Trade Preferences for Developing Countries and the World Trade Organization (WTO)

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January 21, 2011

Congressional Research Service
7-5700
www.crs.gov
RS22183

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

Article I:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) requires World Trade Organization (WTO) Members to grant most-favored-nation (MFN) treatment "immediately and unconditionally" to the like products of other Members with respect to tariffs and other trade-related measures. Programs such as the Generalized System of Preferences (GSP), under which developed countries grant preferential tariff rates to developing country goods, are facially inconsistent with this obligation because they accord goods of some countries more favorable tariff treatment than that accorded to like goods of other WTO Members. Because such programs have been viewed as trade-expanding, however, parties to the GATT provided a legal basis for one-way tariff preferences in a 1979 decision known as the Enabling Clause. The Enabling Clause was formally incorporated into the GATT 1994 upon the entry into force of the GATT Uruguay Round agreements on January 1, 1995. In 2004, the WTO Appellate Body ruled that the Clause allows developed countries to offer differing treatment to developing countries in a GSP program, but only if identical treatment is available to all similarly situated beneficiaries.

In addition to GSP programs, some WTO Members may also grant preferences to products of particular groups of countries that are more generous than GSP benefits. In such cases, Members have generally obtained time-limited WTO waivers of GATT Article I:l and, if needed, other GATT obligations. The United States holds temporary WTO waivers for tariff preferences granted to the former Trust Territory of the Pacific Islands and for three regional preference schemes: (1) the Caribbean Basin Economic Recovery Act (CBERA), as amended; (2) the Andean Trade Preference Act (ATPA), as amended, and (3) the African Growth and Opportunity Act (AGOA). Congress has made the CBERA program permanent and has authorized through September 30, 2020, the expanded tariff benefits contained in the Caribbean Basin Trade Partnership Act and subsequent legislation particular to Haiti. The AGOA program is authorized through September 30, 2015. While the U.S. GSP program expired on December 31, 2010, Congress extended the Andean preference program through February 12, 2011.

In the 111th Congress, H.R. 1318 (Van Hollen) would have extended duty-free treatment for certain textile and apparel products and other goods from designated Reconstruction Opportunity Zones (ROZs) in Afghanistan and Pakistan until September 30, 2024, conditioning continued benefits on governmental compliance with various labor requirements. S. 496 (Cantwell) would have authorized the same through September 30, 2023, without added labor conditions. The House legislation was added to H.R. 1886, the Pakistan Enduring Assistance and Cooperation Enhancement Act of 2009, which passed the House June 11, 2009. H.R. 1886 was later appended to H.R. 2410, the Foreign Relations Authorization Act, FYs 2010 and 2011, which passed the House June 10, 2009. Assistance to Pakistan was later enacted into law without ROZ provisions.

Other 111th Congress trade preference legislation included H.R. 1837 (Engel) and S. 780 (Bill Nelson), which would have made Paraguay eligible for the ATPA program; H.R. 2702 (C. Smith), which would have limited GSP benefits for Brazil; H.R. 3039 (McDermott), which would have provided preferential tariff treatment to certain apparel from the Philippines; H.R. 4101 (McDermott), which would have expanded preferential trade benefits for least-developed countries (LDCs) and authorized the GSP program through December 31, 2019; S. 1141 (Feinstein), which would have granted duty-free treatment to textiles and apparel from 14 LDCs; and S. 1665 (Lugar), which would have made Paraguay and Uruguay eligible for ATPA benefits, expanded certain textile-related benefits under the program, and extended the program through December 31, 2012. No action was taken on any of these bills.

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Trade Preferences and GATT MFN Requirements

As parties to the General Agreement on Tariffs and Trade 1994 (GATT 1994), World Trade Organization (WTO) Members must under Article I:1 of the GATT grant most-favored-nation (MFN) treatment[1] "immediately and unconditionally" to the like products of other Members with respect to customs duties and import charges, internal taxes and regulations, and other trade-related matters.[2] Thus, whenever a WTO Member accords a benefit or advantage to a product of one country, whether it is a WTO Member or not, the Member must accord the same benefit or advantage to the like product of all other WTO Members. Tariff preference programs for developing countries are facially inconsistent with this obligation as the favorable treatment provided by the granting country to the goods of a specific group of countries is not extended to all WTO Members. Because preference programs have been viewed as vehicles of trade liberalization and economic development for developing countries, however, GATT Parties have accommodated them in a series of joint actions.

In 1965, the GATT Parties added Part IV (Arts. XXXVI-XXXVIII) to the General Agreement, an amendment that recognizes the special economic needs of developing countries and asserts the principle of nonreciprocity. 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.[3] Because of the underlying MFN issue, GATT Parties in 1971 adopted a waiver of Article I for the Generalized System of Preferences (GSP), which allowed developed contracting parties to accord more favorable tariff treatment to the products of developing countries for 10 years.[4] The waiver describes the GSP as a "system of generalized, nonreciprocal and nondiscriminatory preferences beneficial to the developing countries."

At the end of the GATT Tokyo Round in 1979, developing countries secured adoption of the Enabling Clause, a permanent deviation from MFN by joint decision of the GATT Contracting Parties. 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" and applies this exception to: (1) preferential tariff

[1] While the WTO uses the term "most-favored-nation" to describe nondiscriminatory trade treatment, U.S. law has since 1998 referred to this treatment as "normal trade relations" (NTR) status. *See* P.L. 105-206, § 5003. This report uses the WTO terminology.

[2] The obligation to extend a benefit or advantage "unconditionally" to the goods of WTO Members aims to prevent Members from discriminating on the basis of origin and does necessarily preclude them from conditioning the benefit or advantage itself. One WTO panel has stated that the obligation in GATT Article I:1 "to accord 'unconditionally' to third countries which are WTO Members an advantage which has been granted to any other country means that the extension of that advantage may not be made subject to conditions *with respect to the situation or conduct of those countries*." Panel Report, *Canada—Certain Measures Affecting the Automotive Industry*, para. 10.23,WT/DS139/R, WT/DS142/R (Feb. 11, 2000)(emphasis added)(panel interpretation not appealed). The panel continued: "An advantage can be granted subject to conditions without necessarily implying that it is not accorded 'unconditionally' to the like products of other Members. More specifically, the fact that conditions attached to such an advantage are not related to the imported product itself does not necessarily imply that such conditions are discriminatory with respect to the *origin* of imported products." *Id.* para. 10.24 (emphasis added).

[3] Edmond McGovern, INTERNATIONAL TRADE REGULATION § 9.212 (updated 1999)[hereinafter McGovern]. For discussion of how Part IV has been interpreted and applied, see WTO, GUIDE TO GATT LAW AND PRACTICE 1039-70 (6th ed. 1995).

[4] GATT, Generalized System of Preferences; Decision of 25 June 1971, L/3545 (June 28, 1971).

treatment in accordance with the GSP; (2) multilateral nontariff preferences negotiated under GATT auspices; (3) multilateral arrangements among less developed countries; and (4) special treatment of the least-developed countries" in the context of any general or specific measures in favour of developing countries."[5] The Enabling Clause has since been incorporated into the GATT 1994.[6]

In 1999, the WTO General Council adopted a decision, captioned "Preferential Tariff Treatment for Least-Developed Countries," which waived GATT Article I:1 until June 30, 2009, "to the extent necessary to allow developing country Members to provide preferential tariff treatment to products of least-developed countries (LDCs), designated as such by the United Nations, without being required to extend the same tariff rates to like products of any other Member."[7] Along with setting out various standards and notification and procedural requirements, the waiver, at paragraph 6, provides that it "does not affect in any way and is without prejudice to rights of Members in their actions pursuant to" the Enabling Clause. The waiver was recently extended until June 30, 2019.[8]

WTO Waivers for Certain Tariff Preferences

WTO Members maintaining preference programs or preferential trade agreements that fall outside the scope of the Enabling Clause or particular GATT articles may seek waivers of Article I:1 and other GATT obligations under Article IX:3 of the Agreement Establishing the World Trade Organization (WTO Agreement). Article IX:3 permits WTO Members as a whole to waive obligations imposed on a WTO Member by WTO multilateral agreements, including the GATT. A request for a GATT waiver must first be submitted by the requesting Member to the WTO Council for Trade in Goods, which, after considering the request, reports to the WTO General Council. The waiver becomes effective after the General Council agrees to the proposal.[9]

[5] GATT, Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; Decision of 28 November 1979, L/4903 (Dec. 3, 1979). To describe the GSP, the Clause refers to the above-quoted language in the 1971 waiver.

[6] Agreement Establishing the World Trade Organization, Annex 1A, General Agreement on Tariffs and Trade 1994, para. 1(b)(iv); see Appellate Body Report, *European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries*, para. 90.3, WT/DS246/AB/R (Apr. 7, 2004).

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

[8] Preferential Tariff Treatment for Least-Developed Countries; Decision on Extension of Waiver, WT/L/759 (May 29, 2009)(adopted May 27, 2009).

[9] Article IX:3 of the WTO Agreement provides that a decision on a waiver of a GATT obligation requires a three-fourths vote of the WTO Members. Under a decision adopted by the WTO General Council in 1995, Members will resort to a vote only if a decision cannot first be reached by consensus (i.e., without objection). This procedure does not preclude a Member, however, from asking for a vote at the time the decision is taken. WTO, Decision-Making Procedures under Articles IX and XII of the WTO Agreement, WT/L/93 (Nov. 24, 1993). Consensus decision-making is the norm in GATT practice. See WTO Agreement, Art. IX:1.

Preferential Trade Agreements

The European Union (EU) had argued that it could further deviate from Article I:1 MFN requirements for nonreciprocal free trade with developing countries under GATT Part IV, as well as Article XXIV, which provides an MFN exception for customs unions and free trade areas meeting specified conditions.[10] At issue was the Lomé IV Convention, a preferential, nonreciprocal trade arrangement between the European Economic Community (EEC) and African, Caribbean and Pacific (ACP) countries. The Convention extended beneficial tariff and quota treatment to ACP imports as well as development assistance to ACP countries. GATT panels concluded in unadopted 1993 and 1994 reports that such a deviation was not justified under either provision.[11] Regarding the Article XXIV claim, the 1994 report concluded that because Lomé IV involved non-GATT Parties, the Article did not cover the agreement and thus could not be used to justify the inconsistency with Article I of trade preferences for bananas imported from ACP countries.[12]

The European Union subsequently obtained a temporary waiver of GATT Article I:1 for the Lomé agreement; a waiver was later granted for the successor ACP-EC Partnership Agreement (Cotonou Agreement) until December 31, 2007.[13] The European Union has since been negotiating Economic Partnership Agreements (EPAs) with ACP countries to replace the Cotonou Agreement. Various WTO Members have raised concerns as to whether MFN clauses in the EPAs, under which trade benefits negotiated by ACP countries with third countries would be accorded to the European Union, are consistent with the Enabling Clause.[14]

Waivers for U.S. Preference Programs

Along with maintaining its long-standing GSP program,[15] the United States administers various regional preferences for which it holds WTO waivers. GATT Article I:1 has been waived for tariff preferences for the former Trust Territory of the Pacific Islands until December 31, 2016.[16] The

[10] As of December 1, 2009, "European Union" replaced "European Communities" as the official name of this WTO Member. The change comes as a result of the entry into force of the Treaty of Lisbon, under which the European Union replaced and succeeded the European Community. See Verbal Note from the Council of the European Union and the Commission of the European Communities, WT/L/779 (Nov. 30, 2009). The terms European Communities and EC still appear in older WTO materials, including panel and Appellate Body reports, bilateral procedural agreements in particular disputes, and communications to the WTO Dispute Settlement Body. Except for references to any such older WTO documents or other governmental materials using this name, this report uses "European Union" or the acronym "EU" in the report text or notes regardless of the time period being discussed. For further information, see *European Union or Communities?*, at http://www.wto.org/english/thewto_e/countries_e/european_union_or_communities_popup.htm.

[11] McGovern, *supra* note 3, § 9.212.

[12] Panel Report, *EEC—Import Regime for Bananas*, paras. 156-164, DS38/R (1994), *as reprinted in* 34 INT'L LEGAL MATERIALS 180 (1995).

[13] GATT, L/7604 (Dec. 19, 1994); WTO, WT/L/436 (Dec. 7, 2001).

[14] See minutes of the WTO General Council, including May 7, 2008, at 21-27, WT/GC/M/114, and February 5-6, 2008, at 23-28, WT/GC/M/113. See also WTO Trade Policy Review Body, *Trade Policy Review, European Communities; Record of the Meeting*, para. 189, WT/TPRM/M/214 (June 8, 2009)(statement by Chile).

[15] The U.S. GSP program was enacted in the Trade Act of 1974, P.L. 93-618, Title V, as amended, 19 U.S.C. §§ 2461-2467. For further discussion of the program, see CRS Report RL33663, *Generalized System of Preferences: Background and Renewal Debate*, by Vivian C. Jones.

[16] WTO, United States—Former Trust Territory of the Pacific Islands; Decision of 27 July 2007, WT/L/694 (Aug. 1, 2007)(covers Republic of the Marshall Islands, Federated States of Micronesia, Commonwealth of the Northern (continued...)

United States has also obtained waivers for the following programs: (1) the Caribbean Basin Economic Recovery Act (CBERA), as amended,[17] through December 31, 2014; (2) the Andean Trade Preference Act (ATPA), as amended,[18] through December 31, 2014; and (3) the African Growth and Opportunity Act (AGOA),[19] through September 30, 2015.[20] These programs extend duty-free treatment that in some cases is subject to quantitative restrictions, and, thus, the WTO has agreed to waive not only GATT Article I:1 but also GATT Article XIII, paras. 1 and 2, which require nondiscrimination in administering quotas.

The United States submitted a waiver request for AGOA, as well as requests for renewals of expired or expiring waivers for the CBERA and ATPA programs, in February 2005.[21] Revised requests were submitted in March 2009, reflecting legislative amendments to the CBERA and ATPA programs.[22] During this period, Brazil, China, India, and Pakistan raised questions on the U.S schemes focused primarily on textile issues, while Paraguay questioned why it had not been included in the ATPA program.[23] The U.S. requests were ultimately approved by the WTO Council on Trade in Goods in March 2009,[24] and by the WTO General Council in May 2009.[25]

Congress has made the CBERA program permanent and has authorized the expanded benefits contained in the Caribbean Basin Trade Partnership Act and later legislation particular to Haiti

(...continued)

Mariana Islands, and Republic of Palau).

[17] Caribbean Basin Economic Recovery Act (CBERA), P.L. 98-67, as amended, 19 U.S.C. §§ 2701-2706. For further information, see CRS Report RL33951, *U.S. Trade Policy and the Caribbean: From Trade Preferences to Free Trade Agreements*, by J. F. Hornbeck.

[18] Andean Trade Preference Act (ATPA), P.L. 102-182, as amended, 19 U.S.C. §§ 3201-3206. The WTO waiver covers amendments made to the ATPA program by the Andean Trade Promotion and Drug Eradication Act, P.L. 107-210, §§ 3101-3108. Bolivia, Colombia, Ecuador, and Peru are authorized to be designated as beneficiary countries under the ATPA; the President suspended Bolivia's designation as a beneficiary country, however, effective December 15, 2008. See *infra* notes 36-37 and accompanying text. For further discussion of the Andean program, see CRS Report RS22548, *ATPA Renewal: Background and Issues*, by M. Angeles Villarreal.

[19] African Growth and Opportunity Act (AGOA), P.L. 106-200, Title I, as amended, 19 U.S.C. §§ 2466a-2466b, 3701-3722 AGOA preferences are available to sub-Saharan African countries. See generally CRS Report RL31772, *U.S. Trade and Investment Relationship with Sub-Saharan Africa: The African Growth and Opportunity Act* , by Vivian C. Jones.

[20] See WTO documents WT/L/753 (CBERA), WT/L/754 (AGOA), and WT/L/755 (ATPA).

[21] See WTO documents G/C/W/508 (CBREA); G/C/W/509 (AGOA); and G/C/W/510 and G/C/W/510/Add.1 (ATPA).

[22] The March 2009 requests are contained in the following WTO documents: G/C/W/508/Rev.2 (CBERA); G/C/W/509/Rev.2 (AGOA); and G/C/W/510/Rev.2 (ATPA). The CBERA request cites changes to the Caribbean program enacted under the United States-Caribbean Trade Partnership Act (P.L. 106-200, Title II, as amended), as well as the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, as amended by the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (P.L. 110-246, Title IV).

[23] Paraguay had blocked the U.S. requests, suggesting compensation as a means of alleviating alleged trade damage caused by its exclusion from the Andean program. See minutes of the WTO Council on Trade in Goods, including July 1, 2008, at 1-2, G/C/M/94; May 22, 2008, at 2-4, G/C/M/93; March 11, 2008, at 2-3, G/C/M/92; November 23, 2007, at 3-4, G/C/M/91; May 21, 2007, at 3-5, G/C/M/89; November 20, 2006, at 15-21, G/C/M/86; July 12, 2006, at 3-8, G/C/M/85; May 9, 2006, at 3-11, G/C/M/84; March 10, 2006, at 3-13, G/C/M/83; and November 10, 2005, at 9-12, G/C/M/82.

[24] WTO News Item, Goods Council agrees on 2009 chairs, waivers for U.S. trade-preference programmes (Mar. 24, 2009), at http://www.wto.org/english/news_e/news09_e/good_24mar09_e.htm. See also *Paraguay Agrees to Grant U.S. Waiver Request for AGOA, ATPDEA, CBERA*, INSIDE U.S. TRADE, Mar. 20, 2009, at 4. Legislation has been introduced in the 111th Congress to include Paraguay as an eligible country for purposes of the ATPA. See *infra* p. 8.

[25] WTO, General Council, Minutes of Meeting, May 26-27, 2009, at 50-54, WT/GC/M/120 (Aug. 21, 2009).

through September 30, 2020. The AGOA program is authorized through September 30, 2015. While the U.S. GSP program expired on December 31, 2010, Congress extended the Andean trade preference program as it applies to Colombia and Ecuador through February 12, 2011.[26]

WTO-Legality of Non-Trade Conditions in Preference Programs

In *European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries*, the WTO Appellate Body (AB) explained how developed country WTO members may design preferential-tariff programs within the requirements of the Enabling Clause.[27] The dispute between India and the European Union (EU) stemmed from an EU Regulation which awarded tariff preferences to a closed group of 12 beneficiary countries on the condition that they combat illicit drug production (the Drug Arrangements). India brought the claim alleging that the Drug Arrangements were inconsistent with GATT Article I:1 and unjustified by the Enabling Clause.

The initial dispute panel, in a report issued on December 1, 2003, concluded that the EU was in violation of its WTO obligations, with one panelist dissenting on procedural grounds.[28] Addressing the nature of the Enabling Clause and its procedural implications, a two member majority first concluded that the Enabling Clause functions as an exception to the GATT Article I:1 MFN obligation and that, consequently, the burden of proof rests on the party that invokes the Enabling Clause as a defense. The lone dissenter argued that the MFN obligation does not apply to the Enabling Clause and that India did not properly bring the claim under the Clause. Employing a broad reading of the term "non-discriminatory" in the Clause's description of the GSP, the panel concluded that developed countries were required to provide "identical tariff preferences" under GSP schemes to "all developing countries without differentiation, except for the implementation of a priori limitations."[29] Applying this standard, the panel then ruled that the Drug Arrangements were inconsistent with GATT Article I:1 and could not be justified under the Clause. The European Union appealed.

The Appellate Body report, issued on April 7, 2004, first addressed the relationship between GATT Article I:1 and the Enabling Clause. The AB upheld the panel's findings that the Enabling Clause is an exception to GATT Article I:1 and that the Clause does not exclude the applicability of Article I:1. The AB explained that the Enabling Clause is to be read together with Article I:1 in the procedural sense, since a challenged measure, such as the Drug Arrangements, is "submitted successively to the test of compatibility with the two provisions."[30] In other words, when the Enabling Clause is implicated, the dispute panel first examines whether a measure is consistent with Article I:1, "as the general rule," and, if it is found not to be so, the panel then examines whether the measure may be justified under the Clause.[31]

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[26] See additional discussion of the status of current programs under "111th Congress Legislation," *infra* pp. 7-8.

[27] Appellate Body Report, *European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries*, WT/DS246/AB/R (Apr. 7, 2004)[hereinafter EC Preferences AB Report].

[28] Panel Report, *European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries*, WT/DS246/R (Dec. 1, 2003).

[29] *Id.* para. 7.161.

[30] EC Preferences AB Report, *supra* note 27, para. 102.

[31] *Id.* para. 101.

Noting the "vital role" played by the Enabling Clause "in promoting trade as a means of stimulating economic growth and development"[32] and the intent of WTO Members through the Clause to encourage the adoption of preference schemes, [33] the AB found that the Clause was not a typical GATT exception or defense. Thus, the AB modified the panel's finding and held that, unlike the ordinary practice with respect to GATT exceptions, under which exceptions are invoked only by the responding party, "it was incumbent upon [complainant] India to *raise* the Enabling Clause in making its claim of inconsistency with Article I:1 of the GATT 1994"[34] and to identify specific provisions of the Clause which it believed were violated by the respondent's measure.[35] At the same time, the burden of justifying GSP schemes under the cited Enabling Clause provisions still rests on a respondent. In application, the AB found that India sufficiently raised the issue, thereby placing the burden on the EU to justify the Drug Arrangements under the Clause.

Most importantly, the AB reversed the panel's substantive decision regarding the breadth of acceptable preference programs under the Enabling Clause. The AB found instead that developed countries can grant preferences beyond those provided in their GSP to developing countries with particular needs, but only if identical treatment is available to all similarly situated GSP beneficiaries. The AB elaborated that similarly situated GSP beneficiaries are all GSP beneficiaries that have the "'development, financial and trade needs' to which the treatment in question is intended to respond."[36] In reaching this conclusion, the AB reversed the panel's reading of the term "non-discriminatory" as used to define the GSP in the Enabling Clause. Even under the more expansive view of the Clause, however, the AB upheld the Panel's ruling that the EU had failed to prove that the Drug Arrangements were in fact "non-discriminatory." Two factors led the AB to its conclusion: (1) the closed list of beneficiary countries in the Drug Arrangements could not ensure that the preferences would be available to all GSP beneficiaries suffering from illicit drug production and trafficking, and (2) the Drug Arrangements did not set out objective criteria that distinguished beneficiaries under the Arrangements from other GSP beneficiaries.[37]

Before the WTO Dispute Settlement Body adopted the ruling, the U.S. representative stated, according to meeting minutes, that the United States was pleased that the Appellate Body had "reversed the Panel's finding that the Enabling Clause required developed countries under their GSP programs to provide *identical* preferences to *all* developing countries" and that the AB's decision "would help maintain the viability of GSP programs."[38] The United States raised concerns, however, about the AB's finding that complainant India needed to raise the Clause, but that the EU bore the burden of proving that the Drug Arrangements were consistent with the Clause. The United States questioned the legal basis for this "hybrid approach" suggesting that difficulties might ensue in allowing the complaining party to set the burden of proof for the respondent.

[32] *Id.* para. 106.

[33] *Id.* para. 114.

[34] *Id.* para. 125 (emphasis in original)

[35] *Id.* para. 115.

[36] *Id.* para. 173.

[37] *Id.* paras 187-188.

[38] Dispute Settlement Body, *Minutes of Meeting*, Apr. 20, 2004, paras. 58-59, WT/DSB/M/167 (May 27, 2004)(emphasis in original).

111th Congress Legislation

In December 2009, Congress extended the GSP and Andean trade preference programs to December 31, 2010, continuing an existing denial of benefits to Bolivia.[39] While Congress has not renewed the GSP program, it enacted legislation in December 2010 extending Andean trade preferences, as accorded to Colombia and Ecuador, through February 12, 2011.[40] Andean benefits for Peru, which has been a party to a free trade agreement with the United States since February 2009, were terminated as of December 31, 2010, in the same enactment.[41] Earlier in the year, Congress authorized the extension of tariff benefits contained in the Caribbean Basin Trade Partnership Act and subsequent legislation particular to Haiti through September 30, 2020.[42]

Among other 111th Congress legislation, H.R. 1318 (Van Hollen) would have extended duty-free treatment for certain textile and apparel products and other goods from designated Reconstruction Opportunity Zones (ROZs) in Afghanistan and Pakistan until September 30, 2024, and conditioned the continued eligibility of products from a designated ROZ for duty-free benefits on compliance by Pakistan or Afghanistan, as the case may be, with various labor-related requirements. S. 496 (Cantwell) would have also authorized such benefits for designated ROZs, but without added labor conditions, through September 30, 2023. The House legislation was added to H.R. 1886, the Pakistan Enduring Assistance and Cooperation Enhancement Act of 2009, which passed the House June 11, 2009. H.R. 1886 was subsequently appended to H.R.

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[39] P.L. 111-124, §§ 1, 2(a), amending Trade Act of 1974, P.L. 93-618, Title V, § 505, 19 U.S.C. § 2465, and Andean Trade Preference Act (ATPA), P.L. 102-182, Title II, § 208(a), 19 U.S.C.§ 3206(a).

[40] P.L. 111-344, § 201(a), (b), amending ATPA, P.L. 102-182, §§ 208(a)(1)(A),(2), 19 U.S.C. §§ 3206(a)(1)(A),(2). An October 2008 enactment, P.L. 110-436, had extended the GSP and Andean programs to December 31, 2009, with limitations on Andean benefits for both Ecuador and Bolivia. In amending § 208(a) of the ATPA, 19 U.S.C. § 3206(a), the 2008 law granted benefits to Ecuador until June 30, 2009, permitting them to continue through December 31, 2009, unless the President determined and reported to Congress that Ecuador *did not* satisfy certain statutory criteria. In addition, while benefits were also extended to Bolivia through June 30, 2009, the benefits were allowed to continue through December 31, 2009, only if the President determined and reported that Bolivia *did* satisfy these criteria. Two months after enactment, Bolivia was suspended as a beneficiary country under the ATPA and the Andean Trade Promotion and Drug Eradication Act of 2002, due to "the Bolivian government's failure to meet the programs' counternarcotics cooperation criteria." Andean Trade Preference Act (ATPA), as Amended: Notice Regarding Eligibility of Bolivia, 73 Fed. Reg. 57158 (Oct. 1, 2008); Proclamation No. 8323, para. 4, 73 Fed. Reg. 72677, 72679 (Nov. 28, 2008).

In June 2009, the President made determinations that effectively maintained each country's existing status, thus permitting continued benefits for Ecuador and denying the extension of benefits to Bolivia. The 2009 statute continued this denial of Andean trade benefits to Bolivia by extending the negative effect of the President's June 2009 determination to December 31, 2010. The December 2010 enactment has further extended this negative effect through February 12, 2011, while expressly extending ATPA benefits to Ecuador through the same date.

[41] P.L. 111-344, § 201(a), adding ATPA, P.L. 102-182, § 208(a)(1)(B), 19 U.S.C. §§ 3206(a)(1)(B). The United States has entered into free trade agreements (FTAs) with two ATPA beneficiaries, Colombia and Peru, the agreement with Peru having been approved in P.L. 110-138 and entered into force February 1, 2009. See U.S. Peru-Trade Promotion Agreement, at http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text. Legislation implementing the FTA with Colombia was introduced in the 110th Congress, 2d Sess. (H.R. 5724, S. 2830), but expedited legislative procedures that would have applied to the House bill were suspended by the House shortly thereafter (H.Res. 1092). Although it has been U.S. policy to remove a beneficiary country from tariff preference programs once it becomes an FTA party (see, e.g., Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, P.L. 109-53, § 201(a)(2),(3) (removal from GSP; removal from CBERA, with limited exceptions); United States-Peru Trade Promotion Agreement Implementation Act, P.L. 110-138, § 201(a)(2)(removal from GSP)), Peru continued to be a beneficiary country under the Andean trade preference program until benefits were moved in December 2010. See Notice of Correction, 74 Fed. Reg. 7493 (Feb. 17, 2009).

[42] Haiti Economic Lift Program Act of 2010, P.L. 111-171, § 3.

2410, the Foreign Relations Authorization Act, Fiscal Years 2010-2011, which had passed the House June 10, 2009 (see Division B, Title IV), and was referred to and remained in the Senate Foreign Relations Committee.[43] In October 2009, assistance to Pakistan was authorized without the trade-related provisions contained in H.R. 1886.

Other 111th Congress trade preference bills included H.R. 1837 (Engel) and S. 780 (Bill Nelson), each of which would have made Paraguay eligible for the Andean preference program (see also S. 1665, below); H.R. 2702 (C. Smith), which would have required the President to suspend GSP benefits for Brazil within 30 days of enactment, subject to a national interest waiver, and permitted the President to reinstate benefits if he made certain certifications to congressional committees regarding Brazilian compliance with the Hague Convention on the Civil Aspects of International Child Abduction; H.R. 3039 (McDermott), which would have provided preferential tariff treatment to certain apparel items from the Philippines; H.R. 4101 (McDermott), which would have expanded preferential trade benefits for least-developed countries and extended the GSP program through December 31, 2019; S. 1141 (Feinstein), which would have granted duty-free treatment to textiles and apparel from 14 least-developed countries; and S. 1665 (Lugar), which would have made Paraguay and Uruguay eligible for the Andean preference program, expanded certain textile-related benefits under the program, and extended the program, as it related to Colombia, Peru, and, as added in the bill, Paraguay and Uruguay, through December 31, 2012.

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[43] Enhanced Partnership with Pakistan Act of 2009, P.L. 111-73.