

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 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; and (7) include safeguard mechanisms or “escape” clauses.<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 is in jeopardy.

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

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

<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.*

## 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 accord more favorable tariff treatment to the products of developing countries for ten 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 favourable 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;

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<sup>12</sup> This section was written by Jeanne Grimmer, 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 WTO*, by Jeanne J. Grimmer [hereinafter CRS Report RS22183].

<sup>13</sup> Edmond McGovern, International Trade Regulation ¶ 9.212 (updated 1999)[hereinafter McGovern]. 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).

<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), available at [[http://www.wto.org/gatt\\_docs/English/SULPDF/90970166.pdf](http://www.wto.org/gatt_docs/English/SULPDF/90970166.pdf)] [hereinafter Enabling Clause].



(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 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

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<sup>16</sup> *Id.* at ¶ 2, note 3.

<sup>17</sup> *Id.* at ¶ 4, note 1.

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 favourable 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, 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

<sup>18</sup> Note also ¶ 4 of the Enabling Clause requiring grantors to notify GATT parties in the event of modification or withdrawal of GSP benefits. *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, note 2.

<sup>20</sup> CRS Report RS22183, *supra* note 12, at 3-4. The United States has pending waiver requests for the Caribbean Basin Economic Recovery Act, as amended by the United States-Caribbean Trade Partnership Act (through September 30, 2008), the Andean Trade Preference Act, as amended by the Andean Trade Promotion and Drug Eradication Act (through December 31, 2006), and the African Growth and Opportunity Act (through September 30, 2015). Some WTO Members, e.g., China and Pakistan, have expressed concerns regarding U.S. treatment of textiles in these programs, while Paraguay has objected to the U.S. request in part because of its exclusion from the Andean preference scheme. *See Goods Council approves waiver for EC’s trade preference scheme for the Western Balkans*, WTO News Item, July 18, 2006, at [[http://www.wto.org/english/news\\_e/news06\\_e/gc\\_july06\\_e.htm](http://www.wto.org/english/news_e/news06_e/gc_july06_e.htm)]; *Minutes of the Meeting of the Council for Trade in Goods*, May 9, 2006, at 3-11, G/C/M/84 (June 29, 2006); *Minutes of the Meeting of the Council for Trade in Goods*, March 10, 2006, at 3-13, G/C/M/83 (May 1, 2006).

<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 Appellate Body 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/DDF>]

and procedural requirements, the waiver also 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.”<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 beneficiary developing countries (as determined by each benefactor) an exemption from duties (either reduced tariffs or duty-free access) on most manufactured products and certain “non-sensitive” agricultural products, although product coverage and preferential treatment 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

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<sup>22</sup> (...continued)

Documents/t/WT/L/304.DOC][hereinafter 1999 LDC Waiver]; 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, 1999).

<sup>23</sup> 1999 LDC Waiver, *supra* note 22, at ¶ 6.

<sup>24</sup> *EC Preferences Appellate Body Report*, *supra* note 21. For further discussion of the Appellate Body report, see CRS Report RS22183, *supra* note 12, at 4-6.

<sup>25</sup> *EC Preferences Appellate Body Report*, *supra* note 21, at ¶¶ 162-165.

<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.*

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>

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 changes have taken place in a beneficiary country, the country might be excluded from GSP programs in some countries (such as the United States) but not in others. Most countries 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, the European Community recently implemented a preference 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>

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<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)].

<sup>30</sup> European Communities. See Council Regulation (EC) N° 980/2005 of 27 June 2005 applying a scheme of generalized tariff preferences (published in Official Journal of the European Communities (OJ) L 169, 30.6.2005, p. 1.

<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.

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 also “graduate” certain GSP recipients with respect to individual products or sectors of the economy.

## U.S. Implementation

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

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 device. 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 beneficiary developing countries, 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:

- other industrial countries;
- Communist countries, unless they are a WTO member, a member of the International Monetary Fund and receive Normal Trade Relations (NTR) treatment;

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<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 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 (PL. 107-210). See **Table 3**, “GSP Implementation and Extension, 1975-2002.”

<sup>34</sup> 19 U.S.C. 2461.

- 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 an adverse impact on U.S. commerce;
- countries that nationalize or expropriate the property of U.S. citizens, or otherwise infringe on U.S. citizens' property rights (including failure to recognize or enforce arbitral awards in favor of U.S. citizens or corporations);
- 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 any commitments they make to eliminate the worst forms of child labor.<sup>35</sup>

The President is also directed to consider certain discretionary criteria, such as the following:

- the country's 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;
- its commitment to a liberal trade policy;
- the extent to which it provides adequate protection of intellectual property rights;

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<sup>35</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.)

- the extent to which it has taken action to reduce trade-distorting investment policies and practices; and
- whether or not it has taken steps to grant internationally recognized worker rights.<sup>36</sup>

The law 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>37</sup>

**Reporting Requirements.** The President must advise Congress of any changes in beneficiary developing country status, as necessary.<sup>38</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>39</sup>

**Least-Developed Beneficiaries.** The President is also authorized by statute to designate any BDC as a least-developed beneficiary, based on an assessment of the conditions and factors previously mentioned.<sup>40</sup> Therefore, 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>41</sup> the U.S. administration also assesses the level of compliance with other GSP statutory requirements and comments from the public before identifying a country as "least-developed" for purposes of the GSP.<sup>42</sup>

As requested by the WTO, the Bush Administration has formally notified its trading partners of all the domestic legislative and regulatory steps necessary in order to comply with the duty-free/quota-free access (DFQF) provision agreed to at the Hong Kong Ministerial. However, the United States also advised other WTO members that implementation of the initiative is contingent on successful completion of negotiations in the Doha Development Agenda.<sup>43</sup>

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<sup>36</sup> 19 U.S.C. 2462(c). *Ibid.*, p. 20.

<sup>37</sup> 19 U.S.C. 2462(d).

<sup>38</sup> 19 U.S.C. 2462(d)(3).

<sup>39</sup> 19 U.S.C. 2464.

<sup>40</sup> 19 U.S.C. 2462(a)(2).

<sup>41</sup> 19 U.S.C. 2462(c)(2).

<sup>42</sup> See 71 F.R. 43543.

<sup>43</sup> World Trade Organization. Committee on Trade and Development. "Duty-Free, Quota-Free Access for Least-Developed Countries." Communication from the United States, May 16, 2006. WT/COMTD/W/149.

## Products

The Trade Act of 1974 authorizes the President to designate articles (except those specifically designated “import sensitive” in the statute) as eligible for duty-free treatment under the GSP after receiving advice from the International Trade Commission.<sup>44</sup> “Import sensitive” products excluded from preferential treatment include textiles and apparel; certain watches; footwear and other accessories; certain 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 1,400 additional articles from least-developed BDCs may receive similar treatment.<sup>48</sup> Leading imports in 2005 included petroleum products, especially crude oil (\$5.7 billion); jewelry and jewelry parts (\$3.4 billion); automobile and other passenger vehicle parts (\$1.43 billion); ferroalloys (\$669.0 million); and rubber tires (\$629.3 million).

**Competitive Need Limits.** The law establishes “competitive need limits” (CNLs) that require the President to automatically suspend GSP treatment if imports of a product from a single country reach a specified threshold value (\$130 million in 2007) or if 50% or more of total U.S. imports of a product entering the preference come from a single country.<sup>49</sup>

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 International Trade Commission 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>

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<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, p. 6.

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

<sup>50</sup> 19 U.S.C. 2463(d).

<sup>51</sup> 19 U.S.C. 2463(d)(2).



All competitive need limits are automatically waived for least-developed and sub-Saharan African beneficiaries.<sup>52</sup> Waivers may also be provided (in some cases automatically) if total U.S. imports of a product from all countries is small or “*de minimis*” (\$17.5 million in 2005),<sup>53</sup> or if the GSP-eligible article was not produced in the United States on January 1, 1995.<sup>54</sup>

**Rules of Origin.** Eligible goods must also meet certain domestic content or “rules of origin” requirements in order to qualify for GSP status. According to the statute, duty-free entry is only allowed if the article is imported directly from the beneficiary country into the United States. In addition, at least 35% of the appraised value of an eligible 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>55</sup> Any inputs from third countries must be “substantially transformed” into new and different constituent materials if they are to be considered part of the 35% domestic content rule.<sup>56</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, Interior, Labor, State, and the Treasury.<sup>57</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 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

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<sup>52</sup> 19 U.S.C. 2462(c)(2)(D). USTR Guidebook, p. 11.

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

<sup>54</sup> 19 U.S.C. 2463(c)(2)(E).

<sup>55</sup> 19 U.S.C. 2463(a).

<sup>56</sup> 19 U.S.C. 2463(a)(2) and (3).

<sup>57</sup> Regulations for implementation of the GSP program were issued by the Office of the United States Trade Representatives at 15 C.F.R. Part 2007. Provisions for the GSP Annual Review are set out at 15 C.F.R. § 2007.2(c)-(h). Results of the most recent (2005) annual review of products entering under GSP were announced on July 5, 2006 (71 F.R. 38190). Results of the 2005 annual review are available on the USTR website at [[http://www.ustr.gov/Trade\\_Development/Preference\\_Programs/GSP/Section\\_Index.html](http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html)].

may also seek an investigation by the International Trade Commission (ITC) for the purpose of providing advice concerning any possible modifications to the GSP.<sup>58</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. The President may graduate a BDC completely, or may do so with respect to the country's individual products or industries. Mandatory country graduation occurs when (1) the BDC is determined to be a "high income country" (as defined by official International Bank for Reconstruction and Development statistics), or (2) as a result of a review of the BDC's advances in economic development and trade competitiveness.<sup>59</sup> The last beneficiaries to graduate from the GSP program were Antigua and Barbuda, Bahrain, and Barbados because the President determined that they had become "high income" countries.<sup>60</sup>

Countries also become ineligible for GSP benefits if they formally enter into a bilateral trading relationship with the United States or other developed country. 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>61</sup>

## **110<sup>th</sup> Congress Developments**

On February 7, 2008, House Ways and Means Committee Chairman Rangel introduced H.R. 5264, a bill seeking to extend the GSP, the Andean Trade Preference Act (ATPA), and the Caribbean Basin Economic Recovery Act (CBERA) until September 2010. After committee consideration of the measure, the bill was amended to seek a ten-month extension for the Andean Preference only (was scheduled to expire on Friday, February 29), until December 31, 2008. The bill was subsequently reported out of committee, and passed the House on February 27 under suspension of the rules, and the Senate by unanimous consent on February 28. The President signed the bill on February 9, 2008 (became P.L. 110-191).

## **109<sup>th</sup> Congress Renewal Debate**

In previous years that the GSP was set to expire, its subsequent renewal was generally considered non-controversial. Even when the preference was allowed to lapse, it was widely expected that Congress would retroactively renew the preference

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<sup>58</sup> 19 U.S.C. 1332(g), 19 U.S.C. 2463

<sup>59</sup> 19 U.S.C. 2462(e).

<sup>60</sup> 69 F.R. 10131.

<sup>61</sup> 72 F.R. 459. USTR officially announced the graduation of Bulgaria and Romania on January 22, 2007 (72 F.R. 2717).

as it did in the Trade Act of 2002.<sup>62</sup> In 2006, however, renewal of the program was a matter of some debate and speculation.

As early as January 2006, then-Senate Finance Committee Chairman Chuck Grassley commented that renewal of GSP was “not a foregone conclusion” and that its extension was likely to be tied to the United States receiving certain reciprocal benefits as part of a successful conclusion of the Doha Round of trade talks.<sup>63</sup> In his opening statement at the hearing for USTR nominee Susan Schwab in May 2006, Senator Grassley repeated these concerns, mentioning especially India and Brazil, two major beneficiaries of the GSP that he perceived as “two of the countries most responsible for holding up the Doha negotiations.”<sup>64</sup> On that basis, he warned that he might oppose GSP renewal as a result of their obstruction, or make sure that eligibility requirements are tightened so that more advanced developing countries, such as India and Brazil, are removed from the program.<sup>65</sup> Finance Committee staff mentioned that the chairman might be in favor of renewing the program for least-developed beneficiaries, however.<sup>66</sup> On September 19, 2006, Then-Senate Agriculture Committee Chairman Saxby Chambliss also called for USTR Schwab to consider revising the GSP program to exclude advanced developing countries such as Brazil and India.<sup>67</sup>

Then-House Ways and Means Committee Chairman Bill Thomas introduced a bill (H.R. 6406) on December 7, 2006, seeking to renew the GSP program for two years.<sup>68</sup> The bill language, reached in compromise with the Senate, amended the statute to direct that not later than July 1 of each year, the President “should” revoke any existing CNL waiver that has been in effect for five years or more, if a beneficiary country has exported a quantity of the article that (1) has an appraised value in the previous calendar year that exceeds 150% of an annually-set trade cap, or (2) exceeds 75% of the value of total U.S. imports of that product.<sup>69</sup>

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<sup>62</sup> In each instance since 1993 (the last that the program has expired, it has been allowed to lapse and has been extended retroactively from the expiration date to the date of enactment. P.L. 107-210 applied the preference to any goods entering between September 30, 2001, and August 6, 2002. See **Table 3**, “GSP Implementation and Extension, 1975-2002.”

<sup>63</sup> “Sen. Grassley Warns of Expiration of Unilateral Trade Preference Programs,” *International Trade Daily*, January 26, 2006.

<sup>64</sup> Senate. Committee on Finance. Hearing on the Nomination of Susan C. Schwab to be United States Trade Representative. Opening Statement of Senator Chuck Grassley. May 16, 2006.

<sup>65</sup> *Ibid.*

<sup>66</sup> Conversation with Senate Finance staff, April 26, 2006.

<sup>67</sup> Senate. Committee on Agriculture. Letter from Chairman Saxby Chambliss to U.S. Trade Representative Susan Schwab, September 19, 2006.

<sup>68</sup> House. Committee on Ways and Means. Summary of H.R. 6406, on the committee’s website at [<http://www.waysandmeans/house/gov>].

<sup>69</sup> Section 8001 of P.L. 109-432.

Ways and Means Committee staff indicated that these limitations were based on ensuring that (1) all BDCs are given an equitable portion of trade preferences accruing from the United States, and (2) BDCs share similar goals with regard to trade liberalization.<sup>70</sup> Passage of the measure was delayed, largely because certain Members in support of the U.S. textile industry were concerned about a provision also included in the bill that would allow Haiti, as well as African countries, to import yarn from third countries and then sell duty-free apparel made with this yarn to the United States.<sup>71</sup>

USTR Schwab publicly called for GSP renewal, but also signaled that the Bush Administration was willing to modify the program to address congressional concerns. According to the GSP statute, the President has the authority to revise country eligibility criteria and allowable tariff lines (except for statutorily excluded products) without congressional action. The administration stated that its favored approach was to graduate individual industry sectors within countries (as opposed to entire countries) from receiving GSP benefits.<sup>72</sup> USTR Schwab, however, indicated that the administration was responsive to congressional concern by stating “one of the concerns that Congress has raised is that GSP benefits go largely to a few countries, while many developing countries are not trading much under the program. We want to ensure that we are operating the program as Congress intended.”<sup>73</sup> Some industry officials reportedly saw this review as the USTR’s way of “controlling the situation” by showing Congress that it already had the ability to make radical changes to the program, thus attempting to forestall additional reform legislation.<sup>74</sup>

## 2006 Annual GSP Review

The Trade Policy Staff Committee initiated the 2006 annual review of the GSP program on October 6, 2005, and announced a second phase on August 8, 2006.<sup>75</sup> On January 17, 2007, the USTR announced that the GSP Subcommittee had received

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<sup>70</sup> Comments at meeting of International Section of the District of Columbia Bar Association, September 21, 2006.

<sup>71</sup> Van Dongen, Rachael, “Rankled by Trade Measure, North Carolina Lawmakers Delay House Action,” *CQ Today*, September 25, 2006.

<sup>72</sup> “Schwab Calls for GSP Extension, Signals Openness to Some Changes,” *Inside U.S. Trade*, August 4, 2006. The USTR probably referred to a larger number of countries, rather than India and Brazil alone because, in order to be compliant with U.S. obligations under the GATT, the same criteria for graduating countries from the GSP preference must be applied to all countries.

<sup>73</sup> U.S. Trade Representative. “Administration to Review Whether to Continue Trade Benefits under the GSP Program,” Press Release, August 7, 2006, [<http://www.ustr.gov>].

<sup>74</sup> “Schwab Calls for GSP Extension, Signals Openness to Some Changes,” *Inside U.S. Trade*, August 4, 2006.

<sup>75</sup> 70 F.R. 58502 and 71 F.R. 45079, respectively.

petitions for new CNL waivers in connection with the 2006 review, and requested public comment.<sup>76</sup>

Since Congress was also in the process of considering GSP program extension (and some in Congress had expressed concerns about whether or not to extend the program) the TPSC also announced that, in the 2006 annual review, it would conduct a more comprehensive evaluation of the GSP program than it had in previous years in order to find “whether the Administration’s operation of the program should be changed so that benefits are not focused on trade from a few countries and developing countries that traditionally have not been major traders under the program receive benefits.”<sup>77</sup>

In this context, the TPSC announced that all of the 83 previously granted CNL waivers would be individually evaluated, in addition to the standard practice of examining petitions for new CNL waivers. The TPSC said that it would also examine the eligibility status of several “middle income” economies (Argentina, Brazil, Croatia, India, Indonesia, Kazakhstan, Philippines, Romania, Russia, South Africa, Thailand, Turkey, and Venezuela) based on (1) their World Bank classification as upper-middle-income economies and (2) the fact that exports from each of these countries accounted for more than 0.25% of world goods exports in 2005 as reported by the WTO.<sup>78</sup>

**2006 Review Results.** The Bush Administration formally announced the results of the 2006 review in Presidential Proclamation 8157 of June 28, 2007.<sup>79</sup> Although none of the countries cited in the August 8 Federal Register notice lost their overall GSP eligibility, several previously granted competitive need limit waivers (meaning that designated products had been permitted to be imported duty-free under GSP despite the statutory import thresholds) from these countries were revoked. For example, effective July 1, 2007, Brazil lost CNL waivers for ferrozirconium and some motor vehicle parts exports, and India and Thailand lost CNL waivers for precious metal jewelry articles. The complete list is as follows:

**Table 1. Products for Which Competitive Need Limits Were Revoked in the 2006 Annual Review**

HTS No.	Description	GSP Partner	Total 2006 Imports (millions)	Share of U.S. Imports	Rate of Duty (if not GSP)
0802.90.94	Kola nuts, fresh or dried, shelled	Cote d’Ivoire	\$4.5	86.3%	5 cents/kg

<sup>76</sup> 72 F.R. 2033. The list of petitions is posted on the USTR website at [[http://www.ustr.gov/assets/Trade\\_Development/Preference\\_Programs/GSP/asset\\_upload\\_file19\\_10292.pdf](http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file19_10292.pdf)].

<sup>77</sup> Ibid.

<sup>78</sup> 71 F.R. 45079.

<sup>79</sup> 72 F.R. 35895.

HTS No.	Description	GSP Partner	Total 2006 Imports (millions)	Share of U.S. Imports	Rate of Duty (if not GSP)
2905.11.20	Methanol (Methyl alcohol) other than imported only for use in producing synthetic natural gas (SNG) or for direct use as fuel	Venezuela	\$263.2	16.2%	5.5%
7113.19.50	Precious metal (other than silver) articles of jewelry and parts, whether or not plated or clad with precious metal, nesoi	India	\$2,211.2	33.2%	5.5%
7113.19.50	(see above)	Thailand	\$700.4	10.5%	5.5%
7202.99.10	Ferrozirconium	India	\$0.5	96.9%	4.2%
8544.30.00	Insulated ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft, or ships	Philippines	\$359.0	6.0%	5.0%
8708.30.50	Pts. and access. of motor vehicles of 8701, nesoi, and 8702-8705, brakes and servo-brakes & parts thereof	Brazil	\$31.9	6.0%	2.5%
9405.50.30	Non-electrical lamps and lighting fixtures, of brass	India	\$17.3	79.6%	5.7%

Source: Trade Policy Staff Committee, GSP Subcommittee. 2006 Annual Review of GSP. Available at [<http://www.ustr.gov>].

India's petitions for new CNL waivers for cucumbers and color TV/VCR combinations were also denied, but did receive a new waiver for hand-hooked carpets and rugs. Brazil was denied new CNL waivers for refined copper cathodes and refined copper wire. Argentina was granted a new waiver for continued duty-free imports of lithium carbonates, but denied a waiver for calcium silicon ferroalloys. Thailand was granted a waiver for radial truck and bus tires.

When announcing the results of the 2006 review USTR Schwab commented that "the eligibility determinations made in this year's review fulfill the intent of the recent Congressional amendment that GSP continue to serve as a powerful development tool, particularly for the world's poorest countries. The statute indicates that well-established, globally competitive industries based in developing countries should compete on a level playing field with their counterparts ... Indeed, the ability

of these industries to compete in global markets is testament to the success of the GSP program in helping to cultivate competitive industries in a number of developing countries.”<sup>80</sup>

**Beneficiary Response.** In India, jewelry industry representatives were optimistic that Indian jewelry would continue to be competitive in the U.S. market due to its superior design and quality, even though some of the business was expected to shift to China.<sup>81</sup> Thai jewelry industry representatives forecasted that gold jewelry exports to the United States could drop by 10-20% as a result of the loss of the CNL waiver, and urged jewelry manufacturers to expand into new export markets such as China and Australia.<sup>82</sup> However, others mentioned that the decrease in imports of gold jewelry might be at least partially offset by increased U.S. exports of silver jewelry from Thailand (still under CNL waiver authority) due to increased customer demand for white precious metals.<sup>83</sup>

Since GSP eligibility for the products above expired on July 1, 2007, it is too early to gauge the actual impact of loss of GSP status for these items.

**Congressional Response.** House Ways and Means Committee Chairman Charles Rangel expressed concern over the administration’s actions, especially since China (rather than other least-developed countries) was forecasted to benefit from revocation of most of the product waivers. He indicated that he would consider introducing legislation seeking to restore the CNL waivers or to direct the USTR to reevaluate them if the administration revoked them.<sup>84</sup>

Ways and Means Committee Member Jim McDermott introduced legislation (H.R. 3427) cosponsored by Chairman Rangel and Representative Levin (chairman of the Ways and Means Trade Subcommittee) seeking to prohibit revocation of a CNL waiver unless the International Trade Commission determines that its revocation (1) will not lessen the current level of exports of the developing country to the United States, (2) will not materially benefit one or more countries that are not GSP beneficiaries, and (3) will not materially benefit one or more countries with a higher volume of exports to the United States of the same product.

However, Senate Finance Committee Ranking Member Charles Grassley expressed approval of the administration’s decision, saying that he was pleased that the administration removed GSP benefits for “super competitive” products, and questioned “why we provide preferential treatment at all to products from countries

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<sup>80</sup> “President Bush Administration Completes 2006 Annual Review of Generalized System of Preferences Program.” U.S. Fed News, June 28, 2007.

<sup>81</sup> “Front Page: U.S. Scraps Duty-Free Regime for Indian Gold Jewelry,” *Business Line*, June 30, 2007.

<sup>82</sup> “Thailand/USA: Some High-Value Thai Export Items may Lose Tariff Privileges Under the U.S. Generalized System of Preferences.” Thai Press Reports, June 20, 2007.

<sup>83</sup> “Thailand’s Fine Jewelry in U.S.: Quality is the Key In Light of GSP Graduation,” Thai Press Reports, July 12, 2007.

<sup>84</sup> *Ibid.*

like Brazil, India and Venezuela.” Senator Grassley said, “These countries have actively worked against the trade interests of the United States, including by resisting efforts to cut their high tariffs on U.S. exports.”<sup>85</sup>

On December 11, 2007, the House approved a Burma sanctions bill (H.R. 3890), that included a provision seeking to revoke the Bush administration’s termination of the CNL waiver for jewelry from India and Thailand. More specifically, the measure (Section 7) sought to waive the application of the waivers within 60 days for India and Thailand, and to reinstate the revoked waivers for other BDCs unless the International Trade Commission found that the revoked waiver (1) would not reduce the current level of exports to the United States, and (2) would not benefit one or more countries that were not BDCs with respect to the GSP. On December 21, the Senate passed a version of H.R. 3890 that struck all after the enacting clause and inserted the text of S. 2257 (Biden) and did not contain the GSP provision. According to Senator Biden’s staff, the GSP language was omitted in the Senate because “several members of the Senate Finance Committee expressed concerns about the GSP language.”<sup>86</sup>

## Effectiveness of GSP

The statutory goals of the GSP are, in part, to (1) promote the development of developing countries, (2) promote trade, rather than aid, as a more efficient way of promoting economic development, (3) stimulate U.S. exports in developing country markets, and (4) promote trade liberalization in developing countries.<sup>87</sup> It is difficult to assess whether or not the program has achieved these goals, however, because the GSP is only one of many such foreign aid initiatives employed 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.

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<sup>85</sup> “Indian, Brazilian Product Petitions for Continued GSP Benefits Denied,” *Inside U.S. Trade*, July 6, 2007.

<sup>86</sup> “Senate Passes Burma Bill Without GSP Provision Sought By House,” *Inside U.S. Trade*, December 21, 2007.

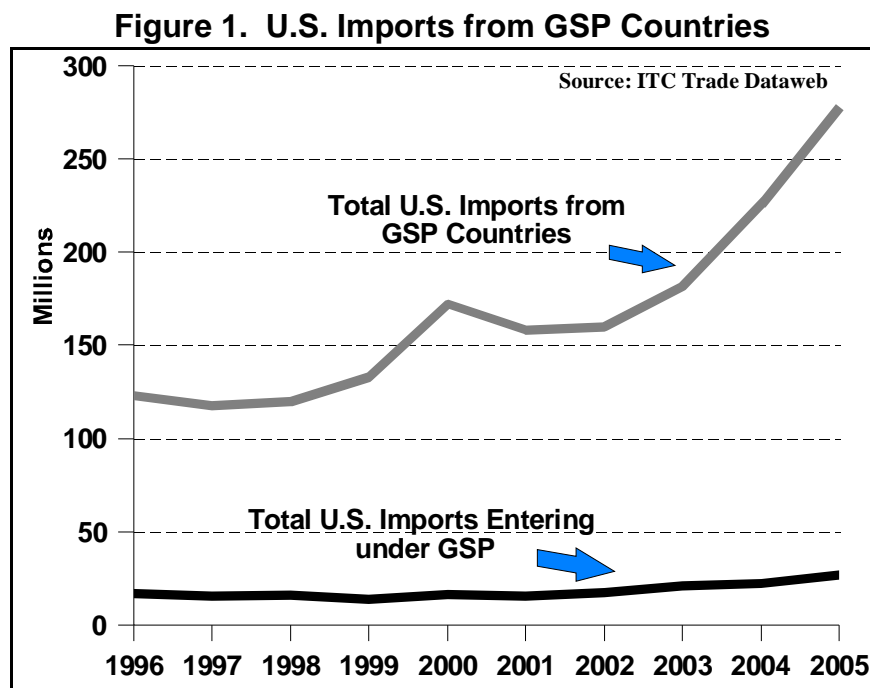
<sup>87</sup> P.L. 98-573, section 501(b), 19 U.S.C. 2461 note. Additional factors are to allow for differences in developing countries; help developing countries generate foreign exchange reserves, further integrate developing countries into the international trading system; and encourage developing countries to eliminate trade barriers, guard intellectual property rights, provide worker rights; and address concerns of the United States with regard to adverse affects on U.S. producers and workers and compliance with GATT obligations.



## Effects on Developing Countries

In the last ten years, total U.S. imports from BDCs have increased dramatically, from \$107.8 billion in 1996 to \$278.0 billion in 2005 (see **Figure 1**). This may indicate, in very general terms, that the GSP and other preferential programs have helped create some export-driven growth in developing countries. Total exports entering under the preference have also increased markedly, from \$11.6 billion in 1996 to \$32.6 billion in 2006. However, the percentage of goods entering the United States under the GSP program, relative to total U.S. imports from BDCs, has remained relatively flat — at around 10%. This may be due, in part, to the presence of the automatic competitive need limits (absent CNL waivers) on GSP-eligible products, and mandatory graduation of countries from the program.

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. preference schemes, such as AGOA. 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>88</sup> Therefore, for individual industries in developing countries, the positive impact of the GSP might be seen as quite significant.



<sup>88</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.

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. On the other hand, some countries may be encouraged by preferential programs to develop industry sectors where they will never be able to compete, thus diverting resources from other industries that might actually become competitive over time (trade diversion).<sup>89</sup> Although the costs of trade diversion are real, empirical evidence suggests that the overall effects of GSP are relatively small.<sup>90</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 DDA, countries may engage in reciprocal tariff reductions, meaning that all parties agree to reduce their tariffs. By avoiding such reciprocal concessions, some developing countries may have tended to keep in place protectionist 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, many 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**

Overall effects of the GSP on the U.S. economy are relatively small. Imports under the program in 2006 represented about \$32.6 billion, in comparison to total U.S. imports of \$1.9 trillion. In addition, the rate of increase of imports entering under GSP in the past ten years is relatively flat (see **Figure 1**), indicating 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 (CBO) estimated that

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<sup>89</sup> OECD. "Making Open Markets Work for Development." *Policy Brief*, October 2005, p. 2.

<sup>90</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.

revenue losses through forgone tariff receipts would amount to about \$3.1 billion if GSP were extended from 2007 to 2011.<sup>91</sup>

U.S. producers of import-competing products are largely protected from severe economic impact. First, certain products, such as textiles and apparel, are designated “import sensitive” and therefore 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>92</sup> Third, U.S. producers may petition the USTR that GSP treatment granted to eligible articles be withdrawn.<sup>93</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.

Many U.S. manufacturers and importers 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>94</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.

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<sup>91</sup> Congressional Budget Office. *The Budget and Economic Outlook: Fiscal Years 2007 to 2016*, Table 4.10, “Effects of Extending Tax Provisions Scheduled to Expire Before 2016.” CBO estimates that revenue losses would be \$0.3 billion in FY2006, \$0.6 billion in FY2007 and 0.7 billion in 2008 and 2009. Estimates are based on the assumption that the quantity of imports under the preference will increase over the term, but do not take into account any possible lowering of tariffs or reductions in value of imports.

<sup>92</sup> 19 U.S.C. 2463(c).

<sup>93</sup> 15 C.F.R. 2007.0(b).

<sup>94</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%).

**“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>95</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>96</sup> Some of these policy makers favor continued progress in 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 observers have stated that many in Congress are 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>97</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>98</sup>

**Erosion of Preferential Margins.** Developing countries have expressed concern about the overall progressive erosion<sup>99</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>100</sup> Some economists point out that if multilateral rounds of tariff

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<sup>95</sup> Women in International Trade (WIIT) Event. The Value of Attending a World Trade Organization Ministerial Conference, January 20, 2006.

<sup>96</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, 2006.

<sup>97</sup> Washington International Trade Association (WITA) event. “The 2006 Congressional Trade Agenda,” February 15, 2006.

<sup>98</sup> “Rangel Bill Would Extend Trade Benefits for Developing Countries,” Press Release, March 30, 2006.

<sup>99</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>100</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).

reductions continue, the preference may disappear completely unless GSP tariff headings are expanded to include more “import-sensitive” products.<sup>101</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>102</sup> These economists say that, rather than continuing GSP and other preferential 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>103</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 under used, and therefore can be 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.

Some in Congress favor graduating some of the more advanced BDCs, thinking that this would leave more room for other countries, especially LDCs, to take greater advantage of the program.<sup>104</sup> However, some U.S. business interests have indicated that, absent GSP eligibility, importers are likely to seek out the best alternative source for the goods — which would probably be China.<sup>105</sup>

Some observers have also suggested that the GSP may not be used by some countries due to unfamiliarity with the program, or because some BDC governments do a poor job of promoting the existence of available opportunities under the preference.<sup>106</sup> Such problems could be addressed through U.S. trade capacity building efforts.

**Trade as Foreign Assistance.** The GSP program is supported by many observers who believe that it is an effective, low-cost means of providing economic help 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>107</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

<sup>101</sup> Sanchez Arnau, p. 282.

<sup>102</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.

<sup>103</sup> OECD study, p. 27.

<sup>104</sup> “USTR Considers Withholding Trade Benefits from India, Brazil in Wake of WTO Debacle,” *International Trade Daily*, August 9, 2006.

<sup>105</sup> Comments of various industry representatives, District of Columbia Bar International Section meeting on GSP, September 21, 2006.

<sup>106</sup> GAO Report, p. 61.

<sup>107</sup> *Ibid.*

Act (CBTPA) are also based on this premise. However, no other U.S. preference program is more broadly based or encompasses as many countries as the GSP.

**Conditionality of Preferences.** Additionally, some supporters of the GSP and other non-reciprocal preferences believe that the conditions (such as worker rights, intellectual property requirements, or drug eradication) incumbent on developing countries if they are to qualify for GSP status provide the United States with international political leverage that can be used to preserve U.S. foreign and commercial interests.<sup>108</sup>

However, some beneficiary countries actively object to these “country practice” provisions and regard them as penalties.<sup>109</sup> Some countries (such as Brazil and India) currently targeted for eligibility review perceive that such action indicates that they are being penalized for advocating for their own national development goals in multilateral talks.<sup>110</sup>

Moreover, intellectual property industry representatives, worker rights groups, and other constituencies in the United States sometimes oppose, in their view, the U.S. administration’s allegedly inconsistent enforcement of these provisions.<sup>111</sup> For example, one lobbying group expressed that they were “shocked and dumbfounded” that the GSP is being annually renewed for such countries as Brazil, Venezuela, and Russia in spite of intellectual property rights violations.<sup>112</sup> This domestic opposition may indicate that, at times, the conditionality of the preferences is of limited usefulness.

**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>113</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

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<sup>108</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>109</sup> GAO Report, p. 100.

<sup>110</sup> September 6, 2006 public comment letter to USTR from ActionAid International USA, [<http://www.ustr.gov>].

<sup>111</sup> See GAO Report, Chapter 5, p. 97 ff.

<sup>112</sup> “Grassley Throws Up Obstacle to Trade-Preference Renewal.” *Congress Daily*, September 18, 2006.

<sup>113</sup> “U.S. Retailers, Importers Push for GSP Renewal Despite Opposition,” *Inside U.S. Trade*, May 5, 2006.

program because they are less able to adjust to the increased costs that would result.<sup>114</sup>

On the other hand, 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>115</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>116</sup>

## Conclusion and Options for Congress

The U.S. program (as established by Title V of the Trade Act of 1974) was extended for all countries (for which it had not previously been extended) through December 31, 2008, in section 8002 of P.L. 109-432, meaning that Congress is expected to consider its extension during the second session of the 110<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.<sup>117</sup> The extension in the 109<sup>th</sup> Congress represented the first time since 1984 that the program had been extended without a lapse (see **Table 3**).

In the 110<sup>th</sup> Congress, the House Ways and Means Trade Subcommittee has included an evaluation of effectiveness of the GSP and other trade preference programs in its oversight plan, and the House Ways and Means and Senate Finance Committees have each expressed an interest in evaluating program effectiveness. In addition, since Congress extended the GSP until December 2008, renewal beyond that date is likely to be a legislative issue for the second session.

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

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<sup>114</sup> Discussion with officials of the Joint Industry Group, August 18, 2006.

<sup>115</sup> 19 U.S.C. 2463(c).

<sup>116</sup> “Administration Decides to Keep Russian GSP Benefits for Titanium,” *Inside U.S. Trade*, July 9, 2004.

<sup>117</sup> 19 U.S.C. 2466b, as amended by section 7 of the AGOA Acceleration Act of 2004 (P.L. 108-274).

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 ¶ 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 will automatically expire for all beneficiary developing countries on December 31, 2008,<sup>118</sup> except for all beneficiary sub-Saharan African countries, for which the preference is authorized through September 30, 2015.<sup>119</sup> No legislative action would be required to pursue this option.

Before the preference was renewed in 2006, some believed that if the GSP was not renewed, it might spur positive movement in the WTO Doha Development Agenda. This position was presented by then-House Ways and Means Chairman Bill Thomas and then-Senate Finance Committee Chairman Chuck Grassley.<sup>120</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>121</sup> Since India and Brazil (major recipients of GSP preferences and two of the primary advocates for developing nations in the WTO talks) faced expiration of the preference, some asserted that they might have been moved closer to the U.S. position in the negotiations. Due to the ongoing USTR review and the bill language suggesting certain criteria for limiting CNL waivers, these countries could still lose these waivers for some (or all) products, or be graduated from the GSP program despite its extension.

On the other hand, country graduation, limitations on CNL waivers, or other modifications to the GSP program could also weaken the hand of U.S. negotiators in the DDA because it 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.

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<sup>118</sup> 19 U.S.C. 2465.

<sup>119</sup> 19 U.S.C. 2466b, as amended by section 7 of the AGOA Acceleration Act of 2004 (P.L. 108-274).

<sup>120</sup> “Thomas Urges USTR to Shift from Lagging Doha Round Completing FTAs,” *Inside U.S. Trade*, April 7, 2006.

<sup>121</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



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 parties may now file petitions requesting the USTR to review the GSP status of BDCs based on these statutory criteria (e.g. worker rights practices). If the program were no longer in effect, these avenues of encouraging certain developing country practices would no longer be available.<sup>122</sup>

Some domestic manufacturers, such as the U.S. automobile industry, may be adversely impacted by GSP expiration or modification, at least in the short term, due to dependence on duty-free (thus lower-cost) manufacturing inputs imported under the preference. 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.

Some least-developed GSP recipients could be harmed substantially by GSP expiration or other legislative changes. For example, Equatorial Guinea (91% of its exports, mostly petroleum products, enter under GSP in 2006) and Angola (59% of its exports to the United States entered under GSP in 2006), both sub-Saharan African countries not designated recipients under the AGOA preference,<sup>123</sup> are both least-developed GSP beneficiaries. Other BDCs or regions with a significant percentage of U.S. trade entering under the GSP in 2005 included Yemen (least-developed, about 87%), the West Bank (about 29%), Zimbabwe (66%), Armenia (60%), Paraguay (48%), Mozambique (least-developed, 70%), and Niue (70%) and Togo (64%).

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

Some in 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, 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

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<sup>122</sup> 15 C.F.R. 2007.0(b).

<sup>123</sup> See 66 F.R. 49059.

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 an FTA or RTA because they are ill-equipped to implement the additional standards that accompany a comprehensive U.S. free trade agreement.<sup>124</sup> Indeed, some countries such as South Africa and other countries in the South African Customs Union (SACU) have failed to reach FTAs with the United States due to inability to reach 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 BDCs. 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 only to the following countries: Afghanistan, Bangladesh, Bhutan, Comoros, Cambodia, Central African Republic, Comoros, Congo (Kinshasa), Equatorial Guinea, Haiti, Kiribati, Mauritania, Nepal, Samoa, Somalia, Togo, Tuvalu, Vanuatu, and Yemen.

Of these countries, only six (Afghanistan, Congo [Kinshasa], Equatorial Guinea, Samoa, Somalia, and Yemen) export goods that account for more than 10% of total U.S. imports under the program. Therefore, if the preference were extended to LDCs only (absent any other modifications), these countries, at least initially, would be the primary recipients to benefit.

### **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.

**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

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<sup>124</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.

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>125</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>126</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 sometimes have no predictable way of knowing before shipment whether certain

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<sup>125</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>126</sup> 19 U.S.C. 2463(c).

foreign components can be included as part of the 35% domestic content.<sup>127</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>127</sup> GAO Report, p. 55.

**Table 2. GSP Product Imports from Leading BDCs, 2007**

Country	HTS	MFN Tariff Rate	Description	Value of Imports Under GSP
Angola	27090020	10.5 cents/bbl	Petroleum oils and oils from bituminous minerals, crude, testing 25 degrees A.P.I. or more	\$6,445,874,925
Angola	27090010	5.25 cents/bbl	Petroleum oils and oils from bituminous minerals, crude, testing under 25 degrees A.P.I.	\$325,972,329
Angola	27101905	5.25 cents/bbl	Distillate and residual fuel oil (including blends) derived from petroleum or oils from bituminous minerals, testing under 25 degrees A.P.I.	\$128,966,671
Angola	27101125	10.5 cents/bbl	Naphthas (exc. motor fuel/mtr fuel blend. stock) fr petroleum oils & bitumin minerals (o/than crude) or preps 70%+ by wt. fr petroleum oils	\$22,983,363
Angola	84081000	2.5%	Marine propulsion compression-ignition internal-combustion piston engines	\$45,000
Angola	85030095	3%	Other parts, nesi, suitable for use solely or principally with the machines in heading 8501 or 8502	\$32,757
Angola All Other GSP (8 additional tariff lines)				\$104,313
<b>Angola Total GSP</b>				<b>\$6,923,979,358</b>
India	71131950	5.5%	Precious metal (o/than silver) articles of jewelry and parts thereof, whether or not plated or clad with precious metal,nesoi	\$1,085,429,686
India	71131929	5.5%	Gold necklaces and neck chains (o/than of rope or mixed links)	\$260,985,675
India	85023100	2.5%	Wind-powered electric generating sets	\$109,429,188
India	57031020	6%	Hand-hooked carpets and other textile floor coverings, tufted, whether or not made up, of wool or fine animal hair	\$103,308,377
India	71131150	5%	Silver articles of jewelry and parts thereof, nesoi, valued over \$18 per dozen pieces or parts	\$87,680,414
India All Other GSP (1878 additional tariff lines)				\$3,087,683,016
<b>India Total GSP</b>				<b>\$4,734,516,356</b>
Thailand	71131950	5.5%	Precious metal (o/than silver) articles of jewelry and parts thereof, whether or not plated or clad with precious metal,nesoi	\$303,273,565

Country	HTS	MFN Tariff Rate	Description	Value of Imports Under GSP
Thailand	71131150	5%	Silver articles of jewelry and parts thereof, nesoi, valued over \$18 per dozen pieces or parts	\$279,225,589
Thailand	40112010	4%	New pneumatic radial tires, of rubber, of a kind used on buses or trucks	\$192,021,536
Thailand	85443000	5%	Insulated ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships	\$111,749,408
Thailand	21069099	6.4%	Food preparations not elsewhere specified or included, not canned or frozen	\$92,263,248
Thailand All Other GSP (1146 additional tariff lines)				\$2,841,873,170
<b>Thailand Total GSP</b>				<b>\$3,820,406,516</b>
Brazil	72029380	5%	Ferroniobium, nesoi	\$150,468,996
Brazil	44182080	4.8%	Doors of wood, other than French doors	\$97,297,376
Brazil	74031100	1%	Refined copper cathodes and sections of cathodes	\$92,496,568
Brazil	44189046	3.2%	Builders' joinery and carpentry of wood, nesoi	\$84,445,460
Brazil	85015380	2.8%	AC motors nesi, multi-phase, of an output exceeding 150 kW	\$80,218,266
Brazil All Other GSP (1391 additional tariff lines)				\$2,921,911,225
<b>Brazil Total GSP</b>				<b>\$3,426,837,891</b>
Indonesia	44123140	8%	Plywood sheets n/o 6 mm thick, with specified tropical wood outer ply, with face ply nesoi, not surface-covered beyond clear/transparent	\$158,646,527
Indonesia	40111010	4%	New pneumatic radial tires, of rubber, of a kind used on motor cars (including station wagons and racing cars)	\$148,938,720
Indonesia	38249040	4.6%	Fatty substances of animal or vegetable origin and mixtures thereof, nesoi	\$144,667,698
Indonesia	85443000	5%	Insulated ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships	\$123,430,336
Indonesia	76061230	3%	Aluminum alloy, plates/sheets/strip, w/thick. o/0.2mm, rectangular (incl. sq), not clad	\$120,444,937
Indonesia All Other GSP (710 additional tariff lines)				\$1,546,717,310
<b>Indonesia Total GSP</b>				<b>\$2,242,845,528</b>

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

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

**Table 3. Leading GSP Beneficiaries and Total, 2007**

<b>Rank</b>	<b>Beneficiary Developing Country</b>	<b>Total Imports (\$ millions)</b>	<b>GSP Duty-Free Imports (\$ millions)</b>
1	Angola	\$12,211	\$6,924
2	India	\$23,857	\$4,735
3	Thailand	\$22,685	\$3,820
4	Brazil	\$25,018	\$3,427
5	Indonesia	\$14,411	\$2,243
6	Equatorial Guinea	\$1,683	\$1,313
7	South Africa	\$9,132	\$1,190
8	Philippines	\$9,397	\$1,165
9	Turkey	\$4,616	\$1,128
10	Argentina	\$4,258	\$666
<b>Imports from Top 10 Beneficiaries</b>		<b>\$127,268</b>	<b>\$26,611</b>
<b>Total Imports from all Beneficiaries</b>		<b>\$313,405</b>	<b>\$30,831</b>

**Source:** U.S. International Trade Commission Dataweb, at [<http://dataweb.usitc.gov>].

**Table 4. GSP Implementation and Extensions, 1975-March 2007**

<b>Public Law</b>	<b>Effective Date</b>	<b>Date Expired</b>	<b>Notes</b>
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.



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Public Law	Effective Date	Date Expired	Notes
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.

## Beneficiary Developing Countries and Regions for Purposes of the Generalized System of Preferences (GSP), and Additional Qualifying Preference Programs, 2007

Afghanistan <sup>A+</sup>	Georgia	Philippines
Albania	Ghana	Russia
Algeria	Grenada <sup>E</sup>	Rwanda <sup>A+</sup>
Angola <sup>A+</sup>	Guinea <sup>A+</sup>	St. Kitts and Nevis <sup>E</sup>
Argentina	Guinea-Bissau <sup>A+</sup>	Saint Lucia <sup>E</sup>
Armenia	Guyana <sup>E</sup>	Saint Vincent and the Grenadines <sup>E</sup>
Bangladesh <sup>A+</sup>	Haiti <sup>A+ E</sup>	Samoa <sup>A+</sup>
Belize <sup>E</sup>	India	Sao Tome and Principe <sup>A+</sup>
Benin <sup>A+</sup>	Indonesia	Senegal
Bhutan <sup>A+</sup>	Iraq	Serbia and Montenegro
Bolivia <sup>J</sup>	Jamaica <sup>E</sup>	Seychelles
Bosnia and Hercegovina	Jordan	Sierra Leone <sup>A+</sup>
Botswana	Kazakhstan	Solomon Islands
Brazil	Kenya	Somalia <sup>A+</sup>
Burkina Faso <sup>A+</sup>	Kiribati <sup>A+</sup>	South Africa
Burundi <sup>A+</sup>	Kyrgyzstan	Sri Lanka
Cambodia <sup>A+</sup>	Lebanon	Suriname
Cameroon	Lesotho <sup>A+</sup>	Swaziland
Cape Verde <sup>A+</sup>	Liberia <sup>A+</sup>	Tanzania <sup>A+</sup>
Central African Republic <sup>A+</sup>	Macedonia, Former Yugoslav	Thailand
Chad <sup>A+</sup>	Republic of	Togo <sup>A+</sup>
Colombia <sup>J</sup>	Madagascar <sup>A+</sup>	Tonga
Comoros <sup>A+</sup>	Malawi <sup>A+</sup>	Trinidad and Tobago <sup>E</sup>
Congo (Brazzaville)	Mali <sup>A+</sup>	Tunisia
Congo (Kinshasa) <sup>A+</sup>	Mauritania <sup>A+</sup>	Turkey
Costa Rica <sup>E</sup>	Mauritius	Tuvalu <sup>A+</sup>
Cote d'Ivoire	Moldova	Uganda <sup>A+</sup>
Croatia	Mongolia	Ukraine
Djibouti <sup>A+</sup>	Mozambique <sup>A+</sup>	Uruguay
Dominica <sup>E</sup>	Namibia	Uzbekistan
East Timor	Nepal <sup>A+</sup>	Vanuatu <sup>A+</sup>
Ecuador <sup>J</sup>	Niger <sup>A+</sup>	Venezuela
Egypt	Nigeria	Republic of Yemen <sup>A+</sup>
Equatorial Guinea <sup>A+</sup>	Oman	Zambia <sup>A+</sup>
Eritrea	Pakistan	Zimbabwe
Ethiopia <sup>A+</sup>	Panama <sup>E</sup>	
Fiji	Papua New Guinea	
Gabon	Paraguay	
Gambia, The <sup>A+</sup>	Peru <sup>J</sup>	

**Source:** Harmonized Tariff Schedule of the United States (2008).

A+ GSP Least-Developed Beneficiary Developing Country

J Beneficiary Country of Andean Trade Preference (ATPA)

E Beneficiary Country of Caribbean Basin Economic Trade Partnership Act (CBTPA)

G Beneficiary Country of African Growth and Opportunity Act (AGOA)

**Generalized System of Preferences: Non-Independent Countries and Territories**

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

**Source:** Harmonized Tariff Schedule of the United States, 2008

**Generalized System of Preferences: Associations of Countries (treated as one country)**

<u>Member Countries of the Cartagena Agreement (Andean Group)</u>	<u>Qualifying Member Countries of the Southern Africa Development Community (SADC)</u>
Bolivia	Botswana
Colombia	Mauritius
Ecuador	Tanzania
Peru	
<u>Member Countries of the West African Economic and Monetary Union (WAEMU)</u>	<u>Qualifying Member Countries of the South Asian Association for Regional Cooperation (SAARC)</u>
Benin	Bangladesh
Burkina Faso	Bhutan
Cote d'Ivoire	India
Guinea-Bissau	Nepal
Mali	Pakistan
Niger	Sri Lanka
Senegal	
Togo	<u>Qualifying Member Countries of the Caribbean Common Market (CARICOM)</u>
<u>Qualifying Member Countries of the Association of South East Asian Nations (ASEAN)</u>	Belize
Cambodia	Dominica
Indonesia	Grenada
Philippines	Guyana
Thailand	Jamaica
	Montserrat
	St. Kitts and Nevis
	Saint Lucia
	Saint Vincent and the Grenadines

**Source:** Harmonized Tariff Schedule of the United States, 2008.