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Generalized System of Preferences (GSP): Overview and Issues for Congress

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Summary

The U.S. Generalized System of Preferences (GSP) program provides nonreciprocal, duty-free tariff treatment to certain products imported from designated beneficiary developing countries (BDCs). The United States, the European Union, and other developed countries have implemented similar programs since the 1970s. Congress first authorized the U.S. program in Title V of the Trade Act of 1974, and most recently extended it until December 31, 2020 in Division M, Title V of the Consolidated Appropriations Act, 2018 (P.L. 115-141).

The GSP program was also retroactively renewed for all GSP-eligible entries between December 31, 2017 (the previous expiration date), and April 22, 2018, the effective date of the current GSP renewal reauthorization.

Currently, 120 developing countries and territories are GSP beneficiary developing countries (BDCs). The GSP program provides duty-free entry into the United States for over 3,500 products (based on 8-digit U.S. Harmonized Tariff Schedule tariff lines) from BDCs, and duty-free status to an additional 1,500 products from 44 GSP beneficiaries additionally designated as least-developed beneficiary developing countries (LDBDCs). In 2017, products valued at about $21.2 billion (imports for consumption) entered the United States duty-free under the program, out of total imports from GSP countries of about $220 billion. Total U.S. imports from all countries amounted to about $2.3 trillion in 2017.

In recent years, members of Congress have held a range of views on whether or not to continue to include emerging market developing countries (e.g., India, Brazil) as beneficiaries, or to limit the program to least-developed countries. Duty-free access for certain products has caused some controversy, as well as the worker rights, intellectual property, and other practices of certain beneficiaries. The U.S. Trade Representative (USTR) recently announced that it will conduct closer reviews of beneficiaries' compliance with GSP eligibility criteria. On April 27, 2018, the USTR initiated GSP country practice reviews of India (market access), Indonesia (market access), and Kazakhstan (worker rights). These reviews were requested by stakeholders. The USTR also announced a new triennial review process of beneficiaries' GSP eligibility, beginning with Asian and Pacific Island countries.

GSP is one of several trade preference programs through which the United States seeks to help developing countries expand their economies. Other U.S. trade preference programs are regionally focused, including the African Growth and Opportunity Act (AGOA) and the Caribbean Basin Initiative (CBI, includes preference programs for Haiti). U.S. implementation of GSP requires that developing countries meet certain eligibility criteria, such as taking steps to maintain internationally recognized worker rights and protect intellectual property rights, among other things. GSP rules of origin require that at least 35% of the appraised value of the product be the "growth, product, or manufacture" of the BDC. Certain "import sensitive" products (e.g., most textiles and apparel) are specifically excluded, and limits are placed on the quantity or value of any one product imported from any one country under the program (except for products from LDBDCs and AGOA countries). GSP country and product eligibility are also subject to annual review.

This report examines, first, recent legislative developments, along with a brief history, economic rationale, and legal background leading to the establishment of the GSP. Second, the report describes U.S. GSP implementation. Third, the report briefly analyzes the U.S. program's effectiveness and stakeholders' views, and discusses possible options for Congress.

Contents

Figures

Tables

Appendixes

Contacts

Introduction

The Generalized System of Preferences (GSP) provides nonreciprocal, duty-free tariff treatment to certain products imported into the United States from designated beneficiary developing countries (BDCs). The United States, the European Union (EU), and other developed countries have implemented similar programs since the 1970s in order to promote economic growth in developing nations.

Currently, 121 developing countries and territories are GSP beneficiary developing countries (BDCs). The GSP program provides duty-free entry into the United States for over 3,500 products (based on 8-digit U.S. Harmonized Tariff Schedule tariff lines) from BDCs, and duty-free status to an additional 1,500 products from 44 GSP beneficiaries additionally designated as least-developed beneficiary developing countries (LDBDCs). In 2017, products valued at about $21.2 billion (imports for consumption) entered the United States duty-free under the program, out of total imports from GSP countries of about $220 billion. Total U.S. imports from all countries amounted to about $2.3 trillion in 2017.

This report briefly summarizes recent GSP developments. It provides a brief history, economic rationale, legal background, and comparison of preferential trade programs worldwide and describes the U.S. implementation of the GSP program.

Latest Developments

On March 23, 2018, President Trump signed the Consolidated Appropriations Act, 2018 (P.L. 115-141). Division M, Title V of the Act extended the GSP program until December 31, 2020. The program was also retroactively renewed for all GSP-eligible entries between December 31, 2017 (the previous expiration date), and April 22, 2018, the effective date of the current GSP renewal reauthorization. The GSP reauthorization also made certain technical modifications to competitive need limits and waivers, and required the U.S. Trade Representative (USTR) to submit an annual report to Congress on efforts to ensure that GSP countries are meeting the eligibility criteria for the program.

U.S. Customs and Border Protection (CBP) will issue automatic refunds of duties paid during the GSP program lapse if (1) importer of record (IOR) information is current, (2) entries continued be flagged as GSP-eligible imports (with the special program indicator (SPI) "A,") during the program lapse, and (3) the importer is a member of CBP's Automated Clearinghouse (ACH) program. If the importer did not fulfill these criteria, a refund request may be submitted in a letter, as a post-summary correction (PSC), or as a protest. The request must include all importer of record (IOR) information; the import entry number, line number, and U.S. Harmonized Tariff Schedule (HTSUS) number; the amount of the estimated total refund; and a signed statement that the goods are eligible for GSP.[1]

[1] U.S. Customs and Border Protection (hereinafter CBP) website, https://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences.

Beneficiary Countries

On April 27, 2018, the Office of the U.S. Trade Representative (USTR) and the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) initiated GSP country practices review of India (market access), Indonesia (market access), and Kazakhstan (worker rights). These reviews were instituted based on stakeholder comments, combined with a self-initiated GSP eligibility review of Asian and Pacific Island countries.[2]

On August 11, 2017, the USTR and the TPSC announced that it would consider petitions to modify the GSP status of certain beneficiary countries because of country practices that could exclude these countries from GSP eligibility. Hearings were held on September 26 and 27 to consider the GSP status of Argentina (GSP reinstatement), Bolivia (worker rights and child labor), Ecuador (arbitral awards), Georgia (worker rights), Indonesia (intellectual property rights), Iraq (worker rights), Laos (GSP reinstatement), Thailand (worker rights), Ukraine (intellectual property rights), and Uzbekistan (worker rights, child labor, and intellectual property rights).[3] This review resulted in the reinstatement of Argentina's GSP eligibility, and the suspension of Ukraine's GSP status with regard to certain products due to inadequate intellectual property rights protections.[4] On April 4, 2018, the USTR extended the schedule for the 2017/2018 annual GSP review due to the January1, 2018 GSP expiration.

On January 1, 2017, Seychelles, Uruguay, and Venezuela were officially "graduated" from GSP status on the basis that each had become a "high income" country. The GSP statute requires the President to terminate the designation of a country as a beneficiary developing country if he determines that the country has become a "high income" country, as defined by the statistics of the International Bank for Reconstruction and Development (i.e., World Bank).[5] President Obama announced the countries' GSP graduation on September 30, 2015.[6]

GSP-Eligible Products

According to the GSP statute, the President is authorized to designate additional products as duty-free under GSP, following a product review and analysis by the U.S. International Trade Commission (ITC). The ITC's role is primarily to determine if the products would be import-sensitive if imported duty-free by GSP beneficiaries.[7]

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[2] USTR, "Initiation of Country Practice Reviews of India, Indonesia, and Kazakhstan," 83 *Federal Register* 18618, April 27, 2018. A hearing will be held on June 19, 2018. Hearing briefs, comments, and requests to appear are due on June 5.

[3] USTR, "Generalized System of Preferences (GSP): Initiation of the 2017 Annual GSP Product and Country Practices Review; Deadlines for Filing Petitions; Notice of Change in Country Practices Hearing," 82 *Federal Register* 37652, August 11, 2017.

[4] Ibid.

[5] As of July 1, 2015, the World Bank defined "high income" as countries with a GNI per capita of $12,736 or greater. In July 2017, the high income threshold is $12,235 GNI per capita. See Section 502(e) of the Trade Act of 1974 (19 U.S.C. 2462[e]).

[6] Proclamation 9333 of September 30, 2015, "To Modify Duty-Free Treatment Under the Generalized System of Preferences," 80 *Federal Register* 60249, October 5, 2015. Country graduations take effect on January 1 of the second year after the year in which the President makes the graduation determination. All determinations are announced in the *Federal Register*.

[7] 19 U.S.C. 2463(a)(1)(A). The ITC investigates the probable economic effect on total U.S. imports, industries, and consumers of the elimination of duties on products being considered for GSP treatment. Travel goods were considered in the *Generalized System of Preferences: Possible Modifications, 2015 Review*, Publication No. 4609, Investigation

Section 202 of P.L. 114-27 gave the President authority to amend the list of eligible products by designating certain cotton and cotton waste products as duty-free to eligible least-developed beneficiaries (see **Table 1**). According to the Senate report accompanying H.R. 1295, the provision was included to implement U.S. commitments to the WTO to provide duty-free, quota-free treatment for certain cotton products originating from least-developed countries.[8] President Obama granted that authority on June 30, 2016.[9]

Table 1. GSP-Eligible Cotton Products (Least-Developed Beneficiaries)

Pursuant to Section 503(b) of the Trade Act of 1974, as amended by Section 202 of P.L. 114-27

Harmonized Tariff Schedule Number	Description	Normal Trade Relations Tariff (if no GSP)
5201.00.18	Cotton, not carded or combed; Harsh or rough, having a staple length under 19.05 mm (3/4 inch); Other	31.4 cents per kilogram
5201.00.28	Cotton, not carded or combed; other, harsh or rough, having a staple length of 29.36875 mm (1-5/32 inches) or more and white in color (except cotton of perished staple, grabbots and cotton pickings); Other	31.4 cents per kilogram
5201.00.38	Cotton, not carded or combed; having a staple length of 28.575 mm (1-1/8 inches) or more but under 34.925 mm (1-3/8 inches); Other	31.4 cents per kilogram
5202.99.30	Cotton waste (including yarn waste and garnetted stock); Other	7.8 cents per kilogram
5203.00.30	Cotton, carded or combed; fibers of cotton processed, but not spun; Other	31.4 cents per kilogram

Source: CRS table based on the Harmonized Tariff Schedule of the United States (HTSUS).

Notes: "Normal Trade Relations" (NTR) is the term used in U.S. law to describe the "most-favored-nation" principle" (MFN). MFN means that countries must treat imports from other trading partners on the same basis as that given to other nations. Based on Section 202 of P.L. 114-27, the President provided all least-developed GSP beneficiaries with duty-free access for the items above.

Section 204 of P.L. 114-27 also granted similar presidential authority to designate certain luggage and travel articles as eligible for GSP (See **Table 2**). After USITC analysis, the Obama Administration declared these goods eligible for duty-free treatment for GSP least-developed and African Growth and Opportunity Act (AGOA) beneficiaries only.[10]

No 332-556, May 2016. Statistics and advice to the USTR were redacted from the public version.

[8] 114th Congress, House, Committee on Ways and Means, Report (to accompany S. 1267), *An Original Bill To Extend the African Growth and Opportunity Act, the Generalized System of Preferences, the Preferential Duty Treatment Program for Haiti, and for Other Purposes,* S.Rept. 114-43, May 12, 2015.

[9] Proclamation 9333 of September 30, 2015, "To Modify Duty-Free Treatment Under the Generalized System of Preferences," 80 *Federal Register* 60249, October 5, 2015.

[10] Proclamation 9466 of June 30, 2016, "To Implement the World Trade Organization on the Expansion of Trade in Information Technology Products and for Other Purposes," 81 *Federal Register* 44129, July 6, 2016.

The American Apparel and Footwear Association (AAFA) and other associations in the travel goods industry, as well as several Members of Congress, reportedly asserted that travel goods should be eligible for duty-free treatment for all GSP beneficiaries.[11] In a March 20, 2017, letter to President Trump, the AAFA requested that he provide GSP access accordingly.[12] In Presidential Proclamation 9625, President Trump provided duty-free access for 23 luggage and travel goods specified in the law to all GSP beneficiaries.[13]

Table 2. GSP-Eligible Luggage and Travel Products

Pursuant to Section 503(b)(1) of the Trade Act of 1974, as amended by Section 204 of P.L. 114-27

Harmonized Tariff Schedule Number	Description	Normal Trade Relations Tariff (if no GSP)
4202.11.00	Trunks, suitcases, vanity and all other cases, occupational luggage and like containers, surface of leather, composition or patent leather	8%
4202.12.21	Trunks, suitcases, vanity and attache cases and similar containers, with outer surface of plastics	20%
4202.12.40	Trunks, suitcases, vanity & attache cases, occupational luggage & like containers, surfaces of cotton, not of pile or tufted construction	6.3%
4202.12.81	Trunks, suitcases, vanity & attache cases, occupational luggage and similar containers, with outer surface of man-made fiber (MMF) materials	17.6%
4202.21.60	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, not otherwise indicated, not over $20 each	10%
4202.21.90	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, not otherwise indicated, over $20 each	9%
4202.22.15	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics	16%
4202.22.45	Handbags, with or without shoulder straps, including those without handle; with outer surface of cotton; not of pile or tufted construction or braid	6.3%
4204.22.81	Handbags with or without shoulder strap or without handle, with outer surface of MMF materials	17.6%
4202.31.60	Articles of a kind normally carried in the pocket or in the handbag; with outer surface of leather, composition, or patent leather, not otherwise indicated	8%

[11] American Apparel and Footwear Association, "AAFA Expresses Deep Disappointment with U.S. Government's GSP Decision," press release, June 30, 2016.

[12] Letter from American Apparel and Footwear Association et al. to Donald J. Trump, President of the United States, March 20, 2017.

[13] Proclamation 9625 of June 29, 2017, "To Modify Duty-Free Treatment Under the Generalized System of Preferences, and for Other Purposes," 82 *Federal Register* 30711, June 30, 2017.

Harmonized Tariff Schedule Number	Description	Normal Trade Relations Tariff (if no GSP)
4202.32.40	Articles of a kind normally carried in the pocket or in the handbag; with outer surface of textile materials; of cotton and not of pile or tufted construction	6.3%
4202.32.80	Articles of a kind normally carried in the pocket or in the handbag; with outer surface of textile materials; of vegetable fibers and not of pile or tufted construction; excluding cotton	5.7%
4202.32.93	Articles of a kind normally carried in the pocket or handbag, with outer surface of MMF	6.3%
4202.32.99	Articles of a kind normally carried in the pocket or handbag, with outer surface of other textile materials	17.6%
4202.91.90	Cases, bags and containers not otherwise indicated, other than golf bags, with outer surface of leather, of composition leather	4.5%
4202.92.15	Travel, sports and similar bags with outer surface of cotton, not of pile or tufted construction	6.3%
4202.92.20	Travel, sports, and similar bags; with outer surface of textile materials; of vegetable fibers excluding cotton, and not of pile or tufted construction	5.7%
4202.92.31	Travel, sports and similar bags with outer surface of MMF textile material	17.6%
4202.92.39	Travel, sports and similar bags with outer surface of textile materials other than MMF, paper yarn, silk, cotton	17.6%
4202.92.45	Travel, sports, and similar bags with outer surface of plastic sheeting	20%
4202.92.91	Bags, cases and similar containers with outer surface of textile materials, of MMF except jewelry boxes	17.6%
4202.92.97	Bags, cases & similar containers with outer surface of sheeting of plastic materials, not containers for CDs or cassettes, or CD or cassette players	17.6%
4202.99.90	Cases, bags, and similar containers, not otherwise indicated, with outer surface of vulcanized fiber or of paperboard	20%
4202.11.00	Trunks, suitcases, vanity and all other cases, occupational luggage and like containers, surface of leather, composition or patent leather	8%
4202.12.21	Trunks, suitcases, vanity and attache cases and similar containers, with outer surface of plastics	20%

Source: CRS table based on Harmonized Tariff Schedule of the United States (HTSUS) and USTR documents.

Notes: Normal Trade Relations" (NTR) is the term used in U.S. law to describe the "most-favored-nation" principle" (MFN). MFN means that countries must treat imports from other trading partners on the same basis as that given to other nations.

Based on Section 204 of P.L. 114-27, the President provided duty-free access for these products to all GSP beneficiaries, in Proclamation 9625 of June 29, 2017. The HTSUS subheadings in the law are not the same as those provided above due to subsequent HTSUS modifications made in Proclamation 9466 of June 30, 2016.

History, Rationale, and Comparison of GSP Programs

The basic principle behind GSP trade programs worldwide is to provide developing countries with unilateral preferential market access to developed-country markets in order to spur economic growth in poorer countries. The preferential access is in the form of lower tariff rates (or as in the U.S. case, duty-free status) for certain products that are determined not to be "import sensitive" in the receiving country market. The program concept was first adopted internationally in 1968 by the United Nations Conference on Trade and Development (UNCTAD) at the UNCTAD II Conference.[14]

Economic and Political Basis

The GSP concept and programs were established based on the premise 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 (e.g., raw materials), and help diversify their economies to promote stable growth.[15]

Some economists claim that GSP was established, in part, as a means of reconciling two widely divergent economic perspectives of trade equity that arose during early negotiations on the General Agreement on Tariffs and Trade (GATT).[16] Industrialized, developed nations argued that the most-favored-nation (MFN) principle[17] should be the fundamental and universal principle governing multilateral trade, while less-developed countries believed that equal treatment of economically unequal trading partners did not constitute equity in trade benefits. These countries called for "special and differential treatment" for developing countries. Economists assert that 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

[14] U.N. Conference on Trade and Development, "About GSP," at http://www.unctad.org. In addition to the United States and the European Union, eight other developed countries—Australia, Bulgaria, Canada, Japan, New Zealand, Norway, the Russian Federation, and Switzerland—currently have GSP programs.

[15] OECD Secretary-General. *The Generalized System of Preferences: Review of the First Decade*. Organization of Economic Co-operation and Development, 1983, p. 9 (hereinafter OECD GSP Review).

[16] 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.

[17] The most-favored-nation principle means that countries must treat imports from other trading partners on the same basis as that given to other nations. Therefore, with certain exceptions (including GSP, regional trading arrangements, and free trade agreements), and tariffs are applied uniformly across countries, 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."

"disarmament" might create serious disruptions among import-sensitive industries in their domestic markets.[18]

Due to differences in developed countries' economic structures and tariff programs—as well as differences in the types of domestic industries and products each country wanted to shield from greater foreign competition—it proved difficult to create one unified system of tariff concessions on additional products. Therefore, the GSP concept 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.[19] As a result, the preference-granting countries implemented various individual schemes of *temporary, generalized, nonreciprocal* preferences under which tariffs were lowered or eliminated on some imports from certain developing countries.

Although not specifically allowed or codified in the GATT, the programs of most GSP-granting countries place certain conditions on the nonreciprocal preferences by (1) excluding certain countries; (2) determining specific product coverage; (3) determining rules of origin governing the preference; (4) determining the duration of the scheme; (5) reducing preferential margins accruing to developing countries by continuing to lower or remove tariffs as a result of multilateral, bilateral, and regional negotiations; (6) preventing the concentration of benefits among a few countries; (7) including safeguard mechanisms or "escape" clauses to protect import-sensitive industries; and (8) placing caps on the volume of duty-free trade entering under their programs.[20]

GATT/World Trade Organization Framework

By its very nature as a trade preference, the GSP concept posed a problem under the GATT, because granting preferences to particular countries is inconsistent with the fundamental nondiscrimination obligation placed on GATT Parties (GATT Article I:1) to grant MFN tariff treatment to the products of all other GATT Parties. However, since preference programs were viewed as a means of transitioning developing countries to greater trade liberalization and economic development, GATT Parties accommodated them in a series of joint actions.

First, 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 nonreciprocity. Under this principle, developed countries may 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.[21] Second, because of the underlying MFN issue, GATT Parties in 1971 adopted a waiver of Article I for GSP programs to allow developed contracting parties to accord more favorable tariff treatment to the products of developing countries for 10 years.[22] The GSP was described in the decision as a "system of generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries."

[18] OECD GSP Review, p. 11.

[19] Ibid., p. 10.

[20] David Wall, "Problems with Preferences," *International Affairs*, vol. 47, October 1971, p. 95.

[21] Edmond McGovern, International Trade Regulation ¶ 9.212 (updated 1999). Part IV is generally viewed as nonbinding, 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 (4th ed. 2002).

[22] 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.

Enabling Clause

At the end of the Tokyo Round of Multilateral Trade Negotiations in 1979, developing countries secured adoption of the so-called Enabling Clause, a permanent deviation from MFN by joint decision of the GATT Contracting Parties.[23] The clause states that notwithstanding GATT Article I, "contracting parties may accord differential and more favorable treatment to developing countries, without according such treatment to other contracting parties," and applies this exception to the following:

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

Additional Commitment to Least Developed Countries

When launching the Doha Development Agenda (DDA) negotiations in November 2001, World Trade Organization (WTO, successor to the GATT established in 1995) members committed themselves to provide "duty free/quota free" (DFQF) access to the products of least-developed countries in keeping with the shared objective of the international community as expressed in the Millennium Development Goals.[24] During DDA negotiations at the sixth 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 DFQF access to at least 97% of products originating from Least Developed Countries (LDCs) by 2008, "in a manner that ensures stability, security and predictability."[25] Many developed countries continued to implement these provisions despite the failure of the DDA. As of October 2015, most developed countries granted either full or near full access to LDCs, and several developing countries had also taken concrete steps to provide duty-free access to products from LDCs.[26]

[23] GATT, Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; Decision of 28 November 1979, L/4903 (December 3, 1979), available at http://www.wto.org/gatt_docs/English/SULPDF/90970166.pdf.

[24] World Trade Organization, "The WTO and the Millennium Development Goals," http://www.wto.org/english/thewto_e/coher_e/mdg_e/mdg_e.htm.

[25] World Trade Organization, Ministerial Declaration, Annex F. December 18, 2005, WT/MIN(05)/DEC.

[26] According to the World Trade Organization Preferential Trade Arrangements database (http://ptadb.wto.org/ptaList.aspx), LDC-specific duty-free tariff preference schemes have been implemented in Morocco, Chile, China, Chinese Taipei, Korea, Kyrgyz Republic, Tajikistan, and Thailand. See also Sena Kimm Gnagnon and Shishir Priyadarshi, *Has the Multilateral Hong Kong Ministerial Decision on Duty Free Quota Free Market Access Provided a Breakthrough in the Least Developed Countries' Export Performance?*, World Trade Organization, Economic Research and Statistics Division, WTO Working Paper ERSD-2016-06, July 2016.

Comparison of International GSP Programs

Other developed countries besides the United States that implement GSP programs include Australia, Canada, the EU, Iceland, Japan, New Zealand, Norway, the Russian Federation, Switzerland, and Turkey.[27] One economist has referred to these programs as a nonhomogeneous set of national schemes sharing certain common characteristics.[28] Generally, each preference-granting country extends to qualifying developing countries (as determined by each benefactor) an exemption from duties (reduced tariffs or duty-free access) on most manufactured products and certain "non-sensitive" agricultural products. Product coverage and the type of preferential treatment offered varies widely.[29]

In the WTO, the developing country status of members is generally based on self-determination. For GSP, however, 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 among countries. If political or economic changes have taken place in a beneficiary country, it might be excluded from GSP programs in some countries but not in others. Some countries, including the United States, also reserve the right to 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, and in the U.S. case, "if it has, or is likely to have, a significant adverse effect on United States commerce."[30]

In terms of additional GSP product coverage for LDCs, the EU's program, which offers duty-free access for "Everything but Arms,"[31] 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. In 2007, for example, the EU implemented a regulation that grants additional GSP benefits to countries that have demonstrated their commitment to sustainable development and internationally recognized worker rights.[32]

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 administered monthly (or daily, if indicated). For other products, import ceilings and maximum country amounts are set by prior allotment.[33] The United States quantitatively limits imports

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[27] U.N. Conference on Trade and Development, "About GSP," at http://www.unctad.org.

[28] Sanchez Arnau, Juan C. *The Generalized System of Preferences and the World Trade Organization*. London: Cameron May, Ltd., 2002, p. 187.

[29] Ibid.

[30] 19 U.S.C. 2462(b)(2)(c).

[31] European Communities, GSP Council Regulation (EC) No. 2501/2001. See also Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007. Published in Official Journal of the European Communities, (OJ) OJ L 211 of 6 August 2008. The "Everything but Arms" provision applies to all goods except arms and munitions and white sugar (from October 1, 2009, to September 2012, sugar importers "shall undertake to purchase such products at a minimum price not lower than 90% of the reference price."). See Council Regulation (EC) No 2501/2001.

[32] Ibid.

[33] World Trade Organization, Committee on Trade and Development. *Notification by Japan*, June 21, 2000, WT/COMTD/N/2/Add.9.

under the GSP program by placing "competitive need limit" (CNL) thresholds on the quantity or value of commodities entering duty-free, as discussed in more detail below.

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

EU GSP Changes

On January 1, 2014, the EU implemented substantial changes to its Generalised Scheme of Preferences (EU GSP) program that it stated were intended to (1) better focus on countries in need; (2) further promote core principles of sustainable development and good governance; and (3) enhance stability and predictability.[34] As part of the changes, the EU mandatorily graduated all countries identified by the World Bank as upper-middle income and above, as well as excluding those countries that benefit from a preferential market access arrangement with the EU.[35] In order to add a measure of stability to the program, the EU extended GSP benefits for 10 years, and provided transition periods of at least one year for those countries that will lose EU GSP eligibility. Currently, there are 23 beneficiaries of the standard EU GSP program, 10 beneficiaries of the "GSP+" program, and 49 beneficiaries in the GSP "Everything But Arms" (EBA) program.[36]

As part of a long-term overhaul of the EU's relationship of its trade arrangements with developing countries, including its GSP beneficiaries, negotiations have been ongoing since 2000 to establish reciprocal, WTO-compliant "Economic Partnership Agreements" (EPAs) with developing country trading partners in the African, Caribbean, and Pacific regions. The most recent country to approve an interim EPA with the EU was Ghana, which ratified the "stepping stone" EPA on August 3, 2016.[37]

Canada's General Preferential Tariff (GPT) Changes

As of January 1, 2015, Canada withdrew its General Preferential Tariff (GPT) benefits from 72 countries.[38] The GPT continues to be available to 103 beneficiaries. 48 of those countries also benefit from Canada's Least Developed Country Tariff (LDCT). Canada announced that it would continue to review the list of beneficiary countries biannually, and will automatically graduate countries that are either classified for two consecutive years as high or upper middle income

[34] Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 Applying a Scheme of Generalized Tariff Preferences and repealing Council Regulation (EC) No. 732/2008, OJ L 303/1, October 31, 2012. See also European Commission, "Revised EU Trade Scheme to Help Developing Countries Applies on 1 January 2014," Memo, December 19, 2013, http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_152015.pdf.

[35] The United States also terminates free trade agreement (FTA) partners from GSP designation, for example, see P.L. 103-182, Section 201(a)(2).

[36] Ibid.

[37] European Commission, "Overview of EPAs – State of Play," accessed at http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/.

[38] Canada Gazette, "General Preferential Tariff Withdrawal Order (2013 GPT Review)," Volume 147, No. 21, October 9, 2013. Canada updates its GPT every 10 years. The findings of the GPT review were in advance of the June 30, 2014, expiration.

countries; or have a 1% or greater share of world exports for two consecutive years.[39] Canada's GPT is authorized until December 31, 2024.

United States GSP Implementation

Congress first authorized the U.S. Generalized System of Preferences scheme in Title V of the Trade Act of 1974 (P.L. 93-618), as amended.[40] P.L. 93-618 provided the President with authority to grant duty-free treatment under the GSP for eligible products from any beneficiary developing country (BDC) or any least-developed beneficiary developing country (LDBDC), provided the President with economic criteria in deciding whether to take any such action, and specified certain other criteria for designating eligible countries and products.[41]

GSP country eligibility changes or changes in product coverage are made at the discretion of the President, drawing on the advice of the USITC and the USTR. The TPSC, an executive branch interagency body chaired by the office of the USTR, serves as the interagency policy coordination mechanism for matters involving GSP.[42] The GSP Subcommittee[43] of the TPSC conducts an annual review in which petitions related to GSP country and product eligibility are assessed, and makes recommendations to the full TPSC, which, in turn, passes these recommendations to the USTR.

Country Eligibility Criteria

When designating BDCs and LDBDCs, the President is directed to take into account certain mandatory and discretionary criteria. The law prohibits (with certain exceptions) the President from extending GSP treatment to certain countries, as follows:[44]

- other industrialized countries (Australia, Canada, EU member states, Iceland, Japan, Monaco, New Zealand, Norway, and Switzerland are specifically excluded);
- communist countries, unless they are a WTO member, a member of the International Monetary Fund, and receive Normal Trade Relations (NTR) treatment from the United States; must also not be "dominated or controlled by international communism";
- countries that collude with other countries to withhold supplies or resources from international trade or raise the price of goods in a way that could cause serious disruption to the world economy;

[39] Ibid.

[40] 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. Twelve laws have authorized GSP with relatively minor modifications, most recently through December 31, 2017, in Section 201 of the Trade Preferences Extension Act of 2015 (P.L. 114-27). See **Table A-1**.

[41] 19 U.S.C. §2461.

[42] According to 15 C.F.R. §2002.2, "The [Trade Policy Staff] Committee consists of a chairman designated by the Special Representative from his Office, and of senior trade policy staff officials designated from their respective agencies or offices by the Secretaries of Agriculture, Commerce, Defense, Interior, Labor, State, and Treasury, by the Executive Director of the Council on International Economic Policy, and by the Chairman of the International Trade Commission." GSP regulations are found at 15 C.F.R. §2007.

[43] The GSP Subcommittee includes officials from the agencies listed in footnote 36, except for Interior and Defense, and also includes the U.S. Agency for International Development.

[44] 19 U.S.C. §2462.

- countries that provide preferential treatment to the products of another developed country in a manner likely to have a significant adverse impact on U.S. commerce;
- countries that have nationalized or expropriated the property of U.S. citizens (including corporations, partnerships, or associations that are 50% or more beneficially owned by U.S. citizens), or otherwise infringe on U.S. citizens' intellectual property rights (IPR), including patents, trademarks, or copyrights;
- countries that have taken steps to repudiate or nullify existing contracts or agreements of U.S. citizens (or corporations, partnerships, or associations that are 50% or more owned by U.S. citizens) in a way that would nationalize or seize ownership or control of the property, including patents, trademarks, or copyrights;
- countries that have imposed or enforced taxes or other restrictive conditions or measures on the property of U.S. citizens; *unless* the President determines that compensation is being made, good faith negotiations are in progress, or a dispute has been handed over to arbitration in the Convention for the Settlement of Investment Disputes or another forum;
- countries that have failed to act in good faith to recognize as binding or enforce arbitral awards in favor of U.S. citizens (or corporations, partnerships, or associations that are 50% or more owned by U.S. citizens); and
- countries that grant sanctuary from prosecution to any individual or group that has committed an act of international terrorism, or have not taken steps to support U.S. efforts against terrorism.

Mandatory criteria also require that beneficiary countries

- have taken or are 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, and occupational safety and health); and
- implement their commitments to eliminate the worst forms of child labor.[45]

The President has the authority to waive certain mandatory criteria if he determines that GSP designation of any country is in the national economic interest of the United States and reports this determination to Congress.[46]

The President is also directed to consider certain discretionary criteria, or "factors affecting country designation":

- a country's expressed desire to be designated a beneficiary developing country for purposes of the U.S. program;
- the level of economic development of a country;
- whether or not other developed countries are extending similar preferential tariff treatment to a country;

[45] 19 U.S.C. §2462(b). The most recent GSP 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).

[46] 19 U.S.C. §2462(b)(2).

- a country is committed to providing reasonable and equitable access to its market and basic commodity resources, and the extent to which a country has assured the United States that it will not engage in unreasonable export practices;
- the extent to which a country provides adequate protection of intellectual property rights (IPR);
- the extent to which a country has taken action to reduce trade-distorting investment policies and practices, and to reduce or eliminate barriers to trade in services; and
- whether or not a country has taken steps to grant internationally recognized worker rights.[47]

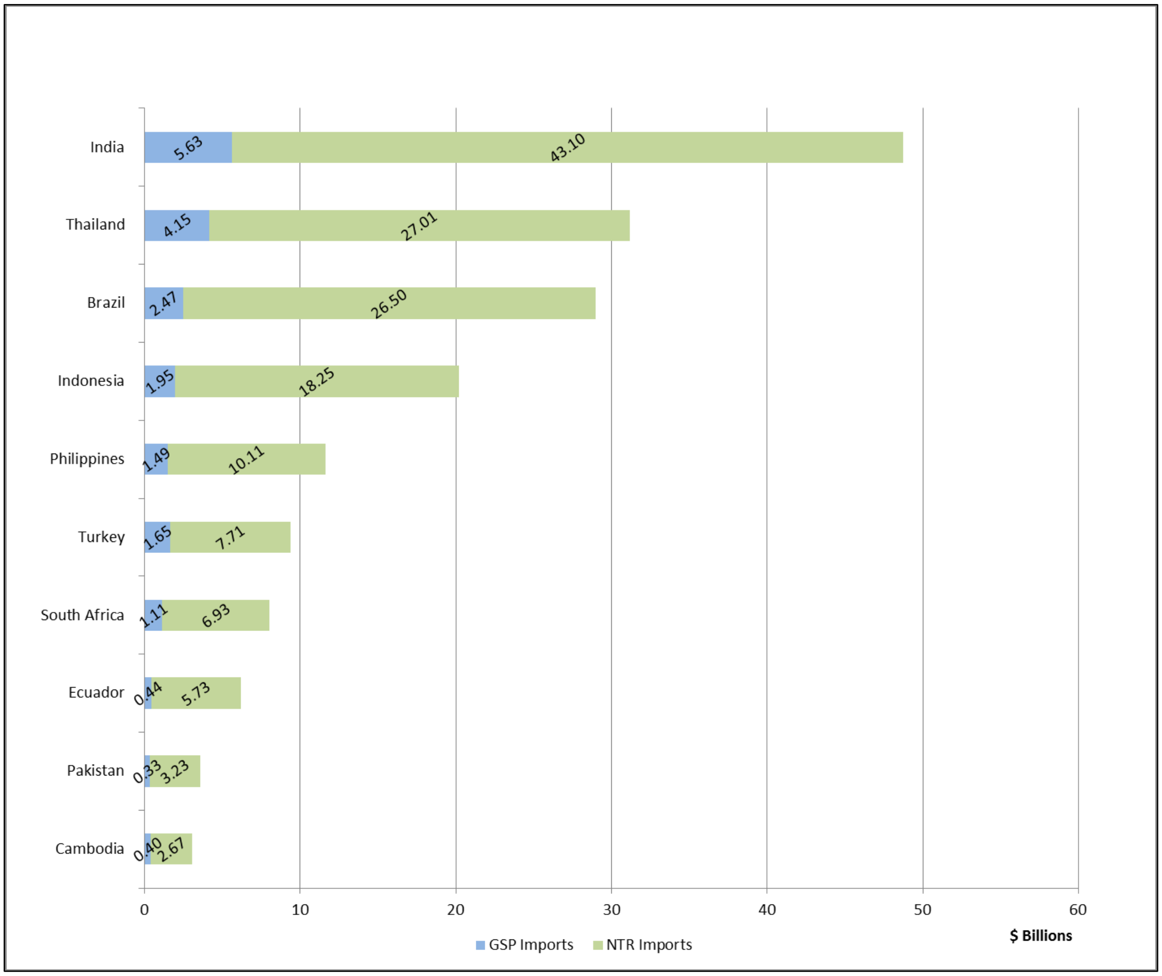
The law further authorizes the President, based on the required and discretionary factors mentioned above, to withdraw, suspend, or limit GSP treatment for any beneficiary developing country at any time (see **Table B-1** for a list of currently eligible GSP beneficiaries). **Figure 1** shows the GSP duty-free imports of the top 10 BDCs as a proportion of their total imports to the United States in 2017.[48]

[47] 19 U.S.C. §2462(c). op. cit., p. 20.

[48] 19 U.S.C. §2462(d).

Figure 1. Top 10 U.S. GSP Beneficiaries, 2017

GSP imports as a proportion of total Normal Trade Relations (NTR) imports, $ billions



Source: CRS chart based on data from the International Trade Commission Trade Dataweb.

Least-Developed Beneficiaries

The President is authorized by statute to designate any BDC as a LDBDC, based on an assessment of the conditions and factors previously mentioned.[49] Although the United Nations' designation of LDCs plays a large factor in GSP least-developed beneficiary determinations,[50] U.S. officials may also assess compliance with GSP statutory requirements and comments from the public (as requested in the *Federal Register*) before identifying a country as "least-developed" for purposes of the GSP.[51]

[49] 19 U.S.C. §2462(a)(2).

[50] 19 U.S.C. §2462(c)(2).

[51] For example, see USTR, "Generalized System of Preferences (GSP): Initiation of a Review to Consider the Designation of East Timor as a Least Developed Beneficiary Country under the GSP," 71 *Federal Register* 43543, August 1, 2006. In practice, Administration designations are generally based on the United Nations designations of LDCs.

Country Graduation from GSP

The President may withdraw, suspend, or limit the GSP status of a BDC if he determines that a country is determined to be sufficiently competitive or developed. In 2014, President Obama removed Russia's GSP eligibility for this reason.[52] *Mandatory* country graduation occurs when the BDC is determined to be a "high income country" as defined by official World Bank statistics (gross national income [GNI] per capita of $12,476 or more in 2016).[53] On September 30, 2015, the President determined that Seychelles, Uruguay, and Venezuela had become "high income" countries, and therefore, no longer eligible for GSP benefits, effective January 1, 2017.[54]

If a country becomes part of an association of countries specifically excluded from GSP, the country is mandatorily withdrawn from GSP. Bulgaria and Romania were the last countries to lose GSP eligibility for this reason, effective when they became EU member states as of January 1, 2007.[55] Although not specifically required by the GSP statute, a developing country that enters into a free trade agreement (FTA) with the United States, at the discretion of Congress, generally loses GSP eligibility in favor of the reciprocal concessions granted by the FTA. Specific language to this effect appears in FTA implementing legislation.[56]

Countries Recently Granted GSP Eligibility

On December 22, 2017, President Trump reinstated Argentina's GSP eligibility.[57]

On September 14, 2016, President Obama announced that Burma was eligible for GSP and also designated it a least-developed beneficiary. The action ended a 27-year suspension of Burma's GSP benefits due to worker rights violations.[58] The reinstatement followed an extensive review of Burma's compliance with GSP eligibility criteria that had been ongoing since Burma's government first requested GSP reinstatement in 2013.[59] Burma's eligibility status became official on November 14, 2016, following a 60-day congressional notification period.[60] The

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[52] Proclamation 9188 of October 3, 2014, "To Modify the List of Beneficiary Developing Countries Under the Trade Act of 1974," 79 *Federal Register* 60945, October 8, 2014.

[53] 19 U.S.C. §2462(e).

[54] Proclamation 9333 of September 30, 2015, "To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes, 80 *Federal Register* 60249, October 5, 2015.

[55] Proclamation 8098 of December 29, 2006, "To Take Certain Actions Under the African Growth and Opportunity Act and the Generalized System of Preferences," 72 *Federal Register* 459, January 4, 2007. Croatia, the last country to join the EU in July 2013, was also previously a GSP beneficiary, but graduated in 2011. European Union member states are specifically identified as ineligible for designation as GSP countries in 19 U.S.C. §2462 (b)(1)(C).

[56] Colombia and Panama were the latest countries to lose GSP status for this reason. See Section 201(a)(2) of the United States-Colombia Trade Promotion Agreement (P.L. 112-42) and Section 201(a)(2) of the United States-Panama Trade Promotion Implementation Act (P.L. 112-43). One country, Jordan, continues to be eligible for GSP benefits even though it entered into an FTA with the United States in 2001.

[57] Proclamation 9687 of December 22, 2017, "To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes," 82 *Federal Register* 61413, December 22, 2017.

[58] Proclamation 5955 of April 13, 1989, "Amending the Generalized System of Preferences," 54 *Federal Register* 15357, April 18, 1989.

[59] United States Trade Representative, "United States Reinstates Trade Preference Benefits for Burma Following Review of Eligibility Criteria," press release, September 2016. See also CRS In Focus IF10352, *U.S. Relations with Burma: Key Issues for 2016*, by (name redacted) .

[60] Proclamation 9492 of September 14, 2016, "To Modify Duty-Free Treatment Under the Generalized System of Preferences," 81 *Federal Register* 63671, September 18, 2016.

review of Burma's GSP eligibility was just one part of a comprehensive review of the bilateral relationship in the wake of Burma's return to democratic governance.

Presidential Reporting Requirements

The President must advise Congress of any changes in beneficiary developing country and product status, as necessary.[61] Additional GSP reporting requirements include 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.[62]

Eligible Products

The Trade Act of 1974 authorizes the President to designate certain imports as eligible for duty-free treatment under the GSP after receiving advice from the United States International Trade Commission (USITC).[63] "Import sensitive" products specifically excluded from preferential treatment include most textiles and apparel goods; watches; footwear and other accessories; most electronics, steel, and glass products; and certain agricultural products that are subject to tariff-rate quotas.[64]

GSP Rules of Origin

Eligible goods under the U.S. GSP program must meet certain rules of origin (ROO) requirements in order to qualify for duty-free treatment. First, duty-free entry is only allowed if the article is imported directly from the beneficiary country into the United States without entering the commerce of a third country. Second, at least 35% of the appraised value of the product must be the "growth, product, or manufacture" of a beneficiary developing country, as defined by the sum of (1) the cost or value of materials produced in the BDC (or any two or more BDCs 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.[65]

GSP Product Coverage

More than 3,500 products[66] are currently eligible for duty-free treatment, and about 1,500 additional products originating in LDBDCs may receive similar preferential treatment. **Table 3** provides leading products imported under GSP from all countries in 2017, including the Harmonized Tariff Schedule (HTS) subheading and description, along with the tariff that would have been assessed if the product had been imported under NTR tariff rates. **Figure 2** shows the Top 10 U.S. GSP imports in 2017 as a proportion of U.S. total NTR trade for those products.

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[61] 19 U.S.C. §2462(d)(3).

[62] 19 U.S.C. §2464. See U.S. Department of Labor, Bureau of International Labor Affairs, *2015 Findings on the Worst Forms of Child Labor*, September 30, 2016, https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2015TDA.pdf.

[63] 19 U.S.C. §2463(a)(1).

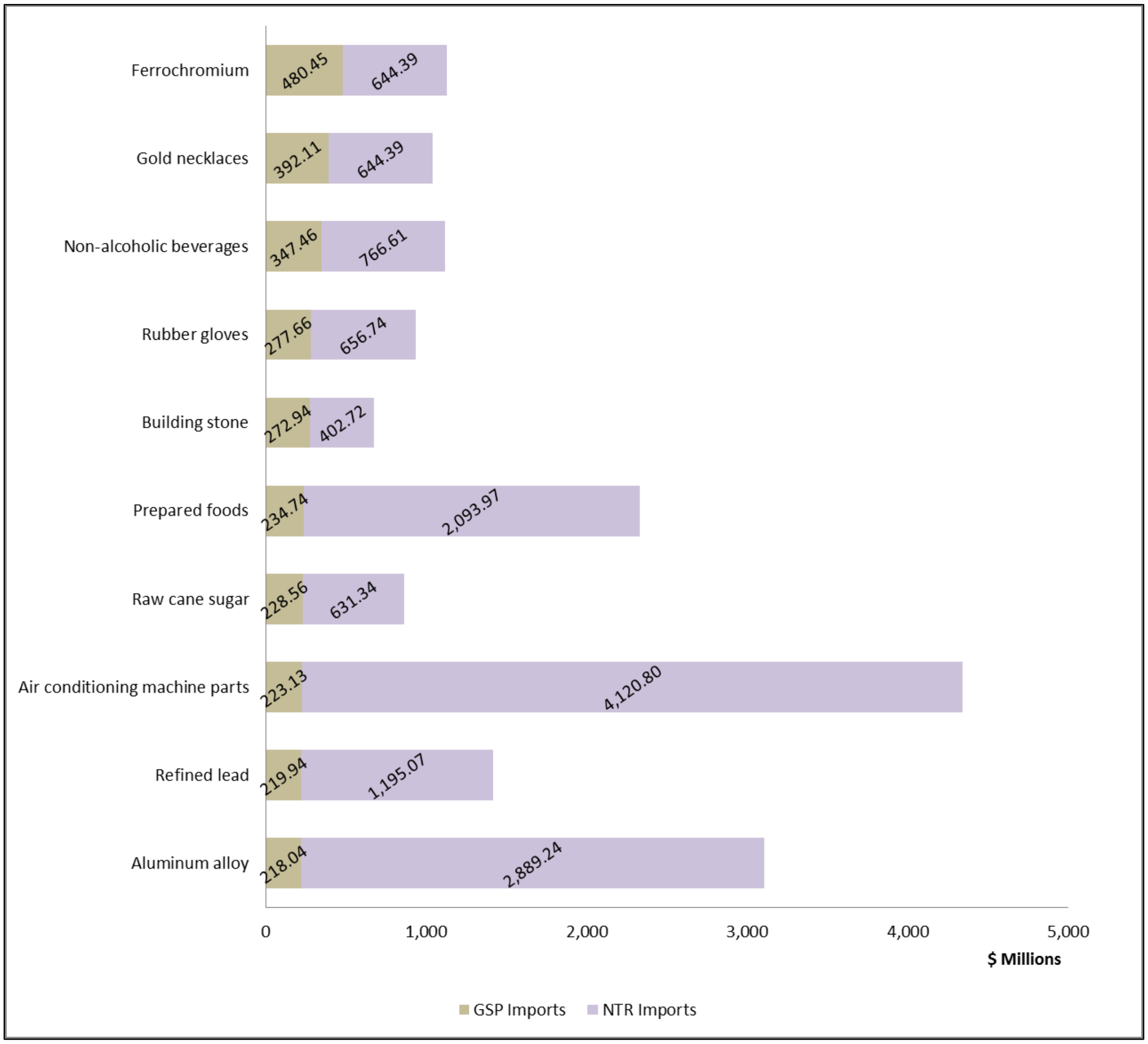
[64] 19 U.S.C. §2463(b).

[65] 19 U.S.C. § 2463(a).

[66] GSP-eligible products are classified in the Harmonized Tariff Schedule of the United States (HTSUS) eight-digit tariff level.

Figure 2. Top 10 U.S. GSP Imports, 2017

$ Millions



Source: CRS chart based on data from the International Trade Commission Trade Dataweb.

Table 3. Leading U.S. GSP Imports, 2017

HTS Number	NTR Tariff Rate (If No GSP)	HTS Description	GSP Imports (Actual $)
72024100	1.9%	Ferrochromium containing by weight more than 4 percent of carbon	$480,445,616
71131929	5.5%	Gold necklaces and neck chains (other than of rope or mixed links)	$392,113,910
22029990	$0.2 cents per liter	Nonalcoholic beverages, not otherwise indicated, not including fruit or vegetable juices of heading 2009	$347,455,422

HTS Number	NTR Tariff Rate (If No GSP)	HTS Description	GSP Imports (Actual $)
40151910	3.0%	Seamless gloves of vulcanized rubber other than hard rubber, other than surgical or medical gloves	$277,655,611
68029900	6.5%	Monumental or building stone and articles thereof, not otherwise specified or indicated, further worked than simply cut/sawn, not otherwise specified or indicated.	$272,939,896
21069098	6.4%	Other food preparations not otherwise specified or indicated, including preparations for the manufacture of beverages, non-dairy coffee whiteners, herbal teas and flavored honey	$234,744,702
17011410	between $1.4606 cents per kg and $0.943854 cents per kg based on quality	Other cane sugar, raw, in solid form, w/o added flavoring or coloring	$223,127,402
84159080	1.0%	Parts for air conditioning machines, not otherwise indicated	$260,726,281
78011000	2.5% on the value of the lead content	Refined lead, unwrought	$219,938,128
76061230	3.0%	Aluminum alloy, plates, sheets, or strip, with thickness over 0.2mm, rectangular (including square), not clad	$218,040,739
71131950	5.5%	Precious metal (other than silver) articles of jewelry and parts thereof, whether or not plated or clad with precious metal, not otherwise specified or indicated	$215,374,847
87089475	2.5%	Parts and accessories of motor vehicles of HTS 8701, not otherwise specified or indicated, and 8702-8705, parts of steering wheels/columns/boxes, not otherwise specified or indicated.	$193,058,121
40111010	4.0%	New pneumatic radial tires, of rubber, of a kind used on motor cars (including station wagons and racing cars)	$187,714,944
40112010	4.0%	New pneumatic radial tires, of rubber, of a kind used on buses or trucks	$176,886,084
73239300	2.0%	Stainless steel, table, kitchen, or household articles and parts thereof	$193,058,121

Source: CRS table based on data from the International Trade Commission Trade Dataweb.

Annual Reviews

The TPSC's GSP Subcommittee reviews and revises the lists of eligible products annually, generally on the basis of petitions received from beneficiary countries or interested parties requesting that additional products be reviewed (i.e., added or removed) for GSP eligibility.[67] When a country's petition for product eligibility is approved, the product becomes GSP-eligible for all BDCs (or only for LDBDCs if so designated).[68]

The GSP Subcommittee also annually reviews issues regarding BDCs' and LDBDCs' observance of country practices (such as worker rights or IPR protection); 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 are "import sensitive" relative to U.S. domestic firms.[69]

The GSP Subcommittee, after consultations with the ITC, also makes recommendations to the President regarding various product waivers that BDCs may have requested. Waiver petitions, if granted, are country-specific. Any modifications to product lists usually take effect on July 1 of the calendar year after the next annual review is launched, but may also be announced and become effective at other times of the year. At the completion of an annual review, the results are announced by proclamation.

Competitive Need Limits (CNL)

The GSP statute establishes "competitive need limit" (CNL) requirements for the President to suspend GSP treatment for individual products from BDCs (LDBDCs and AGOA countries are exempt) if

- imports of a product from a single country reach a specified threshold value, which increases by $5 million each calendar year (i.e., $175 million in 2016 and $180 million in 2017); or
- 50% or more of total U.S. imports of a product entering under GSP come from a single country.[70]

P.L. 115-141 amended the date that products that exceed the CNL become GSP-ineligible from GSP to November 1 of the next calendar year rather than July 1.[71]

CNL Waivers

BDCs may petition for CNL waivers, which the President reviews on a case-by-case basis. In deciding whether to grant a waiver, the President must (1) receive advice from the ITC as to whether a U.S. domestic industry could be adversely affected by the waiver; (2) determine that

[67] The GSP Subcommittee is a sub-group of the Trade Policy Staff Committee (TPSC). The TPSC, through the USTR, is charged with advising the President on GSP beneficiary country designations and covered products (see Section 8 of Executive Order 11846, 40 *Federal Register* 14291, as amended).

[68] USTR, *U.S. Generalized System of Preferences: Guidebook*, September 2016 (hereinafter, GSP Guidebook)

[69] 19 U.S.C. §2463(d)(1)(A). See United States International Trade Commission, *Generalized System of Preferences: Possible Modifications, 2016 Review*, Publication Number: 4692, Investigation Number: 332-560, June 2017, http://www.ITC.gov/research_and_analysis/commission_publications.htm.

[70] LDBDCs and sub-Saharan African beneficiaries of AGOA are exempt from competitive need limits (19 U.S.C. § 2463(c)(2)(A)). See also GSP Guidebook, p. 11.

[71] Ibid.

the waiver is in the U.S. economic interest; and (3) publish the determination in the *Federal Register*.[72] The President is also required to give "great weight" to the extent to which the BDC opens its markets to the United States and protects IPR.[73]

In 2006, Congress amended the GSP law to provide that the President should revoke any CNL waiver that had been in effect for five years or more if (1) the exports of the product were in excess of 1.5 times of the specified dollar amount reflected in the CNL provision; or (2) imports of the product exceeded 75% of the appraised value of total imports of the product into the United States in a calendar year.[74]

After the latest GSP review, in Proclamation 9625 of June 29, 2017, the President determined to grant CNL waivers on certain coniferous lumber from Brazil.[75]

De Minimis Waivers

De minimis waivers may also be provided if the total dollar value of a particular product imported into the United States from *all countries* is small. The *de minimis* level is adjusted each year, in increments of $500,000; for example, $23.0 million in 2016, $23.5 million in 2017, and $24 million in 2018.[76]

In Proclamation 9625, the President granted 78 *de minimis* waivers to products from beneficiary countries including Brazil, India, Indonesia, Thailand, and Papua New Guinea.[77] Products eligible for *de minimis* waivers included various agricultural products (e.g., papayas, mangoes, durians, tamarinds, and pistachios), chemical products (e.g., barium chloride, chromium sulfate), and animal hides and skins.[78]

Waivers for Articles not Produced in the United States (NPUS)

Prior to the enactment of the most recent GSP renewal, certain products that the President determined were not produced in the United States on January 1, 1995, were eligible for waivers of competitive need limits. Division M, Section 502 of P.L. 115-141 recently amended the statute to provide that BDCs could apply for waivers for certain products that were not produced in the United States for *three years prior to the waiver request*. Interested parties may petition for a waiver during the annual review process.[79]

Reviews of Country Practices

Also in the context of annual reviews, any interested party may file a request to request that the GSP status of any GSP beneficiary be reviewed based on its adherence to GSP eligibility criteria.

[72] 19 U.S.C. §2463(d).

[73] 19 U.S.C. §2463(d)(2).

[74] Ibid.

[75] Proclamation 9625 of June 29, 2017, "To Modify Duty Free Treatment Under the Generalized System of Preferences and for Other Purposes," 82 *Federal Register* 30711, June 30, 2017.

[76] 19 U.S.C. §2463(c)(2)(F). These waivers are automatically reviewed by the GSP Subcommittee (see below), but are granted at the discretion of the President.

[77] Proclamation 9625 of June 29, 2017, "To Modify Duty Free Treatment Under the Generalized System of Preferences and for Other Purposes," 82 *Federal Register* 30711, June 30, 2017.

[78] Ibid. See also USTR, "GSP: 2016/2017 Annual Review," https://ustr.gov/issue-areas/preference-programs/generalized-system-preferences-gsp/current-reviews/gsp-20162017.

[79] 19 U.S.C. §2463(c)(2)(E). See USTR Guidebook, p. 11.

For example, in July 2017, the USTR announced the TPSC's self-initiation of a country practice review of Bolivia based on U.S. government reports that it was not implementing its GSP commitment to eliminate the worst forms of child labor.[80] On August 11, 2017, the USTR extended a country practice hearing an additional day to provide interested parties the opportunity to submit testimony on all country practice petitions filed in recent years, including Argentina (GSP reinstatement subsequently granted), Bolivia (worker rights and child labor), Ecuador (arbitral awards), Georgia (worker rights), Indonesia (intellectual property rights), Iraq (worker rights), Laos (for GSP reinstatement), Thailand (worker rights), Ukraine (intellectual property rights), and Uzbekistan (worker rights, child labor, and intellectual property rights).[81] On April 4, 2018, the USTR amended the schedule for the 2017/2018 Annual GSP Product and Country Practice Review due to the December 2017 GSP program lapse and reopened the window for submitting GSP product and country petitions.[82]

In October 2017, USTR Lighthizer announced a new "proactive" process for ensuring that GSP beneficiaries are complying with the program's eligibility criteria. The process will include increased efforts to conclude outstanding country practices reviews, and a triennial assessment of each beneficiary's compliance with the statutory GSP eligibility criteria. The first assessment period will focus on Asian BDCs. GSP countries in other areas of the world will be assessed in the second and third years of the process. If the TPSC review raises concerns about a BDC's compliance, it may self-initiate a country practice review of the country's continued GSP eligibility.[83]

Subsequently, on April 27, 2018, the USTR announced the initiation of country practice reviews of India, Indonesia, and Kazakhstan. The eligibility reviews of India and Indonesia will focus on whether these countries are meeting the GSP requirement to provide the United States with equitable and reasonable market access based on petitions received by U.S. business associations.[84] The review of Kazakhstan was based on a petition from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) alleging that the government of Kazakhstan restricts the right to form trade unions and other internationally recognized worker rights.[85]

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[80] USTR, "Results of the 2016/2017 Annual Generalized System of Preferences Review and Initiation of a Country Practice Review of Bolivia," 82 *Federal Register* 31793, July 10, 2017.

[81] USTR, "Generalized System of Preferences (GSP): Initiation of the 2017 Annual GSP Product and Country Practices Review; Deadlines for Filing Petitions; Notice of Change in Country Practices Hearing," 82 *Federal Register* 37652, August 11, 2017.

[82] USTR, "Generalized System of Preferences (GSP): Notice of Revisions to the 2017/2018 Annual GSP Country and Product Practices Review; Deadline for Filing Petitions; GSP Renewal and Technical Modifications," 83 *Federal Register* 14540, April 4, 2018. Any product or country practices petitions previously submitted do not need to be resubmitted.

[83] USTR, "USTR Announces New Enforcement Priorities for GSP," press release, October 2017, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/october/ustr-announces-new-enforcement. Division M, Section 501(c) of P.L. 115-141, required that the USTR write an annual report on efforts to ensure that BDCs are meeting the eligibility criteria specified in the GSP Law (expires December 31, 2020).

[84] USTR, "Initiation of Country Practice Reviews of India, Indonesia, and Kazakhstan," 83 *Federal Register* 18618, April 27, 2018.

[85] Ibid.

Effects of the U.S. GSP Program

The statutory goals of the U.S. GSP program are 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.[86] It is difficult to assess whether or not the program alone has achieved these goals, however, because the GSP is only one of many such initiatives used by the United States to assist poorer countries. Economic success within countries is also related to internal factors, such as governance, stability, wise policy decisions, availability of infrastructure to foster industry, and legal/financial frameworks that encourage foreign investment. External macroeconomic factors, including global economic growth, worldwide economic shocks, exchange rates, and regional stability may also influence the growth of developing countries.

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

Effects on Developing Countries

From 2000 to 2008, total U.S. imports from all GSP countries (see **Figure 3**, red line, includes imports entering the United States without preferential tariff treatment) increased dramatically by value, from $172 billion in 2000 to a peak of $384 billion in 2008. In 2009, imports from GSP countries decreased by 36% (to $246 billion) in 2009, largely due to the effects of the global economic downturn. Total imports increased to $367 billion in 2011, but decreased gradually to $238 billion in 2014, $207 billion in 2015, $202 billion in 2016. In 2017, total imports from all GSP countries increased to $215 billion (up 7%). The overall decline in total imports from GSP-eligible countries from 2012 to 2016 could be due to an overall reduction in commodity prices, [87] combined with geopolitical tensions, tightening of financial conditions, and political instability in some countries.[88]

Imports entering under the GSP program (see **Figure 3**, blue line, represents only imported products that qualify for GSP duty-free treatment) seem to have been relatively static, averaging about 11% of all imports from GSP countries.[89] A number of factors could explain this, including uncertainty based on short-term GSP program renewals and long pauses between program authorization periods. Other programmatic factors that could keep GSP imports fairly constant over time include suspension, termination, or graduation of some countries from GSP eligibility; exclusion of certain products from eligibility through CNLs; and the entry of some developing countries (many of which had been GSP beneficiaries) entering into FTAs with the United States and thus being disqualified from GSP eligibility. In addition, some products from BDCs under the

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

[87] For example, several LDBDCs export petroleum products to the United States, many of which are GSP-eligible.

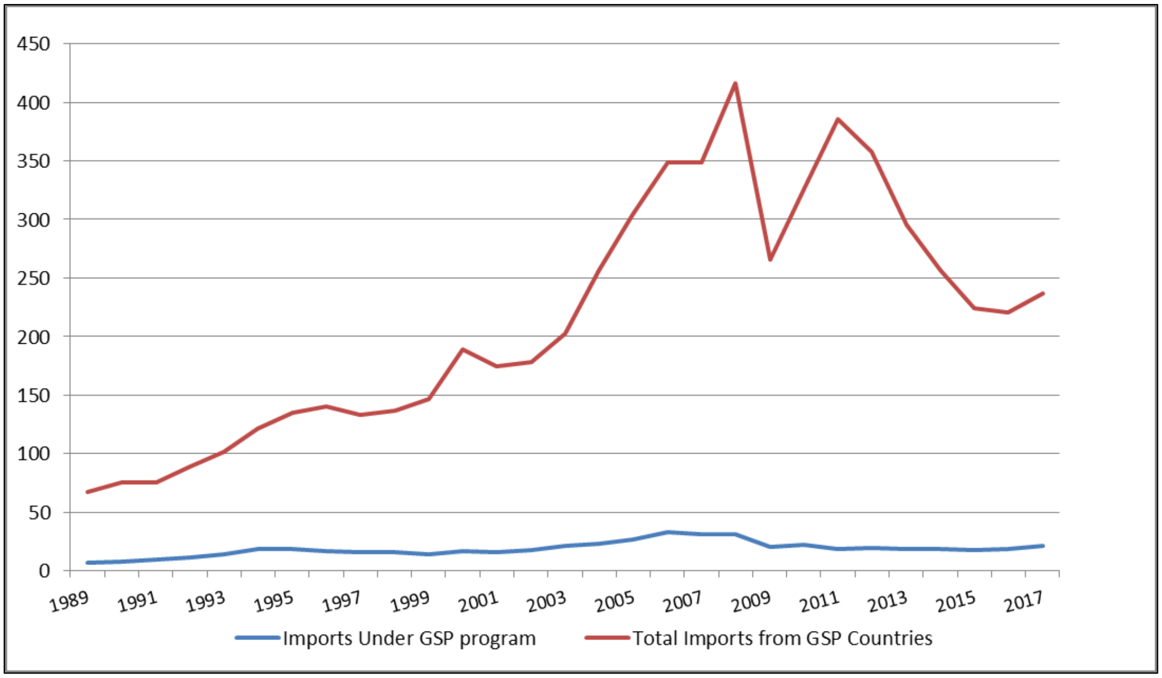
[88] World Bank, *Global Monitoring Report 2015/2016: Developing Goals in an Era of Demographic Change*, 2015, pp. 117-118, https://openknowledge.worldbank.org/handle/10986/22547.

[89] GSP trade data are estimated for 2013 and 2014 (when GSP had expired) based on U.S. entries of goods filed electronically with a Special Program Indicator (SPI) designating them as eligible for GSP benefits. In addition, African Growth and Opportunity Act (AGOA) countries continued to receive GSP benefits despite GSP expiration.

GSP program may receive more favorable treatment under other trade preference programs, such as AGOA or the Caribbean Basin Initiative (CBI).[90]

Figure 3. U.S. Imports from GSP Countries

2000-2017, current dollars



Source: United States International Trade Commission Trade Dataweb.

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, two countries with well-established jewelry industries, were able to expand their international reach through GSP programs. As the jewelry products reached their CNL thresholds, those countries were no longer eligible to receive duty-free status for their jewelry products under GSP, but gained a foothold in the U.S. and international markets that enabled their jewelry industries to continue to be competitive.[91]

However, some developing countries could also be encouraged by preferential trade programs to develop industry sectors in which they might not otherwise ever be able to compete, thus diverting resources from other industries that might stand a better chance of becoming competitive over time (trade diversion).[92]

Some economists assert that the lack of reciprocity in the GSP program could result in long-term costs for beneficiary countries, because by not engaging in multilateral, reciprocal negotiations in favor of preference programs, developing countries keep in place protectionist trade policies that could ultimately impede their long-term growth. The nonreciprocal preferences could also

[90] World Bank, World Integrated Trade Solution (WITS) database. http://wits.worldbank.org.

[91] Gold neck chains and other jewelry products continue to be leading products imported under GSP, but imports of these products from India and Thailand under GSP have been replaced by GSP imports from Turkey, South Africa, Indonesia, Pakistan, and Bolivia.

[92] OECD, "Making Open Markets Work for Development," *Policy Brief*, October 2005, p. 2.

become an impediment to multilateral trade negotiations because beneficiaries may prefer to seek ways of maintaining them rather than exchanging them for reciprocal benefits.[93]

For this reason, some economists prefer multilateral, nondiscriminatory tariff cuts because preferential tariff programs, such as the GSP, could lead to inefficient production and trade patterns in developing countries.[94] They say that 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—exporting products that they produce relatively efficiently and importing products that others produce relatively efficiently.[95]

Economic Effects on the U.S. Market

In 2017 products valued at $21 billion (imports for consumption) entered the United States duty-free under the GSP program, out of total imports from eligible BDCs of about $215 billion. In comparison, total U.S. imports from all countries for 2017 amounted to about $2.3 trillion. These figures suggest that the overall effects of GSP on the U.S. economy are relatively small. In addition, most U.S. producers of import-competing products are largely protected from severe economic impact. First, certain products, such as most textile and apparel products, are designated as "import sensitive" and therefore ineligible for duty-free treatment. Second, CNLs 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.[96] Third, U.S. manufacturers or producers may petition the USTR to withdraw GSP benefits from a certain product if they are injured by the preference.[97]

In federal budgetary terms, according to the Congressional Budget Office cost estimate for the most recent GSP reauthorization legislation (P.L. 115-141), the GSP program was projected to cost the United States (in foregone tariff revenues) about $347 million in 2018, $475 million in 2019, $492 million in 2020, and $129 million in 2021, for a total of about $1.4 billion.[98]

Many U.S. manufacturers and importers benefit from the lower cost of consumer goods and raw materials imported under the GSP program.[99] U.S. demand for certain individual products, including jewelry, leather, and aluminum, is quite significant.[100] The Coalition for GSP, a group of

[93] Patrick Low, Roberta Piermartini, and Jurgen Richtering, *Multilateral Solutions to the Erosion of Non-Reciprocal Preferences in NAMA*, World Trade Organization, Economic Research and Statistics Division, Working Paper ERSD-2005-05, October 2005. R. E. Baldwin and T. Murray, "MFN Tariff Reductions and Developing Country Trade Benefits Under the GSP," *The Economic Journal*, vol. 87, no. 345 (March 1977), pp. 30-46.

[94] Bernard Herz and Marco Wagner, *The Dark Side of the Generalized System of Preferences*, German Council of Economic Experts, Working Paper 02/2010, February 2010, p. 27.

[95] Ibid.

[96] 19 U.S.C. §2463(c).

[97] 15 C.F.R. part 2007.0(a).

[98] Congressional Budget Estimate for House Rules Committee Print 115-66, the Consolidated Appropriations Act, 2018, March 22, 2018, https://www.cbo.gov/publication/53669.

[99] Coalition for GSP, *Lost Sales, Investments, and Jobs: Impact of GSP Expiration After One Year*, September 16, 2014.The Coalition for GSP, a coalition of more than 600 U.S. companies and organizations in support of GSP renewal, makes the case that nonrenewal of GSP costs U.S. businesses an estimated $2 million per day in additional tariffs, see http://renewgsptoday.com.

[100] In some product categories, imports under GSP account for 25% or more of total U.S. imports. For example, in 2013, 94% of copper stranded wire in HTS 7413.00.10; 76% of ferrochromium in HTS 7272.41.00; 72% of cocoa paste in HTS 1803.20.00; and 70% of plywood sheets of 6mm thick and under in HTS 4412.31.40 were imported under the GSP program. GSP expired on July 31, 2013.

U.S. companies and associations that benefit from, and advocate for, the GSP program, asserts that companies in 40 states paid at least $1 million in higher tariffs due to the GSP expiration in 2014, with California firms paying an estimated $100 million in tariffs.[101] It asserts that, during periods of GSP expiration, small and medium enterprises (SMEs) bear a disproportionate share of the burden, resulting in lower sales and lost jobs.[102] It is also possible, however, that other factors, including slower growth and reduced demand in the U.S. market, contribute to adverse economic impacts on these businesses.

Stakeholders' Concerns

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

"Special and Differential Treatment"

Developing countries have long maintained that "special and differential treatment," such as that provided by the GSP, is an important assurance of access to U.S. and other developed country markets in the midst of increasing globalization.[103] Many of these countries have built industries or segments of industries based on receiving certain tariff preferences.

Some in Congress and in previous Administrations have expressed the desire to see reciprocal trade relationships with some of the emerging market economies that are still beneficiaries of nonreciprocal U.S. preference programs.[104] At the same time, there is continued broad support for preference programs in general, including GSP, CBI, and AGOA.[105]

Erosion of Preferential Margins

Developing countries have expressed concern about the overall progressive erosion[106] 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 Organisation for Economic Co-operation and Development (OECD) found that the degree of erosion of preferences resulting from Uruguay Round (1986-1994) tariff concessions by the Quad

[101] Coalition for GSP, *Lost Sales, Investments, and Jobs: Impact of GSP Expiration After One Year*, September 16, 2014.

[102] Ibid.

[103] For example, see World Trade Organization, Committee on Trade and Development, *Special and Differential Treatment Provisions in WTO Agreements and Decisions*, Note by the Secretariat, WT/COMTD/W/196, June 14, 2013, at http://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm.

[104] For example, see U.S. Congress, Senate Committee on Finance, *The African Growth and Opportunity Act at 14: The Road Ahead*, 113th Cong., 2nd sess., July 30, 2014.

[105] *Inside U.S. Trade*, "Congress Working on Advancing GSP Renewal; Senate Pushing GSP-Only," June 20, 2014.

[106] While overall multilateral preferences may be eroding, tariff benefits for individual items are 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%.

countries (Canada, European Union, Japan, United States) was indeed significant.[107] Some economists point out that if multilateral rounds of tariff reductions continue, combined with the proliferation of bilateral and regional trade agreements, the preference may disappear completely unless GSP tariff headings are expanded to include more import-sensitive products.[108]

One example of present concern of preference erosion could be WTO efforts to provide duty-free, quota-free (DFQF) U.S. market access for all products to all least-developed countries. Many sub-Saharan African countries have expressed concern that an approach like this could place them in direct competition for U.S. market share with other developing countries, thus diluting the value of the preferential treatment that they receive through AGOA.[109]

Other economists say that preference erosion could be more than outweighed by the benefits of increased market access brought about by multilateral trade liberalization.[110] 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."[111]

Underutilization of GSP

Some academic literature on preference programs, including GSP and free trade agreements, suggests that they are not used to their fullest extent. One reason cited is that the benefits accruing to importers may not be worth the additional costs (such as the additional paperwork needed to fulfill the local content rule of origin) associated with claiming the preference.[112]

Additional literature suggests that some countries may not use GSP for a variety of reasons, including unfamiliarity of exporters with the program; BDC governments not sufficiently promoting the existence of available opportunities under the preference; lack of available infrastructure (for example, undeveloped or damaged roads and ports that impede the efforts to get goods into the international market); developing countries' major products could be deemed import sensitive; or a combination of all of these factors.[113] One option for addressing these factors could be to provide assistance to GSP beneficiaries through U.S. trade capacity building efforts similar to those employed as part of AGOA.[114] The recent relatively long-term

[107] Organisation for Economic Co-operation 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).

[108] Sanchez Arnau, Juan C. *The Generalized System of Preferences and the World Trade Organization*, London: Cameron May, Ltd., 2002, p. 282.

[109] Alliance to End Hunger, et al. Letter to House Ways and Means and Senate Finance Chairs and Ranking Members, April 22, 2009. African Ambassador's Group Statement, May 13, 2013.

[110] 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.

[111] OECD GSP Review, p. 27.

[112] Shushanik Hakobyan, "Accounting for Underutilization of Trade Preference Programs: The U.S. Generalized System of Preferences," August 2012, p. 1.

[113] U.S. Government Accountability Office. *International Trade: U.S. Trade Preference Programs Provide Important Benefits, But a More Integrated Approach Would Better Ensure that Programs Meet Shared Goals*. GAO 08-443, March 2008, pp. 53-55 (hereinafter 2008 GAO Report).

[114] For more information, see CRS Report R43173, *African Growth and Opportunity Act (AGOA): Background and Reauthorization*, by (name redacted) .

reauthorization of AGOA also encouraged beneficiary countries to develop utilization strategies.[115]

Trade as Foreign Assistance

No other U.S. trade preference program is more broadly based or encompasses as many countries as GSP. As a result, the program is supported by many observers who believe that it is an effective, low-cost means of providing economic assistance to developing countries. Supporters maintain that encouraging trade by private companies through the GSP program stimulates economic development much more effectively than intergovernmental aid and other means of assistance.[116] Economic development assistance through trade is a long-standing element of U.S. foreign policy, and other trade promotion programs such as AGOA and the Caribbean Basin Trade Partnership Act (CBTPA) are also based on this premise.

Conditionality of Preferences

Some supporters of GSP and other nonreciprocal programs assert that the conditions required (such as worker rights and IPR requirements) for GSP qualification provide the United States with leverage that can be used to promote U.S. foreign policy goals and commercial interests.[117] For example, after Bangladesh's suspension from GSP benefits in June 2013 due to worker rights and safety issues, officials in Bangladesh reportedly have been working closely with U.S. officials to address the shortcomings.[118]

In November 2013, the United States and Bangladesh signed a Trade and Investment Cooperation Forum Agreement (TICFA), through which "The United States and Bangladesh will more regularly work together to address issues of concern in our trade and investment relationship."[119] In May 2017, during discussions on the TICFA, U.S. officials expressed optimism at Bangladesh's progress, but stopped short of suggesting GSP eligibility for Bangladesh.[120] The United States is also working with Bangladesh through engagement in a "Sustainability Compact," a multi-government approach that also involves the governments of the EU and Canada, as well as the International Labor Organization (ILO), "to promote continuous improvements in labor rights and factory safety in the Ready Made Garment and Knitwear Industry in Bangladesh." The last review of the Compact also took place in May 2017. Although the compact members noted that trade union membership had increased, and Bangladesh's

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[115] AGOA was extended from September 30, 2015, to September 30, 2025, in Section 103 of P.L. 114-27.

[116] September 21, 2006, DC Bar meeting.

[117] The Coalition for GSP and The Trade Partnership. *The U.S. Generalized System of Preferences Program,* February 2013, p. 3, at http://tradepartnership.com/gsp/us-generalized-system-of-preferences/. See also http://renewgsptoday.com.

[118] Proclamation 8997 of June 27, 2013, "To Modify Duty-Free Treatment Under the Generalized System of Preferences, and for Other Purposes," 78 *Federal Register* 39949, July 2, 2013.

[119] U.S. Trade Representative, "United States, Bangladesh Sign Trade and Investment Cooperation Forum Agreement (TIFCA)," press release, November 2013, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2013/November/US-Bangladesh-TICFA-Signing.

[120] U.S. Trade Representative, "United States and Bangladesh Hold 3rd Trade and Investment Cooperation Forum Agreement Council Meeting," press release, May 2017. "Bangladesh's Best Days are Ahead, says USTR," *bdnews24.com*, May 19, 2017, https://bdnews24.com/business/2017/05/19/bangladeshs-best-days-are-ahead-says-ustr.

government had made significant progress. At the same time, the compact's members noted recent labor unrest in Ashulia (a suburb of the capital, Dhaka), and called for its resolution.[121]

Lower Costs of Imports

U.S. businesses that 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 make U.S. firms more competitive, and the savings can be passed on to consumers. These supporters assert that GSP is as important for many domestic manufacturers and importers as for the countries that receive preferential access for their products.[122]

Even though most U.S. producers are shielded to a certain extent by CNLs and the exclusion of import sensitive products from GSP eligibility, U.S. manufacturers and workers are still sometimes adversely affected by GSP imports. Some of these companies have petitioned for elimination of specific products from GSP eligibility.[123] For example, in 2010, Exxel Outdoors, a U.S. company that manufactures certain non-down sleeping bags, petitioned for their removal from GSP eligibility, claiming that their business operations were being harmed by imports of duty-free sleeping bags from Bangladesh under the GSP program.[124] These sleeping bag categories were ultimately removed from GSP duty-free treatment in January 2012.[125]

Options for Congress

In previous years, Members have suggested various reforms of the GSP program. Possible options include supporting reciprocal tariff and market access benefits through FTAs, renewing the GSP for least-developed beneficiaries only, extending the program in a modified form, or letting the program lapse altogether.

Although the GSP is a nonreciprocal tariff preference, any changes to the program may need to be considered in light of the requirements of the WTO Enabling Clause, as it has been interpreted by the WTO Appellate Body. At a minimum, the United States may need to notify—and possibly consult with—other WTO members regarding any withdrawal or modification of GSP benefits, as required by paragraph 4 of the Enabling Clause.[126] 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.

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[121] Bangladesh Sustainability Compact Partners, Joint Conclusions, Third Follow-up Meeting on Bangladesh Sustainability Compact, Dhaka, May 18, 2017. For information on the unrest in Ashulia, see Rachel Abrams and Maher Sattar, "Turmoil in a Global Apparel Hub," *New York Times*, January 23, 2017, Section B, Page 1, Late Edition-Final.

[122] Coalition for GSP, "American Companies Frustrated by Congress' Inability to Renew Generalized System of Preferences Program," press release, August 1, 2013, http://renewgsptoday.com/.

[123] 19 U.S.C. §2463(c).

[124] "Sleeping Bags Removed from GSP after USTR Administrative Review," *Inside U.S. Trade*, January 5, 2012.

[125] 77 *Federal Register* 1549, January 10, 2012.

[126] Paragraph 4 states that any contracting party that grants a preferential program and seeks to modify or withdraw it must notify the other contracting parties, give them adequate time and opportunity to discuss any difficulties, and help them to reach satisfactory solutions. See http://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm.

Negotiate Trade Agreements with GSP Countries

Some U.S. policymakers have suggested that some developing countries might benefit more through WTO multilateral negotiations, FTAs, or some form of agreement that could also provide reciprocal trade benefits and improved market access for the United States.[127] Arguably, this was one of the policy arguments for the EU's pursuit of Economic Partnership Agreements with many of its former GSP beneficiaries. Since tariff concessions under these agreements would probably apply to more sectors of the economy than GSP, such agreements could increase the likelihood of across-the-board economic stimulation in developing countries. In fact, each one of the United States' current FTA partners, with the exception of Canada and Australia, was at one time a beneficiary of the GSP program.[128]

Authorize GSP Only for Least-Developed Countries

Some in Congress have expressed the possibility of modifying the GSP so that the benefits apply primarily to least-developed beneficiaries.[129] Assuming that many least-developed African beneficiaries[130] would continue to receive the GSP preference under AGOA, other LDCs that might benefit from an LDC-only GSP program are Afghanistan, Bhutan, Burma, Burundi, Cambodia, Congo (Kinshasa), Haiti,[131] Kiribati, Nepal, Samoa, Somalia, South Sudan, the Solomon Islands, Tanzania, Timor-Leste, Tuvalu, Vanuatu, and Yemen.[132] Of these countries, in 2017, the LDCs that made the most use of the program by value were Cambodia ($397 million), Burma ($91.4 million), Nepal ($8.5 million), the Solomon Islands ($2.2 million), Samoa ($1.4 million), Bhutan ($4 million), Burundi ($1.3 million), and Haiti ($1.2 million). U.S. efforts through trade capacity building could help LDCs take greater advantage of the preference.

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[127] For example, then-USTR Froman indicated that he favored negotiating an FTA with South Africa on July 29 and 30, 2014. See *Inside U.S. Trade*, "Froman Signals Interest in 'Reciprocal' Trade Arrangement with South Africa," July 31, 2014.

[128] Some U.S. FTA partners were GSP beneficiaries at the time FTA implementing legislation was enacted. Singapore and South Korea were graduated from GSP in 1989, and thus were not GSP beneficiaries at the time the United States implemented their respective FTAs. Israel retained GSP status until 1995, and Jordan still enjoys GSP status. Implementing language for all other FTAs contained language similar to "the President shall terminate the designation of ... as a beneficiary developing country for the purposes of title V of the Trade Act of 1974 on the date of entry into force of the Agreement."

[129] U.S. Congress, Senate Committee on Finance, *The African Growth and Opportunity Act at 14: The Road Ahead*, 113th Cong., 2nd sess., July 30, 2014. In the question and answer session, Senate Finance Committee Chair Wyden asked USTR Froman, " ... Is it time for Congress and the Administration to consider whether countries like India, Thailand, Brazil and Turkey are also ready to graduate from the Generalized System of Preferences program?"

[130] The least-developed GSP countries that also benefit from AGOA (as of May 2018) are: Angola, Benin, Burkina Faso, Central African Republic, Chad, Comoros, Djibouti, Ethiopia, Guinea, Guinea-Bissau, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Tanzania, Togo, Uganda, and Zambia.

[131] Haiti was provided additional unilateral preferences through the Haiti Economic Lift Act of 2010 (P.L. 111-171).

[132] Burundi, Congo (Kinshasa), Somalia, South Sudan, and Zimbabwe are not designated as beneficiary AGOA countries in 2018, but retain their GSP eligibility.

Reform GSP

Another possible approach for Congress would be to modify the GSP as it applies to all BDCs. Some of these options could have the effect of expanding the GSP program, while others could serve to restrict its application. Below are some examples of potential modifications.

Expand Application of GSP

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

- Expand the list of tariff lines permitted duty-free access. Allow some import-sensitive products to receive preferential access.[133]
- Increase flexibility of rules of origin requirements. For example, allow more GSP beneficiaries to cumulate inputs with other beneficiaries to meet the 35% domestic content requirement.[134]
- Eliminate competitive need limitations for BDCs, or raise the thresholds that trigger them.

Restrict Application of Preferences

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

- Consider mandatory graduation for "middle income" countries, similar to EU GSP changes, or strengthen the language giving the President authority to graduate countries based on competitiveness.
- Reconsider criteria for graduation of countries from GSP or direct greater enforcement of the eligibility criteria.
- Strengthen provision that allows graduation of individual industry sectors within beneficiary countries.
- Modify the rule-of-origin requirement for qualifying products to require that a greater percentage of the direct costs of processing operations (currently 35%) originate in beneficiary developing countries.[135]
- Lower the threshold at which the President may (or must) withdraw, suspend, or limit the application of duty-free treatment of certain products (CNLs).[136]
- Require the President to more frequently and actively monitor (currently an annual process) the economic progress of beneficiary countries, as well as compliance with GSP criteria.

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[133] For example, sections 202 and 204 of P.L. 114-27 permitted duty-free access to certain textile articles and travel goods.

[134] 2008 GAO Report, p. 75. The GSP, at present, allows only specifically designated "associations of countries," (e.g., the Member Countries of the West African Economic and Monetary Union (WAEMU)) to combine inputs to reach the 35% threshold.

[135] 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 designated association of countries. 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)).

[136] 19 U.S.C. §2463(c).

- Add additional eligibility criteria; for example, to include movement toward more reciprocal tariff treatment, sustainable development, or environmental preservation.

Appendix A. GSP Implementation and Renewal

Table A-1. GSP Implementation and Renewal, 1974-2015

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

Public Law	Effective Date	Date Expired	Notes
P.L. 112-40	November 5, 2011	July 31, 2013	Extended retroactively from December 31, 2010, to November 5, 2011.
P.L. 114-27, Title II	July 29, 2015	December 31, 2017	Extended retroactively from July 31, 2013, to July 29, 2015.
P.L. 115-141, Division M, Title V	April 22, 2018	December 31, 2020	Extended retroactively from January 1, 2018 to April 22, 2018.

Source: CRS analysis using Congress.gov, http://www.congress.gov.

Appendix B. GSP Beneficiary Countries

Table B-1. Beneficiary Developing Countries and Regions for Purposes of the Generalized System of Preferences

(as of May 2018)

Independent Countries			
Afghanistan A+	Ecuador	Liberia A+	Serbia
Albania	Egypt	Macedonia	Sierra Leone A+
Algeria	Eritrea	Madagascar A+	Solomon Islands A+
Angola A+	Ethiopia A+	Malawi A+	Somalia A+
Armenia	Fiji	Maldives	South Africa
Azerbaijan	Gabon	Mali A+	South Sudan A+
Belize	Gambia, The A+	Mauritania A+	Sri Lanka
Benin A+	Georgia	Mauritius	Suriname
Bhutan A+	Ghana	Moldova	Swaziland
Bolivia	Grenada	Mongolia	Tanzania A+
Bosnia and Hercegovina	GuineaA+	Montenegro	Thailand
Botswana	Guinea-BissauA+	Mozambique A+	Timor-Leste A+
Brazil	Guyana	Namibia	Togo A+
Burkina Faso A+	Haiti A+	Nepal A+	Tonga
Burma A+	India	Niger A+	Tunisia
Burundi A+	Indonesia	Nigeria	Turkey
Cambodia A+	Iraq	Pakistan	Tuvalu A+
Cameroon	Jamaica	Papua New Guinea	Uganda A+
Cape Verde	Jordan	Paraguay	Ukraine
Central African RepublicA+	Kazakhstan	Philippines	Uzbekistan
Chad A+	Kenya	Republic of Yemen A+	Vanuatu A+
Comoros A+	KiribatiA+	Rwanda A+	Zambia A+
Congo (Brazzaville)	Kosovo	Saint Lucia	Zimbabwe
Congo (Kinshasa) A+	Kyrgyzstan	Saint Vincent and the Grenadines	
Cote d'Ivoire	Lebanon	Samoa A+	
Djibouti A+	Lesotho A+	Sao Tome and Principe A+	
Dominica		Senegal A+	

Non-Independent Countries and Territories Eligible for GSP Benefits		
Anguilla	Heard Island and McDonald Islands	Tokelau
British Indian Ocean Territory	Montserrat	Virgin Islands, British
Christmas Island (Australia)	Niue	Wallis and Futuna
Cocos (Keeling) Islands	Norfolk Island	West Bank and Gaza Strip
Cook Islands	Pitcairn Islands	Western Sahara
Falkland Islands (Islas Malvinas)	Saint Helena	

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

Source: Harmonized Tariff Schedule of the United States, 2017, Revision 1, July 2017.

Note: "A+" indicates least-developed countries.

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