UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

UNCTAD

Generalized System of Preferences

HANDBOOK ON THE SCHEME OF UNITED STATES OF AMERICA

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UNCTAD/ITCD/TSB/Misc.58/Rev.3

PREFACE

The series of handbooks on the Generalized System of Preferences (GSP) promotes greater awareness among exporters and government officials in developing countries on trading opportunities available under the GSP and other preferential trade arrangements and a better understanding on applicable rules and regulations with a view to facilitating their effective utilization. The series comprises the following publications:

- *Handbook on the Scheme of Australia* (UNCTAD/ITCD/TSB/Misc.56)
- *Handbook on the Scheme of Canada* (UNCTAD/ITCD/TSB/Misc.66)
- *Handbook on the Scheme of the European Union* (UNCTAD/ITCD/TSB/Misc.25/Rev.4)
- *Handbook on the Rules of Origin of the European Union* (UNCTAD/ITCD/TSB/Misc.25/Rev.3/Add.1)
- *Handbook on the Scheme of Japan* (UNCTAD/ITCD/TSB/Misc.42/Rev.3)
- *Handbook on the Preferential Tariff Scheme of the Republic of Korea in Favour of Least Developed Countries* (UNCTAD/ITCD/TSB/Misc.75)
- *Handbook on the Scheme of New Zealand* (UNCTAD/ITCD/TSB/Misc.48)
- *Handbook on the Scheme of Norway* (UNCTAD/ITCD/TSB/Misc.29/Rev.1)
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- *Handbook on the Scheme of Turkey* (UNCTAD/ITCD/TSB/Misc.74)
- *Handbook on the Scheme of the United States of America* (present volume)
- *Generalized System of Preferences – List of Beneficiaries* (UNCTAD/ITCD/TSB/Misc.62/Rev.6)
- *The African Growth and Opportunity Act: A Preliminary Assessment* (UNCTAD/ITCD/TSB/2003/1)
- *Quantifying the Benefits Obtained by Developing Countries from the Generalized System of Preferences* (UNCTAD/ITCD/TSB/Misc.52)
- *Trade Preferences for LDCs: An Early Assessment of Benefits and Possible Improvements* (UNCTAD/ITCD/TSB/2003/8)

These publications are also available on the Internet: www.unctad.org/gsp.

For further information on the scheme, readers are invited to contact:

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NOTES

This handbook has been prepared by the UNCTAD secretariat drawing on its ongoing work on the GSP and other preferential market access issues. The handbook aims to provide a general explanation of the United States scheme to allow developing country government officials and experts to gain a better understanding of the scheme to promote its better utilization.

The handbook is essentially based on publicly available official information, as well as that provided by the permanent mission of the United States to the United Nations Office at Geneva, Switzerland.

Readers may also visit: www.unctad.org/gsp.

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ABBREVIATIONS

AGOA	African Growth and Opportunity Act
CITA	Committee for the Implementation of Textile Agreements
CNL	competitive need limitation
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
HTSUS	Harmonized Tariff Schedule of the United States
LDBC	lesser developed beneficiary country (used under the AGOA)
LDBDC	least developed beneficiary developing country (used under the GSP)
LDC	least developed country
NAFTA	North American Free Trade Agreement
NTR	normal trade relations
OPEC	Organization of the Petroleum Exporting Countries
USC	United States Code
USITC	United States International Trade Commission
USTR	Office of the United States Trade Representative
WTO	World Trade Organization

INTRODUCTION

The United States GSP provides preferential duty-free entry for about 4,800 products imported into the country from 131 designated beneficiary countries and territories, including 44 least developed beneficiary developing countries (LDBDCs) so designated. It was instituted in 1 January 1976 by the Trade Act of 1974 and has been renewed periodically since then. The previous cycle of the scheme expired on 31 July 2013. The GSP has been reauthorized, this being effective from 29 July 2015 until 31 December 2017, with retroactive relief for eligible products imported since 31 July 2013. Importers have 180 days from 29 July to submit claims for duty refunds. It should be noted that retroactive benefits are applicable only to goods and countries that are GSP-eligible as of 29 July, thus excluding those from Bangladesh and the Russian Federation.

The purpose of this handbook is to spell out the terms of the United States programmes, with special emphasis on how firms and Governments in the beneficiary countries can best use the GSP programme to their fullest advantage. In addition to the Unites States GSP programme, the handbook covers the African Growth and Opportunity Act (AGOA). This latter strengthens United States relations with sub-Saharan African countries and provides incentives for these countries to achieve political and economic reform and growth through enhanced GSP preferences.

I

HOW THE UNITED STATES PROGRAMME IS ADMINISTERED?

The administration of the United States GSP programme can be divided into two distinct areas. The day-to-day operation of the programme is primarily the responsibility of the United States Customs Service, which is part of the Department of the Treasury (refer to appendix 3 for the regulations that govern the Customs Service's implementation of the programme).

While many of the policy issues in the GSP are theoretically decided by the President of the United States, in reality the latter's decisions are made on the basis of advice provided by the Office of the United States Trade Representative (USTR) and other agencies (see appendix 4 for the regulations that govern the USTR's conduct of GSP reviews). The address of the USTR GSP office is:

Office of the United States Trade Representative
USTR Annex
1724 F Street, NW
Washington, DC 20508
Tel.: 1 202 395 6971; Fax: 1 202 395 9481
Email: contactustr@ustr.eop.gov

The USTR consults with other agencies of the United States Government on all important issues affecting the GSP. The GSP Subcommittee of the Trade Policy Staff Committee is responsible for recommending to the President the actions he should take on petitions that seek changes in the programme's members from all government agencies with an interest in international economic relations (for example, the Departments of State, Commerce, Labour, among others).

The GSP Subcommittee conducts annual reviews of the GSP programme, in which it considers a wider range of petitions. Any interested party – embassies, government agencies, United States foreign firms, and so forth – may petition the GSP Subcommittee to request modifications to the list of products or countries eligible for GSP treatment. A beneficiary country can use this annual review to ask that the Subcommittee add a product to the GSP, or that it waives the limits that apply to imports of a specific product. Other interested parties may ask that the Subcommittee add a product to the GSP, remove a product from the programme, remove a specific country's eligibility for a specific product, or remove a country altogether from the GSP. The GSP Subcommittee usually decides within several weeks which of these petitions it will accept for review. The petitions that are accepted for review are then subject to a process of hearings lasting several months, advice from the United States International Trade Commission (USITC) and internal deliberations; the petitions that are not accepted are abandoned at this point. Table 1 details the chronology of the United States preferential trade programmes.

Table 1. Chronology of the GSP and other United States preferential trade programmes

1947	Havana Charter for the International Trade Organization provided for "preferences…in the interests of economic development" but did not enter into effect.
1964	The GSP was proposed at the first United Nations Conference on Trade and Development (UNCTAD I).
1967	President Lyndon Johnson indicated at the Punta del Este conference of western hemisphere leaders (second Summit of the Americas) that he was prepared to consider preferences for developing countries.
1969	President Richard Nixon declared his support for the GSP and included it in the proposed Trade Act of 1969 that he sent to Congress for approval.
1971	General Agreement on Tariffs and Trade (GATT) contracting parties granted a 10-year waiver for the GSP.
1974	Congress approved the GSP as part of the Trade Act of 1974.
1975	The Trade Act of 1974 was signed into law, and countries were designated for the programme.
1976	The GSP entered into effect.
1979	GATT contracting parties approved an enabling clause in the Tokyo Round, providing a permanent waiver and exempting the GSP from GATT rules. A provision in the Trade Agreements Act of 1979 allowed for the designation to the GSP of Organization of the Petroleum Exporting Countries (OPEC) member countries if they did not participate in the oil embargoes.

1980	Ecuador, Indonesia and the Bolivarian Republic of Venezuela were designated as GSP beneficiaries.
1983	The Caribbean Basin Economic Recovery Act provided superior preferences for Central American and Caribbean countries.
1984	The Trade and Tariff Act of 1984 renewed the GSP until mid-1993.
1985–1987	A general review of the GSP programme led to numerous changes in product eligibility.
1985	Nicaragua's GSP privileges were terminated for reasons of workers' rights.
1987	Paraguay was suspended from the GSP for reasons of workers' rights.
1988	Chile was suspended from the GSP for reasons of workers' rights.
1989	The Republic of Korea, Singapore, Hong Kong (China) and Taiwan Province of China were graduated from the GSP.
1991	Chile and Paraguay were reinstated to the GSP; the Andean Trade Preferences Act was enacted, providing superior preferences for the Plurinational State of Bolivia, Colombia, Ecuador and Peru.
1990–1992	Several Baltic and Eastern European States are designated for the GSP.
1993–1995	Following a change in the law, most States of the former Union of Soviet Socialist Republics were designated for the GSP.
1993	The GSP was renewed several days after it expired.
1994	The GSP was renewed three months after it expired; Mexico lost GSP benefits upon entry into force of the North American Free Trade Agreement.
1995	Israel was graduated from the GSP.
1996	The GSP was renewed 13 months after it expired.
1997	Many products were made GSP-eligible when imported from least developed countries (LDCs); in a dispute over intellectual property protection the United States removed half of Argentina's GSP privileges; President Clinton proposed the AGOA for sub-Saharan African countries.
1998	Cyprus, Malaysia, Aruba, the Cayman Islands, Greenland, Macao (China) and the Netherlands Antilles were graduated from GSP.
1999	President Clinton proposed the Southeast Europe Trade Preferences Act; Gabon and Mongolia were designated for the GSP; Mauritania was reinstated to the GSP as an LDC beneficiary.
2000	President Clinton signed the AGOA into law on 18 May 2000; thirty-four sub-Saharan African countries were designated as AGOA beneficiaries; Eritrea and Nigeria were designated for the GSP; Belarus was suspended from the GSP.
2001	Swaziland was designated as an AGOA beneficiary; the GSP expired in September; Ukraine was suspended from the GSP for reasons of intellectual property rights.
2002	Côte d'Ivoire was designated as an AGOA beneficiary; the Trade Act of 2002 reauthorized the GSP scheme in August; the 2002 Act modified certain rules under the AGOA.
2003	The President's proclamation extended or preserved benefits for approximately $220 million in imports through the addition of new products, restoration of previously lost benefits and the continuation of benefits that would have otherwise expired.
2005	President George W. Bush signed legislation that included new statutory thresholds to identify products that had reached a level of competitiveness suggesting that they no longer warranted duty-free benefits.
2006	Twenty-one products from specific beneficiaries were excluded from the GSP; this group included 13 products that exceeded the statutory "competitive need limitations" (CNLs) and eight products that had been granted waivers to the CNLs at least five years previously and were currently subject to statutory "super-competitiveness" thresholds; Liberia and Ukraine were reinstated to the GSP.
2007	Three types of aluminium products were added to the list of GSP-eligible products; GSP eligibility was terminated for 25 products from specific beneficiary countries.
2008	Two agricultural products were added to the GSP list; 12 sufficiently competitive products from six beneficiary countries were excluded from GSP treatment.
2009	The GSP cycle expired on 31 December 2009; Trinidad and Tobago graduated from GSP eligibility; presidential proclamation granted the Maldives GSP beneficiary status; AGOA eligibility was extended to Mauritania and withdrawn from Guinea, Madagascar, and the Niger.
2010	The previously expired GSP cycle was renewed until 31 December 2010.

2011	The United States GSP programme was temporarily suspended from 1 January to 21 October; during this suspension United States importers had to pay most favoured nation duties on any GSP goods from GSP beneficiary countries, which were later refunded; Croatia and Equatorial Guinea graduated from GSP eligibility.
2012	South Sudan named an LDBDC in June; Argentina lost GSP eligibility following its refusal to pay United States companies arbitration awards; Saint Kitts and Nevis was removed from GSP eligibility because of its classification as “high-income“ under World Bank definitions; CNL standard for “beneficiary developing country” redefined: A beneficiary developing country was now considered a “competitive” supplier if United States imports from that country of that product represent 50 per cent of the value of total United States imports of that product or if such imports exceed $155 million; CNL waiver was granted for products from India, the Philippines and Thailand.
2013	Bangladesh suspended from GSP benefits for lack of progress on recognizing workers‘ rights; CNL waiver was granted for calcium silicon ferroalloys from Brazil; the GSP cycle expired on 31 July 2013.
2014	President Obama removes the Russian Federation‘s GSP status pursuant to section 502(f)(2) of the Trade Act of 1974.
2015	The GSP is reauthorized until 31 December 2017; the AGOA is extended until 30 September 2025.

Source: Official communications from the White House, the USTR and the USITC.

II

BENEFITS AND ELIGIBILITY

While some industrialized countries' GSP schemes provide for varying levels of preferential treatment, this aspect of the programme of the United States is much simpler. All products that are eligible for preferential treatment enter entirely free of duty. For an import to qualify for duty-free treatment under the GSP, it must meet the following three requirements:

- It must be from a designated beneficiary country;
- It must be eligible for GSP treatment;
- It must meet the GSP rules of origin.

Each of these points is worth examining separately. In addition to reading the description that follows, readers are encouraged to examine the laws and regulations in the appendices. Appendix 2 reproduces the full text of the authorizing legislation for the GSP in the United States Code (USC), while appendix 3 consists of the United States Customs Service rules on the GSP (from the Code of Federal Regulations).

A. Country eligibility

Many, but not all, developing countries and territories are designated as GSP beneficiaries (see appendix 1 for the status of independent and non-independent countries and territories under the United States programme).

Country eligibility has evolved considerably over the past quarter of a century (see table1). The original GSP statute excluded countries with communist Governments (other than Yugoslavia) and OPEC members. Although the OPEC exclusion has been lifted, the ban on communist countries still remains and GSP eligibility is saved for those that are World Trade Organization (WTO) and International Monetary Fund members and receive normal trade relations (NTR) treatment from the United States. Ecuador, Indonesia and the Bolivarian Republic of Venezuela were designated for the GSP in 1980 (being OPEC countries that had not joined in the Arab countries' oil embargo), and most former Soviet republics and satellites won GSP benefits with the end of the cold war. Other economies have been "graduated" from the GSP upon achieving sufficiently high levels of income and development: the four main Asian industrialized economies (the Republic of Korea, Singapore, Hong Kong (China) and Taiwan Province of China) were graduated in 1989, and Malaysia was graduated in 1998. Mexico lost GSP benefits when the North American Free Trade Agreement (NAFTA) entered into effect in 1994. Other countries have seen their benefits reduced, suspended or terminated as a result of disputes over workers' rights and other matters, as discussed in a later section.

The United States programme distinguishes between two categories of countries. Forty-four are considered to be LDBDCs (see table 2). These countries enjoy two advantages not shared by the other beneficiaries: a much wider range of products that are eligible for GSP treatment (as discussed in section II.B) and not being subject to the competitive need limitations (as discussed in section III).

The law provides that a beneficiary country can be graduated completely from the programme upon the discretion of the President. The President may withdraw, suspend, or limit the GSP status of beneficiary countries if "he determines that the country is determined to be sufficiently competitive or developed". While this is discretionary, mandatory graduation occurs when a beneficiary developing country has become a "high income country" as defined by the official statistics of the World Bank. This provision has been used to graduate several newly industrialized Asian economies, among others.

Box 1. Summary of eligibility criteria for GSP benefitsa) Botswana telecoms

Mandatory criteria

19 USC 2462(b)(2) of the GSP statute sets forth the criteria that each country must satisfy before being designated a GSP beneficiary (extracted from source):

- A GSP beneficiary may not be a Communist country, unless such country receives Normal Trade Relations (NTR) treatment, is a World Trade Organization (WTO) member and a member of the International Monetary Fund (IMF) and is not dominated by international communism;
- A GSP beneficiary may not be a party to an arrangement of countries nor participate in actions the effect of which are (a) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and (b) to cause serious disruption of the world economy;
- A GSP beneficiary may not afford preferential treatment to products of a developed country that has, or is likely to have, a significant adverse effect on United States commerce;
- A beneficiary may not have nationalized, expropriated or otherwise seized property of United States Citizens or corporations without providing, or taking steps to provide, prompt, adequate, and effective compensation, or submitting such issues to a mutually agreed forum for arbitration;
- A GSP beneficiary may not have failed to recognize or enforce arbitral awards in favour of United States citizens or corporations;
- A GSP beneficiary may not aid or abet, by granting sanctuary from prosecution, any individual or group that has committed an act of international terrorism;
- A GSP beneficiary must have taken or is taking steps to afford internationally recognized worker rights, including 1) the right of association, 2) the right to organize and bargain collectively, 3) freedom from compulsory labour, 4) a minimum age for the employment of children, and 5) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health; and
- A GSP beneficiary must implement any commitments it makes to eliminate the worst forms of child labour.

Discretionary criteria

19 USC 2462(c) of the GSP statute sets forth the following criteria that the President must take into account additional “factors affecting country designation“ in determining whether to designate a country as a beneficiary country for purposes of the GSP program. These criteria are summarized below for informational purposes only; please see the GSP statute for the complete text:

- An expression by a country of its desire to be designated as a GSP beneficiary country;
- The level of economic development, including per capita gross national product, the living standards of its inhabitants, and any other economic factors that the President deems appropriate;
- Whether other major developed countries are extending generalized preferential tariff treatment to such country;
- The extent to which such country has assured the United States that it will provide equitable and reasonable access to its markets and basic commodity resources and the extent to which it has assured the United States it will refrain from engaging in unreasonable export practices;
- The extent to which such country provides adequate and effective protection of intellectual property rights, including patents, trademarks, and copyrights;
- The extent to which such country has taken action to reduce trade distorting investment practices and policies, including export performance requirements, and to reduce or eliminate barriers to trade in services;
- Whether such country has taken or is taking steps to afford internationally recognized workers’ rights, including (1) the right of association; (2) the right to organize and bargain collectively; (3) freedom from compulsory labour; (4) a minimum age for the employment of children; (5) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.

Source: Office of the United States Trade Representative, Executive Office of the President, 2013, U.S. Generalized System of Preferences Guidebook, Washington, D.C.

Table 2. List of GSP-eligible beneficiaries

1. Beneficiary developing countries	
Afghanistan	Liberia
Albania	Madagascar
Algeria	Malawi
Angola	Maldives
Armenia	Mali
Azerbaijan	Mauritania
Belize	Mauritius
Benin	Mongolia
Bhutan	Montenegro
Bolivia (Plurinational State of)	Mozambique
Bosnia and Herzegovina	Namibia
Botswana	Nepal
Brazil	Niger
Burkina Faso	Nigeria
Burundi	Pakistan
Cambodia	Papua New Guinea
Cameroon	Paraguay
Cabo Verde	Philippines
Central African Republic	Republic of Moldova
Chad	Rwanda
Comoros	Saint Lucia
Congo	Saint Vincent and the Grenadines
Côte d'Ivoire	Samoa
Democratic Republic of the Congo	Sao Tome and Principe
Djibouti	Senegal
Dominica	Serbia
Ecuador	Seychelles
Egypt	Sierra Leone
Eritrea	Solomon Islands
Ethiopia	Somalia
Fiji	South Africa
Gabon	South Sudan
Gambia	Sri Lanka
Georgia	Suriname
Ghana	Swaziland
Grenada	Thailand
Guinea	The former Yugoslav Republic of Macedonia
Guinea-Bissau	Timor-Leste
Guyana	Togo
Haiti*	Tonga
India	Tunisia
Indonesia	Turkey
Iraq	Tuvalu

1. Beneficiary developing countries (continued)	
Jamaica	Ukraine
Jordan	United Republic of Tanzania
Kazakhstan	Uruguay
Kenya	Uzbekistan
Kiribati	Vanuatu
Kosovo	Venezuela, Bolivarian Republic of
Kyrgyzstan	Yemen
Lebanon	Zambia
Lesotho	Zimbabwe
Uganda	
2. Non-independent countries and territories	
Anguilla	Norfolk Island
British Indian Ocean Territory	Pitcairn Islands
British Virgin Islands	Saint Helena
Cocos (Keeling) Islands	Territory of Christmas Island
Cook Islands	Tokelau
Falkland Islands (Malvinas)	Wallis and Futuna
Heard Island and McDonald Islands	West Bank and Gaza
Montserrat	Western Sahara
Niue	
3. LDBDCs	
Afghanistan	Malawi
Angola	Mali
Benin	Mauritania
Bhutan	Mozambique
Burkina Faso	Nepal
Burundi	Niger
Cambodia	Rwanda
Cabo Verde	Samoa
Central African Republic	Sao Tome and Principe
Chad	Senegal
Comoros	Sierra Leone
Democratic Republic of the Congo	Solomon Islands
Djibouti	Somalia
Ethiopia	South Sudan
Gambia	Timor-Leste
Guinea	Togo
Guinea-Bissau	Tuvalu
Haiti	Uganda
Kiribati	United Republic of Tanzania
Lesotho	Vanuatu
Liberia	Yemen
Madagascar	Zambia

Source: Harmonized Tariff Schedule of the United States, 2015, general notes page 11 and 13.

* The Hemispheric Opportunity through Partnership Encouragement Act and the Haiti Economic Lift Program, which provide trade benefits for apparel and other products imported from Haiti, have been extended until 30 September 2025.

B. Product eligibility

Articles eligible for duty-free treatment are defined at the eight-digit level of the Harmonized Tariff Schedule of the United States (HTSUS). The products eligible for GSP treatment include most dutiable manufactures and semi-manufactures, as well as selected agricultural, fishery and primary industrial products that are not otherwise duty-free. The lists of eligible products are reviewed and revised annually by the GSP Subcommittee.

To determine whether a product is GSP-eligible, knowledge of how to read the HTSUS is required. Table 2 reproduces part of a page from the United States schedule, together with an explanation of its structure and codes. The principal distinction is between countries that receive NTR (previously referred to as most favoured nation) treatment, as specified in column 1, and those that are still subject to the high tariff rates in column 2. Column 1 is divided into "general" and "special" subcolumns, which set forth NTR rates and rates under special tariff treatment programmes, respectively. Products that are eligible for GSP treatment are identified by the letter A in the "special" subcolumn. This designation is further qualified in the case of products for which some GSP countries are denied duty-free treatment (A*), and products that are eligible for GSP treatment only when imported from LDCs (A+). Additionally, products that are eligible under the AGOA are indicated by the letter D (as discussed in section VII). The column 2 tariffs applied to many communist countries during the cold war. Today, only two countries remain subject to these rates – Cuba and the Democratic People's Republic of Korea.

Certain articles are prohibited from receiving GSP treatment to shield United States manufacturers and workers from potential adverse impacts. These include certain agricultural goods, most electronics, flat goods, footwear, glass products, handbags, luggage, steel products, most textiles, watches and work gloves. In addition, any other article determined to be "import-sensitive" cannot be made eligible; in this regard, the GSP law specifically cites electronic, glass and steel articles. Beyond these restrictions, the GSP Subcommittee is generally authorized to designate products for GSP treatment.

How to read the HTSUS (an example is given in table 3):

- The numbers and nomenclature (product descriptions) used in the HTSUS are identical to those used by all countries that adhere to the Harmonized Tariff System;
- The eight-digit tariff item number identifies the product; it is at this level of specificity that tariff rates are determined;
- The two-digit statistical suffix further distinguishes products for reporting purposes, but has no effect on the tariff rate;
- The unit of quantity indicates whether the item is counted by weight, volume or number; this helps to determine the tariff when rates are expressed in specific terms (for example, the cents per kilogram for most products shown in table 3) rather than ad valorem terms (for example, the 20 per cent for HTSUS item 0703.90.00);
- Column 1 applies to countries that receive NTR treatment; it is subdivided into non-preferential ("general") and preferential ("special") columns;
- Letters in the "special" column indicate whether the product is eligible for duty-free or reduced-duty treatment under various preferential trade agreements or programmes:

  A = GSP
  A* = GSP (certain countries are not eligible)
  A+ = GSP (only LDCs)
  CA = Canada (NAFTA)
  E = Caribbean Basin Economic Recovery Act
  IL = United States–Israel Free Trade Area
  J = Andean Trade Preferences Act
  MX = Mexico (NAFTA)
  D = AGOA
  JO = United States–Jordan Free Trade Area Implementation Act

- Column 2 applies to two countries that do not receive NTR treatment;

- Example: HTSUS item 0703.10.20 would face a tariff of 0.83 cents per kilogram if imported from a country that receives NTR treatment, or 5.5 cents per kilogram from a country that does not; it can be imported duty-free under the GSP, but the asterisk indicates that one or more countries are excluded;
- Example: HTSUS item 0703.10.40 can be imported duty-free from any GSP beneficiary country.

C. Rules of origin

Eligible goods under the GSP regime must still meet some rules of origin requirements to qualify for duty-free treatment. One such requirement is that an article must be shipped directly from the beneficiary developing country to the United States without passing through the territory of any other country, or, if shipped through the territory of another country, the merchandise must not have entered the commerce of that country en route to the United States. In all cases, the invoices must show the United States as the final destination.

The rules further provide that the sum of the cost or value of materials produced in the beneficiary developing country plus the direct costs of processing in the country must equal at least 35 per cent of the appraised value of the article at the time of entry into the United States. Imported materials can be counted towards the 35 per cent value added requirement only if they are “substantially transformed“ into new and different constituent materials of which the eligible article is composed. Where articles are imported from GSP-eligible regional associations, member countries of the association will be accorded duty-free entry if they together account for at least 35 per cent of the appraised value of the article, the same as for a single country. The United States Customs and Border Protection is charged with determining whether an article meets the GSP rules of origin.

There are currently six associations that may benefit from this provision: the Andean Group, the Association of Southeast Asian Nations excluding Brunei Darussalam and Singapore, the Caribbean Common Market, the Southern Africa Development Community, the South Asian Association for Regional Cooperation and the West African Economic and Monetary Union. The status of countries and territories under this regional-cumulation rule is summarized in box 2.

Table 3. An example of the Harmonized Tariff Schedule of the United States, 2002

Heading/ subheading	Rates of duty	Article description	Unit of quantity	Rates of duty		
				1		2
				General	Special	
0703		Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled				
0703.10		Onions and shallots				
0703.10.20	00	Onion sets	kg	0.83¢/kg	Free (A*, CA, E, IL, J, JO, MX)	5.5¢/kg
0703.10.30	00	Other: Pearl onions not over 16 mm in diameter	kg	0.96¢/kg	Free (A, CA, E, IL, J, JO, MX)	5.5¢/kg
0703.10.40	00	Other	kg	3.1¢/kg	Free (A, CA, E, IL, J, JO) See 9906.07.11-9906.07.13 (MX)	5.5¢/kg
0703.20.00		Garlic fresh whole bulbs		0.43¢/kg	Free (A*, CA, E, IL, J, JO, MX)	3.3¢/kg
	10	fresh whole peeled cloves	kg			
	20	Other	kg			
	90		kg			
0703.90.00	00	Leeks and other alliaceous vegetables	kg	20%	Free (A+, CA, D, E, IL, J, MX) 12% (JO)	50%

Box 2. Associations of countries (treated as one country for GSP rule-of-origin requirements)

Member countries of the Cartagena Agreement (Andean Group)

Bolivia (Plurinational State of)
Ecuador
Venezuela (Bolivarian Republic of)

Member countries of the West African Economic and Monetary Union

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

Qualifying member countries of the Association of Southeast Asian Nations

Cambodia
Indonesia
Philippines
Thailand

Qualifying member countries of the South Asian Association for Regional Cooperation

Afghanistan
Bangladesh
Bhutan
India
Maldives
Nepal
Pakistan
Sri Lanka

Qualifying member countries of the Southern Africa Development Community

Botswana
Mauritius
United Republic of Tanzania

Qualifying member countries/territories of the Caribbean Common Market

Belize
Dominica
Grenada
Guyana
Jamaica
Montserrat
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines

Source: General Note 4 of the Harmonized Tariff Schedule of the United States.

In most cases, the merchandise will be appraised at the transaction value. This is the price actually paid or payable for the merchandise when sold for export to the United States, plus the following items if not already included in the price: (a) the packing costs incurred by the buyer; (b) any selling commission incurred by the buyer; (c) the value of any assistance provided to the producer free of charge by the buyer; (d) any royalty or licence fee that the buyer is required to pay as a condition of the sale; (e) the proceeds, accruing to the seller, of any subsequent resale, disposal or use of the imported merchandise. As a general rule, shipping and other costs related to the transport of the GSP articles from the port of export to the United States are included neither in the value of the article nor in the value-added calculation.

It should be noted that the United States programme does not require that GSP imports be accompanied by extensive documentation. It used to be the case that importers had to file a special “form A“ to obtain GSP treatment, but that requirement was eliminated several years ago. Today, an importer requests GSP treatment simply by placing the prefix “A“ before the HTSUS tariff number on the entry documentation. The only additional documentary requirements (other than those mentioned above for transactions within a free zone) pertain to certified handicraft textile products eligible for GSP duty-free treatment. A triangular seal certifying their authenticity and placed on the commercial invoice is required for entry.

III

COMPETITIVE NEED LIMITATIONS

The principal restriction under the United States programme, apart from the non-eligibility of certain categories of products, are CNLs. The CNLs are intended to prevent the extension of preferential treatment to countries that are already competitive in the production of an item. This section describes the general rules and principles of CNLs, but readers are also urged to examine appendix 4 (USTR rules on the GSP in the Code of Federal Regulations). Note also that appendix 7 offers a case study in the operation of the CNLs, examining the experience of ceramic roofing tiles imported from the Bolivarian Republic of Venezuela.

The CNLs set a ceiling on GSP benefits for each product and country and are triggered by the trade data that the GSP Subcommittee reviews on an annual basis. By statute, CNLs do not apply to LDBDCs and beneficiaries of the AGOA. Aside from these exceptions, a country will automatically lose its GSP eligibility for a given product (that is, an eight-digit item in the HTSUS) the year after the CNLs are exceeded. Since 1985 there have been two CNLs in place: the original "upper" CNL and a new "lower" limit. The "upper" CNL remains the more common and applies to the great majority of products and countries. It is triggered on a product if, during any calendar year, United States imports from a country account for half or more of the value of total United States imports of that product or exceed a certain dollar value that is adjusted annually. The figure was originally set at $25 million in 1975 and had risen to $95 million by 2000. It increased by an additional $5 million in each subsequent year ($100 million in 2001, $105 million in 2002). In 2009 it was $140 million, and, most recently, in 2015 the figure has been set to $170 million. Products that have been found by the GSP Subcommittee to be "sufficiently competitive" when imported from a specified beneficiary are subject to the "lower" CNL. For these products the trigger is 25 per cent, or a dollar value set at approximately 40 per cent of the "upper" CNL level. Modifications to the GSP resulting from the application of the CNL take effect on 1 July of the next calendar year.

If the value of imports of an eligible product from a beneficiary country reaches or exceeds the CNLs, they will automatically terminate before 1 July of the following calendar year, unless those products and beneficiaries are granted CNL waivers before then.

Waiving of CNLs is possible under three circumstances. One is by obtaining a de minimis waiver, which is a temporary (one year) exception available only to products that the United States imports in relatively small quantities (see section A). The second option is to obtain a petitioned waiver of the CNLs for a specific product. This second option provides much greater protection than a de minimis waiver and is correspondingly more difficult to obtain. Unlike a de minimis request, a petitioned waiver requires a very substantial amount of information and is subject to a lengthy and difficult review. The third means of obtaining a waiver is the statutory 504(d) waiver, which is reserved for certain GSP-eligible articles not produced in the United States on 1 January 1995.

Note that all CNLs are automatically waived for GSP beneficiaries that are designated as LDBDCs (appendix 1).

A. De minimis waivers of the CNLs

The GSP Subcommittee can waive application of the CNLs for any product that is imported at a de minimis level. De minimis waivers are considered if the total United States imports from all countries of a given product is small, or "de minimis". Like the dollar-value CNL, the de minimis level is adjusted each year in increments of $500,000. Thus, in 2014 the amount was $22 million, and in 2015 $22.5 million. The GSP Subcommittee accepts public comments that either support or oppose the granting of waivers. The Subcommittee is more likely to recommend granting a waiver when it receives one or more detailed comments in support of it (for example, from an embassy or a foreign exporter) and does not receive any comments opposing it (for example, from a United States producer). Ultimately, the decision lies with the discretion of the President.

It should be stressed that these waivers are temporary and are granted only on a year-by-year basis.

The schedule for the de minimis waivers and redesignations is summarized in table 4.

B. Petitioned waivers of competitive need limitations

As amended in 1984, the Trade and Tariff Act also allows interested parties to petition for a CNL waiver for a product. This means submitting a request to the GSP Subcommittee during the annual review of the GSP to the

Table 4. Typical annual schedule for de minimis decisions

Late January or early to mid-February	A “warning list“ is published by the USTR in the Federal Register, identifying products that (on the basis of the previous year’s January–October data) appear in danger of exceeding the CNLs. The list further identifies those products that appear to be eligible for de minimis waivers or redesignation (pending the availability of full-year data).
Mid-March	Deadline for comments on de minimis waivers and petitions for redesignation, based on the USTR “warning list“.
Late spring or early summer	President’s decisions on CNL exclusions, de minimis waivers and redesignations are announced. These decisions are based on full-year data and hence may differ from what the 10-month “warning list“ had suggested. (This step used to be taken much earlier, but in recent years the deadline has been moved closer to the time that the changes take effect.)
1 July	Changes in the GSP status take effect.

effect that a country may be permitted to export unlimited amounts of a product duty-free to the United States. If granted, both the percentage and the dollar limit are waived.

Petitions for CNL waivers are considered by the GSP Subcommittee in annual reviews. The timing of these reviews is summarized in table 5. In addition to considering CNL-waiver petitions, the reviews cover “country practices“ petitions (as discussed in section VII). The results of annual reviews are announced and implemented at the same time as the de minimis waivers discussed in the preceding section.

Petitions for the waiver of CNLs must conform to the GSP Model Petition prepared by the USTR. The model format is reproduced in appendix 6 of this report. Given the complexity of the process and the details that are required for such petitions, many interested parties have found that it is useful to secure the services of Washington-based consultants or lawyers who are experienced in the preparation of CNL-waiver petitions.

There are no absolute rules dictating the outcome of the GSP Subcommittee’s deliberations. Like the de minimis waiver, the ultimate decision lies with the President. In deciding whether to grant a CNL waiver, the President (as advised by the Subcommittee) must (a) receive advice from the USITC as to whether a domestic industry would be adversely affected; (b) find that a waiver “is in the national economic interest of the United States”; (c) publish the decision in the Federal Register. The law further specifies that the President “shall give great weight to“ whether the country is providing reasonable and equitable access to its market for United States goods and services and the extent to which it is providing reasonable and effective protection to United States intellectual property rights. The law imposes limits on the value of CNL waivers that can be granted globally or to a specific country. While the law guides and limits what the GSP Subcommittee can do, its members do in fact have fairly wide discretion. Experience shows that, in general, a petitioner is more likely to be successful if it can offer a well-reasoned and factual argument that granting a CNL waiver will work to the benefit of both the developing country exporter and consumers in the United States, without causing harm to United States producers. Conversely, it can be very difficult to obtain a CNL waiver if the initiative is actively opposed by a domestic United States producer. The process outlined in table 5 gives those producers multiple opportunities to express any objections they might have.

In 2006, the United States Congress passed amendments to the GSP law which significantly constrain the President‘s discretionary authority in an effort to limit duty-free access for so-called “super competitive“ products. If imports of a given product from a specific country exceed 15 per cent of the aggregate appraised value of total imports into the United States of that product in the preceding calendar year, and if the country (a) had a per capita gross domestic product of at least $5,000 according to the World Bank; or (b) had exported the equivalent of products under GSP that comprised more than 10 per cent of the value of all GSP imports, the President cannot grant the waiver. With regards to revoking CNL waivers, the amendments direct the President to revoke waivers that have been in effect for at least five years, if either (a) the exports of a GSP-eligible product from a given country exceed 150 per cent of the specified dollar amount in the CNL provision; or (b) the imports of such product exceed 75 per cent of the appraised value of the total imports of that product in a calendar year.

Table 5. Typical annual schedule for GSP petitions

Mid-April, year 1	Approximate time for the USTR to publish a notice in the Federal Register, announcing the schedule for and requesting the submission of petitions in the annual GSP review.
Mid-June, year 1	Likely deadline for the submission of petitions in the annual GSP review.
Late summer or early autumn, year 1	GSP Subcommittee of the Trade Policy Staff Committee announces which of the petitions submitted to the annual review have been accepted for consideration, and the schedule for the investigation.
Winter, year 1	Deadline for the submission of pre-hearing briefs to the USITC.
Autumn or Winter, year 1	Deadline for the submission of pre-hearing briefs to the GSP Subcommittee (or alternatively the submission of written statements in lieu of a personal appearance).
Winter, year 1	USITC holds hearings in preparation for its advice to the GSP Subcommittee.
Winter, year 1	GSP Subcommittee holds hearings.
Winter, year 1	Deadline for the submission of written statements to the USITC, either in addition to or in lieu of a personal appearance at the hearings.
Mid-April, year 1	Approximate time for the USTR to publish a notice in the Federal Register, announcing the schedule for and requesting the submission of petitions to the annual GSP review.
Mid-June, year 1	Likely deadline for the submission of petitions in the annual GSP review.
Late summer or early autumn, year 1	GSP Subcommittee of the Trade Policy Staff Committee announces which of the petitions submitted to the annual review have been accepted for consideration, and the schedule for the investigation.
Winter, year 1	Deadline for the submission of pre-hearing briefs to the USITC.
Autumn or winter, year 1	Deadline for the submission of pre-hearing briefs to the GSP Subcommittee (or alternatively the submission of written statements in lieu of a personal appearance).
Winter, year 1	USITC holds hearings, in preparation for its advice to the GSP Subcommittee.
Winter, year 1	GSP Subcommittee holds hearings.
Winter, year 1	Deadline for the submission of written statements to the USITC, either in addition to or in lieu of a personal appearance at the hearings.
Autumn or winter, Year 1	Deadline for the submission of pre-hearing briefs to the GSP Subcommittee (or alternatively the submission of written statements in lieu of a personal appearance).
Winter, year 1	Deadline for the submission of post-hearing or rebuttal briefs to the GSP Subcommittee.
Winter, year 1	USITC issues its advice to the President.
Spring, year 2	Deadline for public comments on the USITC's advice to the President.
Late spring or early summer, year 2	President's decisions in the annual review to be announced. (This step used to be taken earlier, but in recent years the deadline has been moved much closer to the time that the changes take effect.)
1 July, year 2	Changes in the GSP take effect.

Source: Official communications from the U.S. GSP Program, USTR.

C. Redesignation

Redesignation of a product and country will be considered if United States imports of that article from the affected country fall below the CNLs in a subsequent year. As a practical matter, however, it is the policy of the GSP Subcommittee to redesignate a product only in conjunction with the granting of a CNL waive.

Table 6. Articles and countries granted waivers of CNLs, current as of 1 July 2013 *(extract – see source)*

HTSUS 8-digit	Product description	Country	Year of action
16043100*	Caviar	Russian Federation	1998
17011305*	Cane sugar, raw, specified in subheading 2 to chapter 17, in solid form, w/o added flavouring or colouring, subject to general note 15 of the HTS	Philippines	1989
17011310*	Cane sugar, raw, specified in subheading 2 and subject to additional note 5 to this chapter, in solid form, w/o added flavouring or colouring	Philippines	1989
17011320*	Cane sugar, raw, specified in subheading 2 to chapter 17, to be used for certain polyhydric alcohols	Philippines	1989
17011405*	Other cane sugar, raw, in solid form, w/o added flavouring or colouring, subject to gen. note 15 of the HTS	Philippines	1989
17011410*	Other cane sugar, raw, in solid form, w/o added flavouring or colouring, subject to add. US 5 to Ch.17	Philippines	1989
17011420*	Other cane sugar, raw, in solid form, to be used for certain polyhydric alcohols	Philippines	1989
20011000	Cucumbers including gherkins, prepared or preserved by vinegar or acetic acid	India	2008
20089915	Bananas, other than pulp, otherwise prepared or preserved	Philippines	1989
28499050	Carbides, not elsewhere specified or indicated (nesoi)	South Africa	1999
29091914	Methyl tertiary-butyl ether	Bolivarian Republic of Venezuela	1997
29157001	Palmitic acid, stearic acid, their salts and esters	Philippines	1989
29159010	Fatty acids of animal or vegetable origin, nesoi	Philippines	1989
29211960	Other acyclic monoamines and their derivatives	Philippines	2012
29333925	Herbicides nesoi, of heterocyclic compounds with nitrogen hetero-atom(s) only, containing an unfused pyridine ring	Brazil	1997
29334930	Pesticides of heterocyclic compounds with nitrogen hetero-atom(s) & a quinoline or isoquinoline ring-system	Brazil	1997
29337100	6-Hexanelactam (epsilon-Caprolactam)	Russian Federation	1998
29350032	Acetyl sulfisoxazole; sulfacetamide, sodium; and sulfamethazine, sodium	Croatia	1991
29350032	Acetyl sulfisoxazole; sulfacetamide, sodium; and sulfamethazine, sodium	Bosnia and Herzegovina	1991
29350032	Acetyl sulfisoxazole; sulfacetamide, sodium; and sulfamethazine, sodium	The former Yugoslav Republic of Macedonia	1991
33074100	"Agarbatti" and other odoriferous preparations which operate by burning, to perfume or deodorize rooms or used during religious rites	India	2012
38231920	Industrial monocarboxylic fatty acids or acid oils from refining derived from coconut, palm-kernel, or palm oil	Philippines	2005
40151910	Seamless gloves of vulcanized rubber other than hard rubber, other than surgical or medical gloves	Thailand	2012
41071940	Buffalo leather, wi/o hair on, parchment - dressed or prepared after tanning, o/than full grains & grain splits	Thailand	1997
41079940	Buffalo leather, w/o hair on, parchment - dressed or prepared after tanning, o/than full grains & grain splits	Thailand	1997
41139060	Leather of animals, nesi, without hair on, not including chamois, patent, patent laminated or metalized, fancy	South Africa	1997
42032120	Batting gloves, of leather or of composition leather	Indonesia	1997
44123140	Plywood sheets n/o 6 mm thick, with specified tropical wood outer ply, with face ply nesoi, not surface-covered beyond clear/transparent	Indonesia	2005
46021216	Baskets and bags of rattan or palm leaf other than wickerwork	Philippines	1989
46021918	Baskets and bags of vegetable material, nesoi	Philippines	1989
46021980	Basketwork and other articles, nesoi, of vegetables materials, nesoi	Philippines	1989
67029065	Artificial flowers/foliage/fruit & pts thereof; articles of artif. flowers, etc.; all the foregoing of materials o/than plast./feath./mmf	Thailand	1995

HTSUS 8-digit	Product description	Country	Year of action
69051000	Ceramic roofing tiles	Bolivarian Republic of Venezuela	1997
69051000	Ceramic roofing tiles	Bolivarian Republic of Venezuela	1997
71131120	Silver articles of jewellery and parts thereof, nesoi, valued not over $18 per dozen pieces or parts	Thailand	1995
71131929	Gold necklaces and neck chains (o/than of rope or mixed links)	Turkey	2003
72025000	Ferrosilicon chromium	Russian Federation	2000
72025000	Ferrosilicon chromium	Zimbabwe	1993
72029920	Calcium silicon ferroalloys	Brazil	2013
74130010	Stranded copper wire	Turkey	2009
74130050	Copper, cables, plaited bands and the like, not fitted with fittings and not made up into articles	Turkey	2008
74181000*	Copper & copper alloy table, kitchen, household articles & parts; scouring & polishing pads, gloves	India	1999-74181910
74181000* 84022000	Copper & copper alloy table, kitchen, household articles & parts Scouring & polishing pads, gloves; Super-heated water boilers	India Philippines	2001-74181921
74181000* 84022000 84073418	Copper & copper alloy table, kitchen, household articles & parts Scouring & polishing pads, gloves Super-heated water boilers Spark-ignition reciprocating piston engines for vehicles of 8701.20 or 8702-8704, cylinder cap. over 1000 cc to 2000 cc, new	Brazil India Philippines	2003-74181951
84073448	Spark-ignition reciprocating piston engines for vehicles of 8701.20 or 8702-8704, cylinder capacity over 2000 cc, new	Brazil	1994
84099130	Aluminium cylinder heads for spark- ignition internal combustion piston engines for vehicles of 8701.20 or 8702-8704	Brazil	1994
84145130	Ceiling fans for permanent installation, with a self-contained electric motor of an output not exceeding 125 W	Thailand	2003
84159080	Parts for air conditioning machines, nesi	Thailand	2012
84433920	Electrostatic photocopying apparatus, operating by reproducing the original image via an intermediate onto the copy (indirect process)	Thailand	2005
84831030	Camshafts and crankshafts nesi	Brazil	1999
85258050	Still image video cameras (other than digital) and other video camera recorders	Indonesia	2004
85272110	Radio-tape player combinations not operable without external power source, for motor vehicles	Brazil	1997
85279140	Radiobroadcast receiver combinations incorporating tape players, nesi	Indonesia	1997
85279915	Radiobroadcast receivers not combined with sound recording apparatus or clock	Indonesia	1999
85279940	Reception apparatus for radiotelegraphy, radiotelephony, radio broadcasting, nesoi	Philippines	1997
85287228	Non-high definition colour television reception app., non-projection, w/CRT, video display diag. over 35.56 cm, incorporating a VCR or player	Thailand	2003
85299001	Printed circuit assemblies for television tuners	Indonesia	1994
85299029	Tuners for television apparatus, other than printed circuit assemblies	Indonesia	1994
85443000	Insulated ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships	Thailand	2003
90013000	Contact lenses	Indonesia	2005
90328960	Automatic regulating or controlling instruments and apparatus, nesi	Philippines	1997
94055020	Non-electrical incandescent lamps designed to be operated by propane or other gas, or by compressed air and kerosene or gasoline	India	2003
94055040	Non-electrical lamps and lighting fixtures nesoi, not of brass	India	2003
96131000	Cigarette lighters and similar lighters, gas fuelled, not refillable, for the pocket	Philippines	1989

Source: Office of the United States Trade Representative, Executive Office of the President, 2013, U.S. Generalized System of Preferences Guidebook, Washington, D.C.

* Indicates 2012 HTSUS nomenclature changes; prior HTSUS numbers listed with year of action.

IV

ELEMENTS OF RECIPROCITY IN THE UNITED STATES GENERALIZED SYSTEM OF PREFERENCES PROGRAMME

As originally devised, the GSP programme was supposed to be free from reciprocity. Industrialized countries were to extend these benefits to developing countries “with no strings attached“, but they did so in a non-contractual and autonomous fashion. This meant that it was within the legal right of the donor countries to reduce or terminate the benefits at any time. The operation of the GSP changed significantly with enactment of the Trade and Tariff Act of 1984, which expanded the number of criteria that beneficiary countries were required to meet and enhanced the USTR’s authority to enforce these eligibility requirements. The USTR used these provisions as a neo-reciprocal tool in a general review of the GSP in 1985–1987 and in subsequent annual reviews.

The original impetus for the transformation of the GSP was bargaining between Congress and the White House. The Trade Act of 1974 had authorized the programme for 10 years. When the Reagan administration asked that Congress renew the GSP in 1984, interest groups and legislators saw an opportunity to promote their aims. The Trade and Tariff Act of 1984 allowed United States trade officials to make each GSP beneficiary country’s continued eligibility, either on a country-wide or product-specific basis, conditional upon its meeting certain eligibility requirements. The law specifically provided that beneficiary countries could lose some or all of their GSP privileges if they did not protect intellectual property, respect labour rights, resolve investment disputes and meet other requirements. It also allowed the USTR to offer countries more secure benefits on some products if they cooperated with the United States. Furthermore, the law and regulations of the GSP require that, when considering CNL-waiver petitions, the GSP Subcommittee attach “great weight“ to the extent to which a country is providing reasonable and equitable access to its market for United States goods and services, and the extent to which it is providing reasonable and effective protection to United States intellectual property rights.

The 1985–1987 general review allowed groups to lodge complaints regarding “country practices“, including trade issues such as alleged restrictions on market access or failure to protect intellectual property rights. The issues raised in these petitions were discussed in the consultations that United States trade officials conducted in 1986. Although these consultations were not identified as “GSP negotiations,“ so as not to violate the non-reciprocal nature of the programme, they constituted negotiations for all practical purposes. The general review afforded United States negotiators an opportunity to raise issues with their counterparts in several countries, with the results of these consultations leading to continued GSP privileges for some countries and reduced preferences for others.

The reciprocal elements of the United States programme have also been encouraged by a key change in the rules of the global trade regime. While the Uruguay Round produced very significant gains for the United States in the form of agreements on each of the “new issues“ (that is, services, investment and intellectual property rights), the revised dispute-settlement rules make it far more difficult for the United States to pursue its interests through unilateral action. Nevertheless, there remain some loopholes in the system. It would generally be a violation of WTO regulations for the United States to retaliate against a WTO member country without first obtaining authorization from the WTO Dispute Settlement Body; however, that general rule does not apply if the retaliatory action does not itself violate the WTO rights of the target country. In this respect, it is highly important to note that the preferences extended under the GSP are privileges rather than enforceable rights. Under the terms of the 1979 Enabling Clause (which “legalized“ the GSP within the GATT regime), the beneficiary countries have no right to the preferences granted under these initiatives. This is true for cases involving established trade issues such as intellectual property rights, as well as new issues such as labour rights.

The workers’ rights issue has been the single most frequently raised issue in country practices petitions. Following a precedent set in 1983 by the Caribbean Basin Initiative legislation, which made trade privileges conditional, among other things, upon a country’s labour practices, the 1984 Trade and Tariff Act amended the GSP by adding a nearly identical provision. Under the amended law, a GSP beneficiary country can lose its eligibility “if such country has not taken or is not taking steps to afford internationally recognized workers rights to workers in the country”. The law defined these rights to include:

(a) The right of association;
(b) The right to organize and bargain collectively;

(c) A prohibition on any form of forced or compulsory labour;

(d) A minimum age for the employment of children;

(e) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The workers' rights issue has been frequently raised. For instance, it accounted for 121 of the 192 "country practices" petitions that were filed with the USTR during 1985–1999. The investigations that followed these petitions led to commitments from some countries to improve their observance of labour rights, while others lost their GSP benefits either through temporary suspension (the Central African Republic, Chile, Maldives, Mauritania, Myanmar, Paraguay, the Sudan and the Syrian Arab Republic) or permanent termination (Liberia and Nicaragua). One special case is Romania, where benefits were "permanently" terminated in 1987 but were then redesignated in 1994.

Violations of intellectual property rights are the second most common source of complaints in country practices petitions. For example, in 1997 Argentina lost half of its GSP benefits in an intellectual property rights dispute. The decision was not made as part of a GSP annual review, but was instead a consequence of the "Special 301" intellectual property rights law. This statute requires that the USTR conduct annual reviews of trading partners' intellectual property rights regimes, and can lead to the imposition of sanctions such as penalty tariffs. In this instance, the USTR determined that the new Argentine patent law was not consistent with the Uruguay Round Agreement on Trade-related Aspects of Intellectual Property Rights and decided to impose sanctions via the GSP law. As for other countries, the USTR annual Special 301 report highlighted India for the twenty-fourth consecutive year for its questionable intellectual property rights policies, ultimately jeopardizing trade benefits from the United States. It has reached the point where the United States has sought to establish a secretary-level group to address this tension.

V

DURATION AND STABILITY OF THE UNITED STATES GENERALIZED SYSTEM OF PREFERENCES PROGRAMME

The Trade Act of 1974 authorized the programme for a 10-year period. The 1984 Trade and Tariff Act provided for reauthorization of the programme until 4 July 1993, and since this latter date the survival of the GSP has been tenuous. The programme lapsed for a period of several days in 1993, until Congress approved a 14-month renewal (applied retroactively to the date of expiration). The programme then expired once again on 30 September 1994, with Congress retroactively renewing it that December. This renewal expired on 31 July 1995. Congress renewed the GSP on 20 August 1996, only to let it expire once more on 31 May 1997. The August 1997 renewal lasted until 31 May 1999. Another renewal was enacted in December 1999 and lasted until the end of September 2001. The Trade Act of 2002 reauthorized the GSP until December 2006. In 2006, the programme was renewed for two years until 31 December 2008, and further extended in 2008 until 31 December 2009. The GSP was temporarily suspended on 31 December 2010, despite a Congress that was in session, and it was not until 21 October 2011 when it was retroactively reinstated, resulting in compensations for the additional expenditures of United States importers. That cycle of the GSP expired on 31 July 2013. On 29 June 2015, the President signed the Trade Preferences Extension Act 2015, which authorized GSP until 31 December 2017 and made it retroactive to 31 July 2013.

The principal reason for the brevity of these GSP reauthorizations is that the programme is no longer free of cost from a budgetary standpoint. The United States adopted new budget rules in 1990 that required a “pay-as-you-go“ (PAYgo) approach to any measures that affect the budget. Under the PAYgo rules, any bill that provides for an increase in government expenditures or (as is the case with tariff cuts) a decrease in government revenues must include offsetting measures. The PAYgo principle thus required that the NAFTA and the Uruguay Round implementing bills include new taxes, fees, spending cuts or other measures to offset the effect of the forgone tariffs, and these same rules also apply to the GSP. These provisions have created a new political complication for the GSP. For every year that the GSP is renewed, legislators must approve hundreds of millions of dollars in spending cuts or tax increases. Proposals to liberalize imports from developing countries are already quite unpopular in many circles, and they do not become more politically attractive to legislators when they are associated with new taxes or spending cuts.

VI

HOW COUNTRIES CAN MAKE THE MOST OF THE GENERALIZED SYSTEM OF PREFERENCES

The preceding analysis emphasized the point that there are several restrictions built into the United States GSP programme. Beneficiary countries can nevertheless take steps to ensure that they maximize the available benefits under the programme. Four specific suggestions follow.

A. Ensure that Generalized System of Preferences-eligible products take advantage of the programme

The first and simplest step is to ensure that GSP-eligible products are in fact taking advantage of the programme. Firms and Governments should take the following steps for all products of interest to them:

(a) Determine what the HTSUS number is for a product and whether that product is eligible for the GSP;

(b) Ascertain whether the United States imports of that product are actually entering under the GSP. This can be done by examining the most recent trade data reported in the database of the USITC, accessible on the Internet at http://dataweb.usitc.gov/;

(c) If the data show that significant shares of the country's exports of a GSP-eligible product are not entering under the GSP, the firm or Government should determine why the duty-free privileges are not being claimed.

It may be that the country's producers do not meet the requirements of the GSP rules of origin, in which case it may be advisable to determine whether it is economically rational to change production processes (for example, sourcing of components) to meet those requirements of rules of origin. If the latter are already being met, the GSP privileges should be claimed.

B. Seek competitive-need-limitation waivers when appropriate

Countries should seek to avoid the loss of GSP benefits by reason of the CNLs. As a general rule, a GSP beneficiary country will do well to bear in mind the following:

(a) Always submit comments in support of de minimis waivers for any products that are included in the USTR's annual "warning list";

(b) All of the products identified in the warning list should also be considered as candidates for CNL-waiver petitions later that same year;

(c) Products that are eligible for redesignation to the GSP should also be considered as candidates for CNL-waiver petitions, especially those for which current imports are near (but below) either the dollar value or the percentage CNL;

(d) Examine all available information, including recent trade data (as reported on the aforementioned USITC website) and any known plans for the expansion of production and exports, to determine whether CNL waivers should be sought for any other GSP-eligible products.

The logic behind point (b) is simple: any product that needs a de minimis waiver in one year is in danger of losing its GSP benefits permanently in a future year. That could easily happen if the total United States imports of that product (that is, from the specific country and all other sources) are growing. Even if there is little or no change in the amount that the country itself ships to the United States, it will not be possible to obtain such a waiver in the future if total United States imports exceed the de minimis level. These points can best be illustrated by considering a specific example – ceramic roofing tiles (HTSUS item 6905.10.00) imported from the Bolivarian Republic of Venezuela – which demonstrates the potential costs of not seeking a permanent CNL waiver (appendix 7).

C. Defend against petitions to restrict or remove products

Countries should also be aware that the annual petition process offers opportunities for firms and interest groups that seek to restrict import competition in the United States market. Even if the firms and Governments of beneficiary countries do not file petitions of their own, they should examine the petitions that are filed each year to determine whether any of them would reduce or remove their own benefits under the GSP. If necessary, they should be prepared to oppose these petitions by participating in the annual reviews.

D. Consider seeking the designation of new products

The GSP Subcommittee can add new products to the list of GSP-eligible items, provided that the goods in question are not explicitly prevented from obtaining GSP treatment. It is worthwhile for a country or firm to consider petitioning for the GSP designation of any product that meets the following criteria:

(a) The product is subject to duty on an NTR basis and the tariff is high enough to matter (for example, at least 1 per cent);

(b) The item has not yet been designated for the GSP;

(c) The country is (among the GSP beneficiaries) one of the principal suppliers of this product to the United States and/or has plans to expand its production and exportation of this item;

(d) The item is not among those goods that are ineligible for the GSP by statute (that is, the law specifically provides that certain goods such as textiles, steel products and oil cannot be designated for the GSP under 19 USC 2463).

As in the case of CNL-waiver petitions, countries should be aware that the GSP Subcommittee requires substantial information in support of such a request. In addition to examining closely the GSP Model Petition (appendix 6), firms and Governments should consider the option of retaining the services of Washington-based consultants or law firms that are experienced in the preparation of such petitions.

VII

AFRICAN GROWTH AND OPPORTUNITY ACT

The AGOA is the most recent United States initiative authorizing a new trade and investment policy towards Africa. It is a non-reciprocal trade preference programme that specifically provides a meaningful opportunity for eligible sub-Saharan African countries to develop. Congress first authorized the AGOA in 2000 and since then it has been amended six times and renewed until 30 September 2025.

Under title I-B of the Act, beneficiary countries in sub-Saharan Africa that will be designated by the President as eligible for the AGOA benefits will be granted what could be called a “super GSP“. While the current GSP programme contains several limitations in terms of product coverage, the AGOA surpasses the benefits of the GSP programme by providing duty-free treatment for a wider range of products. These include, upon fulfilment of specific origin and visa requirements, certain textile and apparel articles that were previously considered import-sensitive and thus statutorily excluded from the programme. Beyond just duty-free preferences, the AGOA also includes trade and development provisions.

The AGOA has a country category “lesser developed beneficiary countries” (LDBC) used under the Special Rule provisions for apparel products. These countries are defined as having a per capita gross national product of $1,500 or less in 1998, as measured by the World Bank. However, countries must also meet the general AGOA eligibility requirements and the requirements for apparel benefits to qualify for the Special Rule. Table 7 indicates the Special Rule status in the column Special Rule for apparel.

The Trade Act of 2002 amended apparel and textile provisions under the original AGOA. It modified certain provisions of the AGOA by extending preferential treatment to knit-to-shape articles, increasing the cap on apparel imports, granting LDBC status to Botswana and Namibia, and revising the technical definition of merino wool. Furthermore, it clarified the origin of yarns under the Special Rule for designated LDBCs and made eligible for preferences “hybrid“ apparel articles (that is, involving cutting occurring both in the United States and in AGOA countries that does not render the fabric ineligible).

The “AGOA-enhanced“ GSP benefits were initially in place for a period of eight years until 30 September 2008, providing additional security for investors and traders in qualifying African countries. This was subsequently amended by the AGOA Acceleration Act of 2004, which extended the expiration date from 2008 to 30 September 2015. This element of security is further strengthened by the decision by the Office of the USTR responsible for GSP matters not to carry out the usual annual reviews of product coverage for AGOA products.

Since the AGOA Accelaration Act provided for a series of preconditions and requires positive actions on the part of the 48 potential beneficiary sub-Saharan African countries, the actual utilization of the trade benefits depended on the capacity at institutional level to satisfy those preconditions and undertake the requested actions. The larger sub-Saharan African countries may have been better equipped to qualify as AGOA beneficiaries than other LDCs in the region.

Qualifying articles include (a) apparel assembled in one or more AGOA beneficiary countries from United States yarns and fabrics; (b) apparel made of sub-Saharan African (regional) yarns and fabrics until 2015, subject to a cap; (c) apparel made in a designated LDC of third-country yarns and fabrics, subject to a cap until 2015; (d) apparel made of yarns and fabrics not produced in commercial quantities in the United States; (e) textile or textile articles produced entirely in one LDBC from sub-Saharan Africa; (f) certain cashmere and merino wool sweaters; (g) eligible hand-loomed, handmade or folklore articles, and ethnic printed fabrics.

In December 2006, the Africa Investment Incentive Act (“AGOA IV”) was introduced and amended portions of the AGOA. On July 2015, the AGOA was extended until 30 September 2025.

The following paragraphs provide a detailed overview of the provisions of the AGOA.

A. Country eligibility

Any AGOA beneficiary country must be eligible under the normal GSP programme. Additionally, there are two steps that sub-Saharan African countries must pass to be considered AGOA eligible. First, the country must be enumerated in the statute itself (19 USC 3706). This list is updated periodically via new legislation. Second, the President is authorized to designate a sub-Saharan African country if the country has made or is making progress in all of the following respects, according to section 104 of the AGOA statute (19 USC 3703); thus, the country must have established, or be in the process of establishing:

(a) A market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes Government interference in the economy;

(b) The rule of law, political pluralism and the right to due process, a fair trial and equal protection under the law;

(c) The elimination of barriers to United States trade and investment, including by:

(d) The provision of national treatment;

(e) The protection of intellectual property rights;

(f) The resolution of bilateral trade and investment disputes;

(g) Economic policies to reduce poverty, increase the availability of health care and educational opportunities;

(h) A system to combat corruption and bribery;

(i) Protection of internationally recognized worker rights.

In addition, the country must not engage in activities that undermine United States national security or foreign policy interests or gross violations of internationally recognized human rights.

If an eligible country does not continue to make progress in complying with the above requirements of AGOA country eligibility, the President shall terminate the designation of the country.

As of December 2015, the President has designated 43 countries out of 50 to be eligible for AGOA benefits (appendix 1).

B. Product eligibility

The AGOA authorizes the President of the United States to provide duty-free treatment for selected products from designated sub-Saharan African countries if, after receiving advice from the USITC, he determines that the products are not “import-sensitive“ in the context of imports from those countries.

The AGOA adds 1,835 products to the regular GSP products (approximately 4,650). All AGOA-designated countries are granted duty-free treatment on all products currently eligible under the GSP programme, including those on which, so far, only LDBDCs have been enjoying GSP treatment. Products designated by the AGOA that were previously statutorily excluded by the GSP programme even for the LDBDCs include electronic articles, flat goods, footwear, handbags, leather wearing apparel, luggage, semi-manufactured and manufactured glass products, steel articles, watches and work gloves.

Furthermore, the AGOA eliminates the GSP CNLs.

C. Rules of origin

An AGOA article must meet the basic United States GSP origin and related rules to receive duty-free treatment (as discussed in section III.C, above). In the specific context of AGOA, application of the basic GSP origin rules is subject to the following two additional rules:

(a) The cost or value of materials produced in the customs territory of the United States may be counted towards the 35 per cent requirement up to a maximum amount not to exceed 15 per cent of the article’s appraised value;

(b) Any amount of production in one or more beneficiary sub-Saharan African countries may be counted towards the 35 per cent requirement (cumulation among AGOA-designated countries).

D. Provisions on textile/apparel articles

1. Country eligibility

Preferential tariff treatment is provided by the AGOA for imports of certain textile and apparel products from designated sub-Saharan African countries, provided that these countries (a) have adopted an effective visa system and related procedures to prevent illegal trans-shipment and the use of counterfeit documents; (b) have implemented and follow, or are making substantial progress towards implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products. These determinations are made by the USTR. As of December 2014, 26 sub-Saharan African countries were eligible to receive AGOA textile and apparel benefits: Benin, Botswana, Burkina Faso, Cabo Verde, Cameroon, Chad, Côte d'Ivoire, Ethiopia, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Uganda, the United Republic of Tanzania and Zambia (table 7, column Special Rule for apparel). The Secretary of Commerce is tasked with monitoring apparel imports on a monthly basis. Should an import surge potentially threaten the United States apparel industry, the President has the authority to suspend duty-free treatment for those articles from the specific country.

These countries were designated by the USTR after demonstrating that they had an effective visa system in place to verify that apparel and textile goods are in fact produced in a beneficiary sub-Saharan African country in accordance with the required rules of origin. The United States Government has provided countries with guidance on the elements of an effective visa system. A Federal Register notice will be published by USTR when it designates a country(ies) as eligible for AGOA apparel/textile benefits.

In particular, in order to be declared eligible for textile/apparel provisions, sub-Saharan African countries are required to:

(a) Adopt an effective visa system, domestic law and enforcement procedure in order to prevent illegal trans-shipment and the use of counterfeit documents relating to the importation of the eligible apparel products into the United States;

(b) Enact legislation or issue regulations in order to permit the United States Customs Service to investigate thoroughly allegations of trans-shipment;

(c) Agree to report on the total exports and imports of covered articles in the country;

(d) Cooperate with the United States to prevent circumvention;

(e) Agree to require all producers and exporters of covered articles in the country to maintain complete records of the production and the export of covered articles, including materials used in the production, for at least two years after the production or export;

(g) Agree to provide documentation to the United States customs establishing the country of origin of covered articles. This includes the production record, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter. These records should be retained for five years.

Table 7. Countries eligible for AGOA benefits

Country	Date declared AGOA eligible	Date declared eligible for apparel provision	Special rule for apparel	Observations
Angola	30 December 2003			
Benin	2 October 2000	28 January 2004	Yes	
Botswana	2 October 2000	27 August 2001	Yes	

Country	Date declared AGOA eligible	Date declared eligible for apparel provision	Special rule for apparel	Observations
Burkina Faso	10 December 2004	4 August 2006	Yes	
Burundi	1 January 2006			
Cabo Verde	2 October 2000	28 August 2002	Yes	
Cameroon	2 October 2000	1 March 2002	Yes	
Chad	2 October 2000	26 April 2006	Yes	
Comoros	30 June 2008			
Congo	2 October 2000			
Côte d'Ivoire	25 October 2011	19 March 2013	Yes	
Democratic Republic of the Congo	31 December 2002			AGOA benefits were terminated on 1 January 2011, pursuant to Presidential Proclamation 8618 on 21 December 2010, for failing to make continual progress on meeting AGOA requirements.
Djibouti	2 October 2000			
Ethiopia	2 October 2000	2 August 2001	Yes	
Gabon	2 October 2000			
Gambia	31 December 2002	28 April 2008	Yes	AGOA benefits were terminated on 1 January 2015, pursuant to Presidential Proclamation 9223 on 23 December 2014, for failing to make continual progress on meeting AGOA requirements.
Ghana	2 October 2000	20 March 2002	Yes	
Guinea	2 October 2000	15 December 2014	Yes	
Guinea-Bissau	2 October 2000			AGOA benefits were terminated on 1 January 2013, pursuant to Presidential Proclamation 8921 on 20 December 2012, for failing to make continual progress on meeting AGOA requirements.
Kenya	2 October 2000	18 January 2001	Yes	
Lesotho	2 October 2000	23 April 2001	Yes	
Liberia	29 December 2006	7 February 2011	Yes	
Madagascar	26 June 2014	15 December 2014	Yes	
Malawi	2 October 2000	15 August 2001	Yes	
Mali	1 January 2014		Yes	AGOA benefits reinstated on 1 January 2014, with the exception of textile and apparel benefits, until Mali applies for its visa arrangement.
Mauritania	1 January 2010			
Mauritius	2 October 2000	18 January 2001	Yes	
Mozambique	2 October 2000	8 February 2002	Yes	
Namibia	2 October 2000	3 December 2001	Yes	
Niger	25 October 2011	17 December 2003	Yes	AGOA benefits reinstated on 25 October 2011, with the exception of textile and apparel benefits, until the Niger applies for its visa arrangement.
Nigeria	2 October 2000	14 July 2004	Yes	
Rwanda	2 October 2000	4 March 2003	Yes	
Sao Tome and Principe	2 October 2000			
Senegal	2 October 2000	23 April 2002	Yes	
Seychelles	2 October 2000			
Sierra Leone	23 October 2002	5 April 2004	Yes	

Country	Date declared AGOA eligible	Date declared eligible for apparel provision	Special rule for apparel	Observations
South Africa	2 October 2000	7 March 2001		
South Sudan				AGOA benefits were terminated on 1 January 2015, pursuant to Presidential Proclamation 9223 on 23 December 2014, for failing to make continual progress on meeting AGOA requirements.
Swaziland				AGOA benefits were terminated on 1 January 2015, pursuant to Presidential Proclamation 9145 on 26 June 2014, for failing to make continual progress on meeting AGOA requirements.
United Republic of Tanzania	2 October 2000	4 February 2002	Yes	
Togo	17 April 2008			
Uganda	2 October 2000	23 October 2001	Yes	
Zambia	2 October 2000	17 December 2001	Yes	

Source: Office of the United States Trade Representative, Executive Office of the President, 2013, U.S. Generalized System of Preferences Guidebook, Washington, D.C.

* Indicates 2012 HTSUS nomenclature changes; prior HTSUS numbers listed with year of action.

Visa requirements under the AGOA

On 18 January 2001, the USTR directed the Commissioner of Customs to require that importers provide an appropriate export visa from a designated beneficiary sub-Saharan African country when the country claims preferential treatment of textile and apparel products under the Act. Under this requirement:

- A shipment shall be approved by stamping an original circular visa in blue ink only on the front of the original commercial invoice;
- The original visa shall not be stamped on duplicate copies of the invoice;
- The original of the invoice with the original visa stamp shall be required to obtain preferential tariff treatment. Duplicates of the invoice and/or visa may not be used for this purpose;
- Each visa stamp shall include (a) the visa number, including the preferential groupings the apparels qualify for, a country code, and a numerical serial number identifying the shipment; (b) the date of visa issuance; (c) the signature of an authorized official of the beneficiary countries; (d) the quantity of goods being shipped.

A visa shall not be accepted and preferential tariff treatment shall not be permitted if the visa number, date of issuance, authorized signature, correct grouping, quantity or the unit of quantity is missing, incorrect or illegible, or has been crossed out or altered in any way.

If the visa is not acceptable, a new visa must be obtained from an authorized official of the eligible country, or a designate, before preferential tariff treatment can be claimed. Waivers are not permitted.

If the approved invoice is deemed invalid, the United States Customs Service will not return the original document after entry, but will provide a certified copy of it for use in obtaining a new correct original approved invoice.

2. Rules of origin and preferential groupings of textile/apparel articles

The African Growth and Opportunity Act provides duty-free and quota-free access for selected textile and apparel articles if they are imported from designated sub-Saharan African countries under the textile/apparel provision. The 35 per cent value added requirement for AGOA GSP treatment is not required for the textile/apparel provision. Apparel products eligible for benefits under the AGOA must fall within one of 9 specific preferential groupings and meet the related requirements. The Trade Act of 2002 modifies certain rules by making knit-to-shape articles eligible for duty-free and quota-free treatment in the preferential groupings.

Before each preferential grouping is examined in detail, it is important to note that groupings four and five are subject to the quantitative limitations called “cap“ given the fact that beneficiary countries are allowed to use regional or foreign fabrics or yarns. More details about “cap“ are given below.

The granting of preferential treatment depends on the origin of the fabric and yarn used.

This is the rule of origin under the AGOA for textile/apparel articles.

Grouping 1:

Apparel articles sewn or assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States: **Duty-free and quota-free treatment.**

Grouping 2:

Apparel articles sewn or assembled and further processed in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States: **Duty-free and quota-free treatment.**

Grouping 3:

Apparel articles sewn or assembled in one or more beneficiary sub-Saharan African countries with United States thread from fabrics wholly formed in the United States and cut in one or more sub-Saharan African countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both: **Duty-free and quota-free treatment.**

Grouping 4:

Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries: **Duty-free and quota-free treatment within cap.**

Grouping 5:

Under the Special Rule for LDBCs, duty-free access within cap is granted to apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more LDBCs, regardless of the country of the origin of the fabric or yarn used: **Duty-free and quota-free treatment within cap.**

Grouping 6:

Cashmere sweaters: Sweaters in chief weight of cashmere, knit-to-shape in one or more beneficiary sub-Saharan Africas: **Duty-free and quota-free treatment.**

Grouping 7:

Merino wool sweaters: Wool sweaters containing 50 per cent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan Africas: **Duty-free and quota-free treatment.**

Grouping 8:

Apparel articles wholly assembled from fabric or yarn not available in commercial quantities (that is, “in short supply“) in the United States: **Duty-free and quota-free treatment, if:**

(a) Apparel articles that are both cut and assembled in one or more beneficiary sub-Saharan African countries from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country are subject to duty-free/quota-free treatment to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under NAFTA annex 401. The AGOA provision applies to apparel articles that would be originating goods and thus would be entitled to preferential duty treatment under the NAFTA tariff shift and related rules on the basis of the fact that the fabrics or yarns used to produce them were determined to be in short supply in terms of the NAFTA;

Or:

(b) The President proclaims duty-free/quota-free treatment for apparel articles that are both cut and assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, if he has determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed such treatment.

Grouping 9:

Hand-loomed, handmade and folklore articles: Products covered under this category will be determined through United States consultations with the beneficiary countries and must also be certified by the competent authority of the beneficiary countries as hand-loomed, handmade or folklore articles: **Duty-free and quota-free treatment.**

3. Administrable rules on the provision of textile/apparel articles

Groupings 4 and 5 face the cap limitation (annual quota) and surge mechanism as explained below. This quota is reassessed annually and is based on total United States imports of textiles and apparel over the preceding year, based on a volumetric determination rather than on the value of imports. For this purpose, the quota is based on square meter equivalents of goods imported into the United States.

Initially, the annual quota limit was determined to be 1.5 per cent of total United States textile and apparel imports, and was set to increase to 3.5 per cent in annual increments by 2008. The AGOA II law changes increased this threshold to 7 per cent by annual increment over eight years.

The annual quota does not discriminate between AGOA beneficiaries and is filled on a first-come, first-serve basis. AGOA apparel exports benefitting from AGOA third-country fabric provision are subject to a sub-quota, which is roughly 50 per cent of the comined quota.

Furthermore, in any year, when the cap is filled products may still be imported; however, normal trade tariffs will be assessed at the time of entry. To date, the annual apparel quota has not been breached and has had little practical impact on apparel trade under AGOA preferences. The apprel quota period runs annually from 1 October to 30 September of the following year.

The AGOA includes protection for United States industries from surges in apparel imports wholly assembled in sub-Saharan African countries from regional and third-country fabric and yarn. The Secretary of Commerce will monitor imports of articles on a monthly basis. If the secretary determines that there has been a surge of imports in such increased quantities as to cause serious damage, or threat to United States products, the President must suspend benefits for that particular product. If the inquiry is initiated at the request of an interested party, the secretary shall make the determination within 60 days of the date of the request.

The Africa Investment Incentive Act of 2006 (signed by President Bush on 20 December 2006) amends portions of the AGOA and is referred to as “AGOA IV”. As summarized below, the Act:

(a) Extends textile and apparel provisions of the AGOA programme until 2015;

(b) Extends the third-country fabric provision until 2012 and increases the cap to 3.5 per cent beginning October 1, 2006;

(c) Provides for the Special Rule for fabrics or yarns produced in commercial quantities (or “abundant supply”) in any designated sub-Saharan African country for use in qualifying apparel articles. Upon receiving a petition, the International Trade Commission will determine the quantity of such fabrics or yarns that must be sourced from the region before applying the third country fabric provision;

(d) Provides for 30 million square meter equivalents of denim to be determined to be in abundant supply beginning October 1, 2006;

(e) Expands duty-free treatment for textiles or textile articles originating entirely in one or more LDBCs;

(f) Provides for a process to remove designated fabrics or yarns that were determined to be not available in commercial quantities for use by LDBCs on the basis of fraud.

The Committee for the Implementation of Textile Agreements (CITA), an interagency group chaired by the Commerce Department‘s Deputy Assistant Secretary for Textiles and Apparel, has the authority to implement certain provisions of the AGOA textile and apparel benefits. These provisions include:

(a) Determination of the annual cap on imports of apparel assembled in beneficiary countries from fabric formed in beneficiary countries from yarn originating either in the United States or in beneficiary countries;

(b) Determination that yarn or fabric cannot be supplied by the United States industry in commercial quantities in a timely manner, and to extend preferential treatment to eligible apparel from such yarn or fabric (commercial availability);

(c) Determination of eligible hand-loomed, handmade or folklore articles and ethnic printed fabrics;

(d) A “tariff snapback“ in the event that a surge in imports of eligible articles causes serious damage or threat thereof to domestic industry;

(e) Determination of whether United States manufacturers produce interlinings in the United States in commercial quantities, thereby rendering articles containing foreign interlinings ineligible for benefits under the AGOA;

(f) Determination of whether exporters have engaged in illegal trans-shipment and denial of benefits to such exporters for a period of five years.

Third country fabric provision

This is part of the Special Rule that allows United States apparel imports from LDBCs to qualify for duty-free treatment, even if the yarns and fabrics used in the production of the imported piece of apparel are from non-AGOA countries. This rule is set to expire in 30 September 2025, along with the overall AGOA programme (see grouping 5 on page 36).

Abundant supply

The Africa Investment Incentive Act 2006 (AGOA IV) provides for the Special Rule for fabrics or yarns produced in commercial quantities (or “abundant supply“) in any designated sub-Saharan African country for use in qualifying apparel articles. Upon receiving a petition from any interested party, the International Trade Commission will determine the quantity of such fabrics or yarns that must be sourced from the region before applying the third country fabric provision. It also provided for 30 million square metre equivalents of denim to be determined to be in abundant supply beginning 1 October 2006.

In an interim rule notice in the Federal Register in February 2007, the USITC amended its rules of practice and procedure to implement section 112(c) of the AGOA, as amended in 2006. This gave the USITC the responsibility of conducting investigations, making determinations and publishing reports concerning whether a fabric or yarn produced in beneficiary sub-Saharan African countries will be available in commercial quantities for use by LDBCs. These 2007 interim rules outline the manner in which the USITC is to conduct such investigations upon receiving petitions, as well as guidelines for filing petitions correctly.

Public Law 110-436 of 16 October 2008 removed the AGOA abundant supply provision that required use of regional denim fabric in denim apparel imports eligible for duty-free treatment under the AGOA.

Commercial availability

Under the AGOA, the President is authorized to proclaim duty-free and quota-free benefits for apparel that is both cut (or knit-to-shape) and sewn or otherwise assembled in beneficiary countries from fabric or yarns not formed in the United States or a beneficiary country if the President has determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order 13191, the President delegated to the CITA authority to determine whether yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner and to extend preferential treatment to apparel articles from such yarn or fabric.

The Africa Investment Incentive Act 2006 (AGOA IV) provides for a process to remove designated fabrics or yarns that were determined not to be available in commercial quantities in the United States on the basis of fraud.

Hand-loomed, handmade or folklore articles, or ethnic printed fabrics

Duty-free and quota-free benefits are provided by the AGOA for hand-loomed, handmade or folklore articles, or ethnic printed fabrics made in beneficiary sub-Saharan African countries. This provision is known as “category 9“. In Executive Order 13191, the President authorized CITA, after consultation with the Commissioner of Customs and Border Protection, to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods will be treated as being hand-loomed, handmade or folklore articles, or ethnic printed fabrics.

As of December 2014, 19 sub-Saharan African countries have been approved under category 9: Benin, Botswana, Burkina Faso, Ethiopia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mozambique, Namibia, the Niger, Nigeria, Senegal, Sierra Leone, South Africa, the United Republic of Tanzania and Zambia.

Findings and trimmings

An apparel article is eligible for benefits even if the article contains findings or trimmings of foreign origin if the value of such findings and trimmings does not exceed 25 per cent of the cost of the components of the assembled article. Examples of findings and trimmings include sewing thread, hooks and eyes, snaps, buttons, “bow buds“, decorative lace trim, elastic strips and zippers. Elastic strips are considered findings or trimmings only if they are less than 1 inch in width and used in the production of brassieres.

Sewing thread will not be treated as findings or trimmings in the case of grouping 3 and the new preferential grouping because these groupings specify that the thread used in the assembly of the article must be formed in the United States and thus cannot be of foreign origin.

Certain interlinings

Articles containing certain interlinings of foreign origin are eligible for benefits if the value of the interlinings (and any findings and trimmings) does not exceed 25 per cent of the cost of the components of the assembled article. The interlinings permitted include only a chest type plate, a “hymo“ piece or “sleeve header“, made of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. This benefit will terminate if the President determines such interlinings are made in the United States in commercial quantities.

Certain components

The AGOA Accelaration Act of 2004 (“AGOA III”) expanded product eligibility to allow non-AGOA produced collars, cuffs, drawstrings, padding/shoulder pads, waistbands, belts attached to garments, straps with elastic, and elbow patches for all import categories to be eligible. This treatment continues under the Africa Investment Incentive Act (AGOA IV).

De minimis rule

Apparel products assembled in sub-Saharan Africa that would otherwise be considered eligible for AGOA benefits but for the presence of some fibres or yarns not wholly formed either in the United States or the beneficiary sub-Saharan African country will still be eligible for benefits as long as the total weight of all such fibres and yarns is not more than 10 per cent of the total weight of the article (see 19 C.F.R. 10.5333). This percentage was increased by the AGOA III from 7 per cent.

4. Customs procedures and enforcement

Any importer claiming preferential treatment of certain textiles and apparel shall comply with customs procedure and requirements similar to the relevant procedures and requirements under chapter 5 of NAFTA.

The African Growth and Opportunity Act also provides for trans-shipment penalties for exporters. If the President determines, on the basis of sufficient evidence, that an exporter has engaged in unlawful trans-shipment he shall deny for a period of five years all AGOA benefits to the exporter or any successor entity. The President delegated the authority to make these determinations to CITA.

5. Technical assistance and capacity-building

The African Growth and Opportunity Act directs the President to target United States Government technical assistance and trade capacity-building in AGOA beneficiary countries. This is intended to encourage Governments to (a) liberalize trade policy; (b) harmonize laws and regulations with WTO commitments; (c) engage in financial and fiscal restructuring; (d) promote greater agribusiness linkages. The Act also includes assistance for developing private sector business associations and networks among United States and sub-Saharan African enterprises.

In fiscal year 2012, the most recent year for which data are available, the United States reported obligating approximately $94.6 million in trade capacity-building assistance to AGOA countries, down considerably from the previous five years during which trade capacity-building funding averaged over $600 million per year. Of this amount, in 2012 $12.4 million were committed for physical infrastructure development, $25.8 million for trade-related agriculture projects and $27.7 million for competition policy, business, environment and governance.

In addition to these mandates, the AGOA defines certain agencies' roles in implementing the provisions of the statute:

- Overseas Private Investment Corporation: The Corporation should exercise its authority to support projects in sub-Saharan Africa and increase funds directed to sub-Saharan African countries;
- Export–Import Bank (Ex-Im Bank): Section 124 of the AGOA expresses the sense of Congress that the Ex-Im Bank should continue to expand its financial commitments to its loan guarantee and insurance programmes to African countries and commends the Bank's sub-Saharan Africa Advisory Committee. This Committee's work was extended to 30 September 30 2014 in recent legislation reauthorizing the Ex-Im Bank (§23 of P.L. 112-122);
- USTR: Section 117 supports the creation of an assistant USTR for Africa to serve as the "primary point of contact in the executive branch for those persons engaged in trade between the United States and sub-Saharan Africa" and the chief adviser to the USTR on trade and investment issues pertaining to Africa;
- United States Foreign Commercial Service: Section 125 notes that the Commercial Service presence in sub-Saharan Africa had been reduced since the 1980s to the point of inadequately servicing the needs of United States businesses in the region. Accordingly, the legislation required the posting of at least 20 Commercial Service officers in not less than 10 countries in sub-Saharan Africa by 31 December 2001, "subject to the availability of appropriations". As of fiscal year 2014, there are now 15 Commercial Service officers in sub-Saharan Africa, up from five in 2012. These are located in Angola (4), Ethiopia (1), Ghana (1), Kenya (2), Mozambique (1), Nigeria (2), South Africa (3) and the United Republic of Tanzania (1).

- United States Agency for International Development: The Agency funds much of the trade capacity-building efforts related to the AGOA ($58 million of the $94.6 million mentioned above). In 2011, the Government announced an African competitiveness and trade expansion initiative, a trade and investment initiative with funding of up to $30 million annually, subject to appropriations. As part of the Trade Africa initiative, the East Africa Trade Hub will be renamed the East Africa Trade and Investment Hub and will build on its current activities to expand two-way trade and investment between the United States and the East African Community.

6. Monitoring and report to Congress

In the original AGOA statute, the President was required to monitor, review and report to Congress annually (not later than 31 March of each year). In a subsequent amendment of the programme, this requirement was not renewed. Thus, the most recent report was in 2008.

ENDNOTES

1 This information should be submitted for each article that is the subject of the request, both for the party making the request, and to the extent possible, for the industry to which the request pertains.

2 Office of the United States Representative, Generalized System of Preferences Guidebook, Washington, D.C., July 2013.

3 Excerpts from:http://trade.gov/agoa/faq.asp .

Appendix 1

STATUS OF INDEPENDENT COUNTRIES AND NON-INDEPENDENT COUNTRIES AND TERRITORIES UNDER THE GSP,

as of December 2015

Country	Association of countries	LDBDs	Other
Afghanistan	SAARC	Yes	---
Albania	—	No	—
Angola	—	Yes	AGOA
Anguilla*	—	No	—
Antigua and Barbuda		No	CBI
Armenia	—	No	—
Azerbaijan	---	No	---
Bangladesh**	SAARC	No	—
Barbados		No	CBI
Belize	CARICOM	No	CBI
Benin	WAEMU	Yes	AGOA
Bhutan	SAARC	Yes	—
Bolivia	Andean	No	ATPA
Bosnia and Herzegovina	—	No	—
Botswana	SADC	No	AGOA
British Indian Ocean Territory*	—	No	—
Burkina Faso	WAEMU	Yes	AGOA
Burundi	—	Yes	AGOA
Cambodia	ASEAN	Yes	—
Cameroon	—	No	AGOA
Cape Verde	—	No	AGOA
Central African Republic***	—	Yes	
Chad	—	Yes	AGOA
Christmas Island (Australia) *	—	No	—
Cocos (Keeling) Islands*	—	No	—
Colombia**		No	ATPA
Comoros	—	Yes	AGOA
Congo, Rep. of	—	No	AGOA
Congo, Dem. Rep. of***	—	Yes	AGOA (benefits terminated on 1 January 2011)
Cook Islands*	—	No	—
Costa Rica**	—	No	CBI
Côte d’Ivoire	WAEMU	No	AGOA
Djibouti	—	Yes	AGOA
Dominica	CARICOM	No	CBI
Dominican Republic**	—	No	CBI
Ecuador	Andean	No	ATPA
Egypt	—	No	—
El Salvador**	—	No	CBI
Eritrea	—	No	
Ethiopia	—	Yes	AGOA
Falkland Islands (Islas Malvinas)*	—	No	—
Fiji	—	No	—
Gabon	—	No	AGOA

Country	Association of countries	LDBDs	Other
Gambia	—	Yes	AGOA (benefits terminated on 1 January 2015)
Georgia	—	No	—
Ghana	—	No	AGOA
Grenada	CARICOM	No	CBI
Guatemala**	—	No	CBI
Guinea	—	Yes	AGOA
Guinea Bissau***	WAEMU	Yes	AGOA (benefits terminated on 1 January 2013)
Guyana	CARICOM	No	CBI
Haiti	—	Yes	CBI
Heard Island and McDonald Islands*	—	No	—
Honduras**	—	No	CBI
India	SAARC	No	—
Indonesia	ASEAN	No	—
Iraq	---	No	---
Jamaica	CARICOM	No	CBI
Jordan	—	No	—
Kazakhstan	—	No	—
Kenya	—	No	AGOA
Kiribati	—	Yes	—
Kosovo	---	No	---
Kyrgyzstan	—	No	—
Lebanon	—	No	—
Lesotho	—	Yes	AGOA
Liberia		Yes	AGOA
Madagascar***	—	Yes	AGOA
Malawi	—	Yes	AGOA
Maldives	---	No	---
Mali	WAEMU	Yes	AGOA
Mauritania	—	Yes	AGOA
Mauritius	SADC	No	AGOA
Moldova	—	No	—
Mongolia	—	No	—
Montenegro	---	No	---
Montserrat*	CARICOM	No	CBI
Mozambique	—	Yes	AGOA
Namibia	—	No	AGOA
Nepal	SAARC	Yes	—
Niue*	—	No	—
Niger	WAEMU	Yes	AGOA
Nigeria	—	No	AGOA
Norfolk Island*	—	No	—
Pakistan	SAARC	No	—

Country	Association of countries	LDBDs	Other
Panama**	—	No	CBI
Papua New Guinea	—	No	—
Paraguay	—	No	—
Peru	Andean	No	ATPA
Philippines	ASEAN	No	—
Pitcairn Islands*	—	No	—
Rwanda	—	Yes	AGOA
Saint Helena*	—	No	—
Saint Kitts and Nevis**	CARICOM	No	CBI
Saint Lucia**	CARICOM	No	CBI
Saint Vincent and the Grenadines**	CARICOM	No	CBI
Samoa		Yes	
Sao Tome and Principe	—	Yes	AGOA
Senegal	WAEMU	Yes	AGOA
Serbia	---	No	---
Seychelles	—	No	AGOA
Sierra Leone	—	Yes	AGOA
Solomon Islands	—	Yes	—
Somalia***	—	Yes	—
South Africa	—	No	AGOA
South Sudan	---	Yes	AGOA (benefits terminated on 23 December 2014)
Sri Lanka	SAARC	No	—
Suriname	—	No	—
Swaziland	—	No	AGOA (benefits terminated on 1 January 2015)
Tanzania	SADC	Yes	AGOA
Thailand	ASEAN	No	—
Timor-Leste	---	Yes	---
The former Yugoslav Republic of Macedonia	—	No	—
Togo	WAEMU	Yes	AGOA
Tonga	—	No	—
Tokelau*	—	No	—
Trinidad and Tobago**		No	CBI
Tunisia	—	No	—
Turkey	—	No	—
Tuvalu	—	Yes	—
Uganda	—	Yes	AGOA
Ukraine	---	No	---
Uruguay	—	No	—
Uzbekistan	—	No	—
Vanuatu	—	Yes	—
Venezuela, Bolivarian Rep.	Andean	No	—
Virgin Islands, British*	—	No	CBI

Country	Association of countries	LDBDs	Other
Wallis and Futuna*	—	No	—
West Bank and Gaza Strip*	—	No	—
Western Sahara*	—	No	—
Yemen, Republic of	—	Yes	—
Zambia	—	Yes	AGOA
Zimbabwe	—	No	—

Notes

The mark “*” indicates status of Non-Independent Countries and Territories Under the GSP.

The mark “**” indicates countries that are not eligible for GSP benefits on their own individual merit, but are either considered qualifying member states of associations of countries that are eligible for GSP benefits or are subject to specific US legislation that targets trade preferences for such countries.

The mark “***” indicates countries that are not designated as AGOA beneficiary countries as of December 2014, but still retain their GSP eligibility.

The heading “Associations of Countries” are regional intergovernmental organizations that are treated as one country, for the purposes of rules of origin.

Andean: Member countries of the Cartagena Agreement (Andean Group).

ASEAN: Member countries of the Association of South East Asian Nations (except Brunei Darussalam, the Lao People’s Democratic Republic, and Singapore).

CARICOM: Member countries of the Caribbean Common Market.

SADC: Member countries of the Southern Africa Development Community.

WAEMU: Member countries of the West African Economic and Monetary Union.

SAARC: Member countries of the South Asian Association for Regional Cooperation.

AGOA: Sub-Saharan African countries eligible for nonreciprocal trade preference treatment through the African Growth and Opportunity Act.

CBI: Central American and Caribbean countries eligible for duty-free entry into the US market through the Caribbean Basin Initiative.

ATPA: The Andean Trade Preference Act is a piece of federal legislation of the United States designed to help Bolivia, Colombia Ecuador, and Peru in their fight against drug production and trafficking by expanding those specific countries’ economic alternatives.

Appendix 2

AUTHORIZING LEGISLATION FOR THE GSP IN THE UNITED STATES CODE

AUTHORIZING LEGISLATION FOR THE GSP IN THE UNITED STATES CODE

TITLE 19 — CUSTOMS DUTIES
CHAPTER 12 — TRADE ACT OF 1974
SUBCHAPTER V — GENERALIZED SYSTEM OF PREFERENCES

Sec. 2461. Authority to extend preferences

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for:

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

Sec. 2462. Designation of beneficiary developing countries

(a) Authority to designate countries

(1) Beneficiary developing countries

The President is authorized to designate countries as beneficiary developing countries for purposes of this subchapter.

(2) Least-developed beneficiary developing countries

The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this subchapter, based on the considerations in section 2461 of this title and subsection (c) of this section.

(b) Countries ineligible for designation

(1) Specific countries

The following countries may not be designated as beneficiary developing countries for purposes of this subchapter:

(A) Australia.

(B) Canada.

(C) European Union member states.

(D) Iceland.

(E) Japan.

(F) Monaco.

(G) New Zealand.

(H) Norway.

(I) Switzerland.

(2) Other bases for ineligibility

The President shall not designate any country a beneficiary developing country under this subchapter if any of the following applies:

(A) Such country is a Communist country, unless:

(i) the products of such country receive nondiscriminatory treatment,

(ii) such country is a WTO Member (as such term is defined in section 3501(10) of this title) and a member of the International Monetary Fund, and

(iii) such country is not dominated or controlled by international communism.

(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is:

(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

(ii) to cause serious disruption of the world economy.

(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

(D) (i) Such country:

(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless clause (ii) applies.

(ii) This clause applies if the President determines that:

(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 2405(j)(1)(A) of title 50, Appendix.

(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Subparagraphs (D), (E), (F), and (G) shall not prevent the designation of any country as a beneficiary developing country under this subchapter if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

(c) Factors affecting country designation

In determining whether to designate any country as a beneficiary developing country under this subchapter, the President shall take into account:

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the resident deems appropriate;

(3) whether or not other major developed countries are extending **generalized** preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;

(6) the extent to which such country has taken action to:

 (A) reduce trade distorting investment practices and policies (including export performance requirements); and

 (B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(d) Withdrawal, suspension, or limitation of country designation

(1) In general

The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this subchapter with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 2461 of this title and subsection (c) of this section.

(2) Changed circumstances

The President shall, after complying with the requirements of subsection (f)(2) of this section, withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2) of this section. Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this subchapter.

(3) Advice to Congress

The President shall, as necessary, advise the Congress on the application of section 2461 of this title and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c) of this section.

(e) Mandatory graduation of beneficiary developing countries

If the President determines that a beneficiary developing country has become a "high income" country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this subchapter, effective on January 1 of the second year following the year in which such determination is made.

(f) Congressional notification

(1) Notification of designation

(A) In general

Before the President designates any country as a beneficiary developing country under this subchapter, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

(B) Designation as least-developed beneficiary developing country

At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

(2) Notification of termination

If the President has designated any country as a beneficiary developing country under this subchapter, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate uch designation, together with the considerations entering into such decision.

Sec. 2463. Designation of eligible articles

(a) Eligible articles

(1) Designation

(A) In general

Except as provided in subsection (b) of this section, the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this subchapter by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section.

(B) Least-developed beneficiary developing countries

Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) of this section and articles described in paragraphs (2) and (3) of subsection (b) of this section, the President may, in carrying out section 2462(d)(1) of this title and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 2462(a)(2) of this title if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

(C) Three-year rule

If, after receiving the advice of the International Trade Commission under subsection (e) of this section, an article has been formally considered for designation as an eligible article under this subchapter and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

(2) Rule of origin

(A) General rule

The duty-free treatment provided under this subchapter shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if :

- (i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and
- (ii) the sum of:
  - (I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 2467(2) of this title, plus
  - (II) the direct costs of processing operations performed in such beneficiary developing country or such member countries, is not less than 35 percent of the appraised value of such article at the time it is entered.

(B) Exclusions

An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone:

- (i) simple combining or packaging operations, or
- (ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) Regulations

The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this subchapter, an article:

- (A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or
- (B) must be a new or different article of commerce which has been grown, produced, or anufactured in the beneficiary developing country.

(b) Articles that may not be designated as eligible articles

(1) Import-sensitive articles

The President may not designate any article as an eligible article under subsection (a) of this section if such article is within one of the following categories of import-sensitive articles: Textile and apparel articles which were not eligible articles for purposes of this subchapter on January 1, 1994, as this subchapter was in effect on such date.

(A) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions.

(B) Import-sensitive electronic articles.

(C) Import-sensitive steel articles.

(D) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this subchapter on January 1, 1995, as this subchapter was in effect on such date.

(E) Import-sensitive semi-manufactured and manufactured glass products.

(F) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) Articles against which other actions taken

An article shall not be an eligible article for purposes of this subchapter for any period during which such article is the subject of any action proclaimed pursuant to section 2253 of this title or section 1862 or 1981 of this title.

(3) Agricultural products

No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this subchapter.

(c) Withdrawal, suspension, or limitation of duty-free treatment; competitive need limitation

(1) In general

The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this subchapter with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this subchapter. In taking any action under this subsection, the President shall consider the factors set forth in sections 2461 and 2462(c) of this title.

(2) Competitive need limitation

(A) Basis for withdrawal of duty-free treatment

(i) In general

Except as provided in clause (ii) and subject to subsection (d) of this section, whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31, 1995:

(I) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or

(II) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during any calendar year,

the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country.

(ii) Annual adjustment of applicable amount

For purposes of applying clause (i), the applicable amount is:

(I) for 1996, $75,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $5,000,000.

(B) “Country” defined

For purposes of this paragraph, the term “country” does not include an association of countries which is treated as one country under section 2467(2) of this title, but does include a country which is a member of any such association.

(C) Redesignations

A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of subparagraph (A) may, subject to the considerations set forth in sections 2461 and 2462 of this title, be redesignated a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

(D) Least-developed beneficiary developing countries

Subparagraph (A) shall not apply to any least-developed beneficiary developing country.

(E) Articles not produced in the United States excluded

Subparagraph (A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

(F) De minimis waivers

(i) In general

The President may disregard subparagraph (A)(i)(II) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount for such preceding calendar year.

(ii) Applicable amount

For purposes of applying clause (i), the applicable amount is:

(I) for calendar year 1996, $13,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $500,000.

(d) Waiver of competitive need limitation

(1) In general

The President may waive the application of subsection (c)(2) of this section with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) of this section was made with respect to such eligible article, the President:

(A) receives the advice of the International Trade Commission under section 1332 of this title on whether any industry in the United States is likely to be adversely affected by such waiver,

(B) determines, based on the considerations described in sections 2461 and 2462(c) of this title and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

(C) publishes the determination described in subparagraph (B) in the Federal Register.

(2) Considerations by the President

In making any determination under paragraph (1), the President shall give great weight to:

(A) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

(3) Other bases for waiver

The President may waive the application of subsection (c)(2) of this section if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) of this section was made with respect to a beneficiary developing country, the President determines that:

(A) there has been a historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

and the President publishes that determination in the Federal Register.

(4) Limitations on waivers

(A) In general

The President may not exercise the waiver authority under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which equals or exceeds 30 percent of the aggregate appraised value of all articles that entered duty-free under this subchapter during the preceding calendar year.

(B) Other waiver limits

The President may not exercise the waiver authority provided under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which exceeds 15 percent of the aggregate appraised value of all articles that have entered duty-free under this subchapter during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year:

(i) had a per capita gross national product (calculated on the basis of the best available information, including that of the International Bank for Reconstruction and Development) of $5,000 or more; or

(ii) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this subchapter that had an aggregate appraised value of more than 10 percent of the aggregate appraised value of all articles that entered duty-free under this subchapter during that ear.

(C) Calculation of limitations

There shall be counted against the limitations imposed under subparagraphs (A) and (B) for any calendar year only that value of any eligible article of any country that:

(i) entered duty-free under this subchapter during such calendar year; and

(ii) is in excess of the value of that article that would have been so entered during such calendar year if the limitations under subsection (c)(2)(A) of this section applied.*(5) Effective period of waiver*

Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(e) International Trade Commission advice

Before designating articles as eligible articles under subsection (a)(1) of this section, the President shall publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this subchapter. The provisions of sections 2151, 2152, 2153, and 2154 of this title shall be complied with as though action under section 2461 of this title and this section were action under section 2133 of this title to carry out a trade agreement entered into under section 2133 of this title.

(f) Special rule concerning Puerto Rico

No action under this subchapter may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 1319 of this title on coffee imported into Puerto Rico.

Sec. 2464. Review and report to Congress

The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country, including the 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.

Sec. 2465. Date of termination

No duty-free treatment provided under this subchapter shall remain in effect after December 31, 2008.

Sec. 2466. Agriculture exports of beneficiary developing countries

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

Sec. 2466a. Designation of sub-Saharan African countries for certain benefits

(a) Authority to designate

(1) In general

Notwithstanding any other provision of law, the President is authorized to designate a country listed in section 107 of the African Growth and Opportunity Act [19 U.S.C. 3706] as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b) of this section—

(A) if the President determines that the country meets the eligibility requirements set forth in section 104 of that Act [19 U.S.C. 3703], as such requirements are in effect on May 18, 2000; and

(B) subject to the authority granted to the President under subsections (a), (d), and (e) of section 2462 of this title, if the country otherwise meets the eligibility criteria set forth in section 2462 of this title.

(2) Monitoring and review of certain countries

The President shall monitor, review, and report to Congress annually on the progress of each country listed in section 107 of the African Growth and Opportunity Act in meeting the requirements described in paragraph (1) in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country for purposes of this section. The President's determinations, and explanations of such determinations, with specific analysis of the eligibility requirements described in paragraph (1)(A), shall be included in the annual report required by section 106 of the African Growth and Opportunity Act [19 U.S.C. 3705].

(3) Continuing compliance

If the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements described in paragraph (1), the President shall terminate the designation of that country as a beneficiary sub-Saharan African country for purposes of this section, effective on January 1 of the year following the year in which such determination is made.

(b) Preferential tariff treatment for certain articles

(1) In general

The President may provide duty-free treatment for any article described in section 2463(b)(1)(B) through (G) of this title that is the growth, product, or manufacture of a beneficiary sub-Saharan African country described in subsection (a) of this section, if, after receiving the advice of the International Trade Commission in accordance with section 2463(e) of this title, the President determines that such article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.

(2) Rules of origin

The duty-free treatment provided under paragraph (1) shall apply to any article described in that paragraph that meets the requirements of section 2463(a)(2) of this title, except that—

(A) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 2463(a)(2) of this title; and

(B) the cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries shall be applied in determining such percentage.

(c) Beneficiary sub-Saharan African countries, etc.
For purposes of this subchapter—

(1) the terms “beneficiary sub-Saharan African country” and “beneficiary sub-Saharan African countries” mean a country or countries listed in section 107 of the African Growth and Opportunity Act [19 U.S.C. 3706] that the President has determined is eligible under subsection (a) of this section.

(2) the term “former beneficiary sub-Saharan African country” means a country that, after being designated as a beneficiary sub-Saharan African country under the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.], ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States

Sec. 2466b. Termination of benefits for sub-Saharan African countries

In the case of a beneficiary sub-Saharan African country, as defined in section 2466a(c) of this title, duty-free treatment provided under this subchapter shall remain in effect through September 30, 2008.

Sec. 2467. Definitions

For purposes of this subchapter:

(1) Beneficiary developing country

The term ``beneficiary developing country” means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this subchapter.

(2) Country

The term ``country” means any foreign country or territory, including any overseas dependent territory

or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under section 2462(b) of this title shall be treated as one country for purposes of this subchapter.

(3) Entered

The term ``entered” means entered, or withdrawn from warehouse for consumption, in the customs

territory of the United States.

(4) Internationally recognized worker rights

The term ``internationally recognized worker rights” includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational

safety and health.

(5) Least-developed beneficiary developing country

The term ``least-developed beneficiary developing country” means a beneficiary developing country

that is designated as a least-developed beneficiary developing country under section 2462(a)(2) of this title.

(6) Worst forms of child labor

The term ``worst forms of child labor” means--

(A) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt

bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for

pornographic purposes;

(C) the use, procuring, or offering of a child for illicit activities in particular for the production and

trafficking of drugs; and

(D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the

health, safety, or morals of children.

The work referred to in subparagraph (D) shall be determined by the laws, regulations, or competent

authority of the beneficiary developing country involved.

Appendix 3

UNITED STATES CUSTOMS SERVICE RULES ON THE GSP IN THE CODE OF FEDERAL REGULATIONS

Title 19 – Customs Duties
Chapter I - Bureau of Customs and Border Protection,
Department of Homeland Security:
Department of the Threasury
Part 10 – Articles conditionally free, subject to a reduced rate, etc.
Sub-part A - General provisons

UNITED STATES CUSTOMS SERVICE RULES ON THE GSP IN THE CODE OF FEDERAL REGULATIONS CODE OF FEDERAL REGULATIONS - TITLE 19: CUSTOMS DUTIES (DECEMBER 2005)

TITLE 19 - CUSTOMS DUTIES
CHAPTER I - BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY
PART 10 - ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.
AUB-PART A - GENERAL PROVISIONS

10.171 - General.

(a) Statutory authority. Title V of the Trade Act of 1974 as amended (19 U.S.C. *24612467*) authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary developing countries. Beneficiary developing countries and articles eligible for duty-free treatment are designated by the President by Executive order in accordance with sections 502(a)(1) and 503(a) of the Trade Act of 1974 as amended (19 U.S.C. 2462(a)(1), 2463(a)).

(b) Country defined. For purposes of 10.171 through 10.178, except as otherwise provided in 10.176(a), the term country means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union or which is contributing to comprehensive regional economic integration among its members through appropriate means, including but not limited to, the reduction of duties, the President may by Executive order provide that all members of such association other than members which are barred from designation under section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) shall be treated as one country for purposes of 10.171 through 10.178.

subpart a - GENERAL PROVISIONS

10.172 - Claim for exemption from duty under the Generalized System of Preferences.

A claim for an exemption from duty on the ground that the Generalized System of Preferences applies shall be allowed by the port director only if he is satisfied that the requirements set forth in this section and 10.173 through 10.178 have been met. If duty-free treatment is claimed at the time of entry, a written claim shall be filed on the entry document by placing the symbol A as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which such treatment is claimed.

10.173 - Evidence of country of origin.

(a) Shipments covered by a formal entry (1) Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country. (i) Declaration. In a case involving merchandise covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the exporter of the merchandise or other appropriate party having knowledge of the relevant facts shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the merchandise. When requested by the port director, the declaration shall be prepared in substantially the following form: GSP DECLARATION

GSP DECLARATION

I,____(name), hereby declare that the articles described below were produced or manufactured in ______________ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries as set forth below and incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth:

		Processing operations performed on articles		Materials produced in a beneficiary developing country or members of the same association	
Number and date if invoices	Description of articles and quantity	Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process and country of production	Cost or value of material
	....	....	....	....	....

Date____

Address______________________________________

Signature_____________________________________

Title____

(ii) Retention of records and submission of declaration. The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment. (2) Merchandise wholly the growth, product, or manufacture of a beneficiary developing country. In a case involving merchandise covered by a formal entry which is wholly the growth, product, or manufacture of a single beneficiary developing country, a statement to that effect shall be included on the commercial invoice provided to Customs.

(b) Shipments covered by an informal entry. Although the filing of the declaration provided for in paragraph (a)(1)(i) of this section will not be required for a shipment covered by an informal entry, the port director may require such other evidence of country of origin as deemed necessary.

(c) Verification of documentation. Any evidence of country of origin submitted under this section shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as dutiable.

10.174 - Evidence of direct shipment.

(a) Documents constituting evidence of direct shipment. The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were imported directly, as that term is defined in 10.175. Any evidence of direct shipment required by the port director shall be subject to such verification as he deems necessary.

(b) Waiver of evidence of direct shipment. The port director may waive the submission of evidence of direct shipment when he is otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise clearly qualifies for treatment under the Generalized System of Preferences.

10.175 - Imported directly defined.

Eligible articles shall be imported directly from a beneficiary developing country to qualify for treatment under the Generalized System of Preferences. For purposes of 10.171 through 10.178 the words imported directly mean: (a) Direct shipment from the beneficiary country to the United States without passing through the territory of any other country; or (b) If the shipment is from a beneficiary developing country to the U.S. through the territory of any other country, the merchandise in the shipment does not enter into the commerce of any other country while en route to the U.S., and the invoice, bills of lading, and other shipping documents show the U.S. as the final destination; or (c) If shipped from the beneficiary developing country to the United States through a free trade zone in a beneficiary developing country, the merchandise shall not enter into the commerce of the country maintaining the free trade zone, and (1) The eligible articles must not undergo any operation other than: (i) Sorting, grading, or testing, (ii) Packing, unpacking, changes of packing, decanting or repacking into other containers, (iii) Affixing marks, labels, or other like distinguishing signs on articles or their packing, if incidental to operations allowed under this section, or (iv) Operations necessary to ensure the preservation of merchandise in its condition as introduced into the free trade zone. (2) Merchandise may be purchased and resold, other than at retail, for export within the free trade zone. (3) For the purposes of this section, a free trade zone is a predetermined area or region declared and secured by or under governmental authority, where certain operations may be performed with respect to articles, without such articles having entered into the commerce of the country maintaining the free trade zone; or (d) If the shipment is from any beneficiary developing country to the U.S through the territory of any other country and the invoices and other documents do not show the U.S as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country; (2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and (3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition; or (e)(1) Shipment to the U.S. from a beneficiary developing country which is a member of an association of countries treated as one country under section 507(2), Trade Act of 1974, as amended (19 U.S.C. 2467(2)), through the territory of a former beneficiary developing country whose designation as a member of the same association for GSP purposes was terminated by the President pursuant to section 502(d), Trade Act of 1974, as amended (19 U.S.C. 2462(d)), provided the articles in the shipment did not enter into the commerce of the former beneficiary developing country except for purposes of performing one or more of the operations specified in paragraph (c)(1) of this section and except for purposes of purchase or resale, other than at retail, for export. (2) The designation of the following countries as members of an association of countries for GSP purposes has been terminated by the President pursuant to section 502(d) of the Trade Act of 1974 (19 U.S.C. 2462(d)): The Bahamas Brunei Darussalam Malaysia Singapore [T.D. 762, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 83144, 48 FR 29684, June 28, 1983; T.D. 84237, 49 FR 47992, Dec. 7, 1984; T.D. 86107, 51 FR 20816, June 9, 1986; T.D. 926, 57 FR 2018, Jan. 17, 1992; T.D. 9447, 59 FR 25569, May 17, 1994; T.D. 9530, 60 FR 18543, Apr. 12, 1995; T.D.

10.176 - Country of origin criteria.

(a) Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries (1) General. Except as otherwise provided in this section, any article which either is wholly the growth, product, or manufacture of, or is a new or different article of commerce that has been grown, produced, or manufactured in, a beneficiary developing country may qualify for duty-free entry under the Generalized System of Preferences (GSP). No article will be considered to have been grown, produced, or manufactured in a beneficiary developing country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the GSP may be accorded to an article only if the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries that are members of the same association of countries and are treated as one country under section 507(2) of the Trade Act of 1974, as amended (19 U.S.C. 2467(2)), plus the direct costs of processing operations performed in the beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time it is entered. (2) Combining, packaging, and diluting operations. No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary developing country within the meaning of paragraph (a)(1) of this section will be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph. For purposes of this section: (i) Simple combining or packaging operations and mere dilution include, but are not limited to, the following: (A) The addition of batteries to devices; (B) Fitting together a small number of components by bolting, gluing, soldering, etc.; (C) Blending foreign and beneficiary developing country tobacco; (D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.; (E) Repacking or packaging components together; (F) Reconstituting orange juice by adding water to orange juice concentrate; and (G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength; (ii) Simple combining or packaging operations and mere dilution will not be taken to include processes such as the following: (A) The assembly of a large number of discrete components onto a printed circuit board; (B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale; (C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and (D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (for example, a simple assembly of a small number of components, one of which was fabricated in the beneficiary developing country where the assembly took place); and (iii) The fact that an article has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article.

(b) [Reserved] (c) Merchandise grown, produced, or manufactured in a beneficiary developing country. Merchandise which is wholly the growth, product, or manufacture of a beneficiary developing country, or an association of countries treated as one country under section 507(2) of the Trade Act of 1974 (19 U.S.C. 2467(2)) and 10.171(b), and manufactured products consisting of materials produced only in such country or countries, shall normally be presumed to meet the requirements set forth in this section.

10.177 - Cost or value of materials produced in the beneficiary developing country.

(a) Produced in the beneficiary developing country defined. For purposes of 10.171 through 10.178, the words produced in the beneficiary developing country refer to the constituent materials of which the eligible article is composed which are either: (1) Wholly the growth, product, or manufacture of the beneficiary developing country; or (2) Substantially transformed in the beneficiary developing country into a new and different article of commerce.

(b) Questionable origin. When the origin of an article either is not ascertainable or not satisfactorily demonstrated to the port director, the article shall not be considered to have been produced in the beneficiary developing country.

(c) Determination of cost or value of materials produced in the beneficiary developing country. (1) The cost or value of materials produced in the beneficiary developing country includes: (i) The manufacturer's actual cost for the materials; (ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant; (iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and (iv) Taxes and/or duties imposed on the materials by the beneficiary developing country, or an association of countries treated as one country, provided they are not remitted upon exportation. (2) Where the material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of: (i) All expenses incurred in the growth, production, manufacture or assembly of the material, including general expenses; (ii) An amount for profit; and (iii) Freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of the materials is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

10.178 - Direct costs of processing operations performed in the beneficiary developing country

(a) *Items included in the direct costs of processing operations.* As used in § 10.176, the words "direct costs of processing operations" means those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to:

(1) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words "direct costs of processing operations" are those which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

10.178a - Special duty - free treatment for sub - Saharan African countries.

(a) General. Section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) authorizes the President to provide duty-free treatment for certain articles otherwise excluded from duty-free treatment under the Generalized System of Preferences (GSP) pursuant to section 503(b)(1)(B) through (G) of the Trade Act of 1974 (19 U.S.C. 2463(b)(1)(B) through (G)) and authorizes the President to designate a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) as an eligible beneficiary sub-Saharan African country for purposes of that duty-free treatment.

(b) Eligible articles. The duty-free treatment referred to in paragraph (a) of this section will apply to any article within any of the following classes of articles, provided that the article in question has been designated by the President for that purpose and is the growth, product, or manufacture of an eligible beneficiary sub-Saharan African country and meets the requirements specified or referred to in paragraph (d) of this section: (1) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions; (2) Certain electronic articles; (3) Certain steel articles; (4) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date; (5) Certain semi manufactured and manufactured glass products; and (6) Any other articles which the President determines to be import-sensitive in the context of the GSP.

(c) Claim for duty-free treatment. A claim for the duty-free treatment referred to in paragraph (a) of this section must be made by placing on the entry document the symbol D as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which duty-free treatment is claimed;

(d) Origin and related rules. The provisions of 10.171, 10.173, and 10.175 through 10.178 will apply for purposes of duty-free treatment under this section. However, application of those provisions in the context of this section will be subject to the following rules: (1) The term beneficiary developing country, wherever it appears, means beneficiary sub-Saharan African country;' (2) In the GSP declaration set forth in 10.173(a)(1)(i), the column heading Materials produced in a beneficiary developing country or members of the same association should read Material produced in a beneficiary sub-Saharan African country or in the U.S.; (3) The provisions of 10.175(c) will not apply; and (4) For purposes of determining compliance with the 35 percent value content requirement set forth in 10.176(a): (i) An amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States, and the provisions of 10.177 will apply for purposes of identifying materials produced in the customs territory of the United States and the cost or value of those materials; and (ii) The cost or value of materials included in the article that are produced in more than one beneficiary sub-Saharan African country may be applied without regard to whether those countries are members of the same association of countries.

(e) Importer requirements. In order to make a claim for duty-free treatment under this section, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for duty-free treatment; (2) Must have records that demonstrate that the importer is claiming that the article qualifies for duty-free treatment because it is the growth of a beneficiary sub-Saharan African country or because it is the product of a beneficiary sub-Saharan African country or because it is the manufacture of a beneficiary sub-Saharan African country. If the importer is claiming that the article is the growth of a beneficiary sub-Saharan African country, the importer must have records that indicate that the product was grown in that country, such as a record of receipt from a farmer whose crops are grown in that country. If the importer is claiming that the article is the product of, or the manufacture of, a beneficiary sub-Saharan African country, the importer must have records that indicate that the manufacturing or processing operations reflected in or applied to the article meet the country of origin rules set forth in 10.176(a) and paragraph (d) of this section. A properly completed GSP declaration in the form set forth in 10.173(a)(1) is one example of a record that would serve this purpose; (3) Must establish and implement internal controls which provide for the periodic review of the accuracy of the declarations or other records referred to in paragraph (e)(2) of this section; (4) Must have shipping papers that show how the article moved from the beneficiary sub-Saharan African country to the United States. If the imported article was shipped through a country other than a beneficiary sub-Saharan African country and the invoices and other documents from the beneficiary sub-Saharan African country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in 10.175(d)(1) through (3) were met; (5) Must have records that demonstrate the cost or value of the materials produced in the United States and the cost or value of the materials produced in a beneficiary sub-Saharan African country or countries and the direct costs of processing operations incurred in the beneficiary sub-Saharan African country that were relied upon by the importer to determine that the article met the 35 percent value content requirement set forth in 10.176(a) and paragraph (c) of this section. A properly completed GSP declaration in the form set forth in 10.173(a)(1) is one example of a record that would serve this purpose; and (6) Must be prepared to produce the records referred to in paragraphs (e)(1), (e)(2), (e)(4), and (e)(5) of this section within 30 days of a request from Customs and must be prepared to explain how those records and the internal controls referred to in paragraph (e)(3) of this section justify the importer's claim for duty-free treatment.

Appendix 4

UNITED STATES TRADE REPRESENTATIVE RULES ON THE GSP IN THE CODE OF FEDERAL REGULATIONS

Foreign Trade
Trade Representative
Part 2007 – Regulations of the United States Trade Representative pertaining to eligibility of articles and countries for the Generalized System of Preferfence Programme

UNITED STATES TRADE REPRESENTATIVE RULES ON THE GSP IN THE CODE OF FEDERAL REGULATIONS

FOREIGN TRADE
TRADE REPRESENTATIVE
PART 2007 — REGULATIONS OF THE UNITED STATES TRADE REPRESENTATIVE PERTAINING TO ELIGIBILITY OF ARTICLES AND COUNTRIES FOR THE GENERALIZED SYSTEM OF PREFERENCE PROGRAM
(GSP (15 CFR PART 2007))

Sec. 2007.0 Requests for reviews.

(a) An interested party may submit a request (1) that additional articles be designated as eligible for GSP duty-free treatment, provided that the article has not been accepted for review within the three preceding calendar years; or (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) for a determination of whether a like or directly competitive product was produced in the United States on January 3, 1985 for the purposes of section 504(d)(1) (19 United States 2464(d)(1)); or (4) that the President exercise his waiver authority with respect to a specific article or articles pursuant to section 504(c)(3) (19 United States C. 2464(c)(3)); or (5) that product coverage be otherwise modified.

(b) During the annual reviews and general reviews conducted pursuant to the schedule set out in Sec. 2007.3 any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in section 502(b) or 502(c) (19 United States C. 2642 (b) and (c)). Such requests must (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) or 502(c) criteria which the requestor believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; (5) supply any other relevant information as requested by the GSP Subcommittee. If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue.

(c) An interested party or any other person may make submissions supporting, opposing or otherwise commenting on a request submitted pursuant to either paragraph (a) or (b) of this section.

(d) For the purposes of the regulations set out under Sec. 2007.**0** et seq., an interested party is defined as a party who has significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive article, a commercial importer or retailer of an article which is eligible for the GSP or for which such eligibility is requested, or a foreign government.

(e) All requests and other submissions should be submitted in 20 copies, and should be addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. Requests by foreign governments may be made in the form of diplomatic correspondence provided that such requests comply with the requirements of Sec. 2007.1.

(f) The Trade Policy Staff Committee (TPSC) may at any time, on its own motion, initiate any of the actions described in paragraph (a) or (b) of this section.

Sec. 2007.1 Information required of interested parties in submitting requests for modifications in the last of eligible articles.

(a) General Information Required. A request submitted pursuant to this part, hereinafter also referred to as a petition, except requests submitted pursuant to Sec. 2007.0(b), shall state clearly on the first page that it is a request for action with respect to the provision of duty-free treatment for an article or articles under the GSP, and must contain all information listed in this paragraph and in paragraphs (b) and (c). Petitions which do not contain the information required by this paragraph shall not be accepted for review except upon a showing that the petitioner made a good faith effort to obtain the information required. Petitions shall contain, in addition to any other information specifically requested, the following information:

(1) The name of the petitioner, the person, firm or association represented by the petitioner, and a brief description of the interest of the petitioner claiming to be affected by the operation of the GSP;

(2) An identification of the product or products of interest to the petitioner, including a detailed description of products and their uses and the identification of the pertinent item number of the Tariff Schedules of the United States (TSUS). Where the product or products of interest are included with other products in a basket category of the TSUS, provide a detailed description of the product or products of interest;

(3) A description of the action requested, together with a statement of the reasons therefore and any supporting information;

(4) A statement of whether to the best of the Petitioner's knowledge, the reasoning and information has been presented to the TPSC previously either by the petitioner or another party. If the Petitioner has knowledge the request has been made previously, it must include either new information which indicates changed circumstances or a rebuttal of the factors supporting the denial of the previous request. If it is a request for a product addition, the previous request must not have been formally accepted for review within the preceding three calendar year period; and

(5) A statement of the benefits anticipated by the petitioner if the request is granted, along with supporting facts or arguments.

(b) Requests to withdraw, limit or suspend eligibility with respect to designated articles. Petitions requesting withdrawal or limitation of duty-free treatment accorded under GSP to an eligible article or articles must include the following information with respect to the relevant United States industry for the most recent three year period:

(1) The names, number and locations of the firms producing a like or directly competitive product;

(2) Actual production figures;

(3) Production capacity and capacity utilization;

(4) Employment figures, including number, type, wage rate, location, and changes in any of these elements;

(5) Sales figures in terms of quantity, value and price;

(6) Quantity and value of exports, as well as principal export markets;

(7) Profitability of firm on firms producing the like product, if possible show profit data by product line;

(8) Analysis of cost including materials, labor and overhead;

(9) A discussion of the competitive situation of the domestic industry;

(10) Identification of competitors; analysis of the effect imports receiving duty-free treatment under the GSP have on competition and the business of the interest on whose behalf the request is made;

(11) Any relevant information relating to the factors listed in section 501 and 502(c) of Title V of the Trade Act of 1974, as amended (19 United States C. 2501, 502(c)) such as identification of tariff and non-tariff barriers to sales in foreign markets;

(12) Any other relevant information including any additional information that may be requested by the GSP Subcommittee.

This information should be submitted with the request for each article that is the subject of the request, both for the party making the request, and to the extent possible, for the industry to which the request pertains.

(c) Requests to designate new articles. Information to be provided in petitions requesting the designation of new articles submitted by interested parties must include for the most recent three year period the following information for the beneficiary country on whose behalf the request is being made and, to the extent possible, other principal beneficiary country suppliers:

(1) Identification of the principal beneficiary country suppliers expected to benefit from proposed modification;

(2) Name and location of firms;

(3) Actual production figures (and estimated increase in GSP status is granted);

(4) Actual production and capacity utilization (and estimated increase if GSP status is granted);

(5) Employment figures, including numbers, type, wage rate, location and changes in any of these elements if GSP treatment is granted;

(6) Sales figures in terms of quantity, value and prices;

(7) Information on total exports including principal markets, the distribution of products, existing tariff preferences in such markets, total quantity, value and trends in exports;

(8) Information on exports to the United States in terms of quantity, value and price, as well as considerations which affect the competitiveness of these exports relative to exports to the United States by other beneficiary countries of a like or directly competitive product. Where possible, petitioners should provide information on the development of the industry in beneficiary countries and trends in their production and promotional activities;

(9) Analysis of cost including materials, labor and overhead;

(10) Profitability of firms producing the product;

(11) Information on unit prices and a statement of other considerations such as variations in quality or use that affect price competition;

(12) If the petition is submitted by a foreign government or a government controlled entity, it should include a statement of the manner in which the requested action would further the economic development of the country submitting the petition;

(13) If appropriate, an assessment of how the article would qualify under the GSP's 35 percent value-added requirements; and

(14) Any other relevant information, including any information that may be requested by the GSP Subcommittee.

Submissions made by persons in support of or opposition to a request made under this part should conform to the requirements for requests contained in Sec. 2007.**1**(a) (3) and (4), and should supply such other relevant information as is available.

Sec. 2007.2 Action following receipt of requests for modifications in the list of eligible articles and for reviews of the GSP status of eligible beneficiary countries with respect to designation criteria

(a) (1) If a request submitted pursuant to Sec. 2007.0(a) does not conform to the requirements set forth above, or if it is clear from available information that the request does not warrant further consideration, the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the reasons why the request was not accepted.

(2) If a request submitted pursuant to Sec. 2007.0(b) does not conform to the requirements set forth above, or if the request does not provide sufficient information relevant to subsection 502(b) or 502(c) (19 United States C. 2642 (b) and (c)) to warrant review, or if it is clear from available information that the request does not

fall within the criteria of subsection 502(b) or 502(c), the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the reasons why the request was not accepted.

(b) Requests which conform to the requirements set forth above or for which petitioners have demonstrated a good faith effort to obtain information in order to meet the requirements set forth above, and for which further consideration is deemed warranted, shall be accepted for review.

(c) The TPSC shall announce in the Federal Register those requests which will be considered for full examination in the annual review and the deadlines for submissions made pursuant to the review, including the deadlines for submission of comments on the United States International Trade Commission (USITC) report in instances in which USITC advice is requested.

(d) In conducting annual reviews, the TPSC shall hold public hearings in order to provide the opportunity for public testimony on petitions and requests filed pursuant to paragraphs (a) and (b) of Sec. 2007.0.

(e) As appropriate, the USTR on behalf of the President will request advice from the USITC.

(f) The GSP Subcommittee of the TPSC shall conduct the first level of interagency consideration under this part, and shall submit the results of its review to the TPSC.

(g) The TPSC shall review the work of the GSP Subcommittee and shall conduct, as necessary, further reviews of requests submitted and accepted under this part. Unless subject to additional review, the TPSC shall prepare recommendations for the President on any modifications to the GSP under this part. The Chairman of the TPSC shall report the results of the TPSC's review to the United States Trade Representative who may convene the Trade Policy Review Group (TPRG) or the Trade Policy Committee (TPC) for further review of recommendations and other decisions as necessary. The United States Trade Representative, after receiving the advice of the TPSC, TPRG or TPC, shall make recommendations to the President on any modifications to the GSP under this part, including recommendations that no modifications be made.

(h) In considering whether to recommend: (1) That additional articles be designated as eligible for the GSP; (**2**) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; (3) that product coverage be otherwise modified; or (4) that changes be made with respect to the GSP status of eligible beneficiary countries, the GSP Subcommittee on behalf of the TPSC, TPRG, or TPC shall review the relevant information submitted in connection with or concerning a request under this part together with any other information which may be available relevant to the statutory prerequisites for Presidential action contained in Title V of the Trade Act of 1974, as amended (19 United States C. 2461-2465).

Sec. 2007.3 Timetable for reviews.

(a) Annual review.

Beginning in calendar year 1986, reviews of pending requests shall be conducted at least once each year, according to the following schedule, unless otherwise specified by Federal Register notice:

(1) June 1, deadline for acceptance of petitions for review;

(2) July 15, Federal Register announcement of petitions accepted for review;

(3) September/October — public hearings and submission of written briefs and rebuttal materials;

(4) December/January — opportunity for public comment on USITC public reports;

(5) Results announced on April 1 will be implemented on July 1, the statutory effective date of modifications to the program. If the date specified is on or immediately follows a weekend or holiday, the effective date will be on the second working day following such weekend or holiday.

(b) Requests filed pursuant to paragraph (a) or (b) of Sec. 2007.0 which indicate the existence of unusual circumstances warranting an immediate review may be considered separately.

Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

(c) General Review.

Section 504(c)(2) of Title V of the Trade Act of 1974 (19 United States C. 2464(c)(2)) requires that, not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502(c) of Title V. The initiation and scheduling of such reviews as well as the timetable for submission of comments and statements will be announced in the Federal Register. The first general review was initiated on February 14, 1985 and will be completed by January 3, 1987. The initiation of the review and deadlines for submission of comments and statements were announced in the Federal Register on February 14, 1985 (50 FR 6294).

Sec. 2007.4 Publication regarding requests.

(a) Whenever a request is received which conforms to these regulations or which is accepted pursuant to Sec. 2007.2 a statement of the fact that the request has been received, the subject matter of the request (including if appropriate, the TSUS item number or numbers and description of the article or articles covered by the request), and a request for public comment on the petitions received shall be published in the Federal Register.

(b) Upon the completion of a review and publication of any Presidential action modifying the GSP, a summary of the decisions made will be published in the Federal Register including:

(1) A list of actions taken in response to requests; and

(2) A list of requests which are pending.

(c) Whenever, following a review, there is to be no change in the status of an article with respect to the GSP in response to a request filed under Sec. 2007.0(a), the party submitting a request with respect to such articles may request an explanation of factors considered.

(d) Whenever, following a review, there is to be no change in the status of a beneficiary country with respect to the GSP in response to a request filed under Sec. 2007.0(b), the GSP Subcommittee will notify the party submitting the request in writing of the reasons why the requested action was not taken.

Sec. 2007.5 Written briefs and oral testimony.

Sections 2003.2 and 2003.4 of this chapter shall be applicable to the submission of any written briefs or requests to present oral testimony in connection with a review under this part. For the purposes of this section, the term “interested party” as used in Secs. 2003.2 and 2003.4 shall be interpreted as including parties submitting petitions and requests pursuant to Sec. 2007.0(a) or (b) as well as any other person wishing to file written briefs or present oral testimony.

Sec. 2007.6 Information open to public inspection.

With exception of information subject to Sec. 2007.7 any person may, upon request inspect at the Office of the United States Trade Representative:

(a) Any written request, brief, or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings which may be held pursuant to this part.

Sec. 2007.7 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the disclosure of such information is not required by law.

(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page "Submitted in Confidence" at the top, and shall submit a no confidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

Sec. 2007.8 Other reviews of article eligibilities.

(a) As soon after the beginning of each calendar year as relevant trade data for the preceding year are available, modifications of the GSP in accordance with section 504(c) of the Trade Act of 1974 as amended (19 United States C. 2464) will be considered.

(b) General Review. Section 504(c)(2) of Title V of the Trade Act of 1974 as amended (19 United States C. 2464(c)(2)) requires that not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502 of Title V. The purpose of these reviews is to determine which articles from which beneficiary countries are "sufficiently competitive" to warrant a reduced competitive need limit. Those articles determined to be "sufficiently competitive" will be subject to a new lower competitive need limit set at 25 percent of the value of total U.S imports of the article, or $25 million (this figure will be adjusted annually in accordance with nominal changes in United States gross national product (GNP), using 1984 as the base year). All other articles will continue to be subject to the original competitive need limits of 50 percent or $25 million (this figure is adjusted annually using 1974 as the base year).

(1) Scope of General Reviews.

In addition to an examination the competitiveness of specific articles from particular beneficiary countries, the general review will also include consideration of requests for competitive need limit waivers pursuant to section 504(c)(3)(A) of Title V of the Trade Act of 1974 as amended (19 United States C. 2464(c)) and requests for a determination of no domestic production under section 504(d)(1) of Title V of the Trade Act of 1974 as amended (19 United States C. 2464(d)(1)).

(2) Factors To Be Considered.

In determining whether a beneficiary country should be subjected to the lower competitive need limits with respect to a particular article, the President shall consider the following factors contained in sections 501 and 502(c) of Title V:

(i) The effect such action will have on furthering the economic development of developing countries through expansion of their exports;

(ii) The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(iii) The anticipated impact of such action on the United States producers of like or directly competitive products;

(iv) The extent of the beneficiary developing country's competitiveness with respect to eligible articles;

(v) The level of economic development of such country, including its per capita GNP, the living standard of its inhabitants and any other economic factors the President deems appropriate;

(vi) Whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(vii) The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(viii) The extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights;

(ix) The extent to which such country has taken action to:

(A) Reduce trade distorting investment practices and policies (including export performance requirements); and

(B) Reduce or eliminate barriers to trade in services; and

(x) Whether or not such country has taken or is taking steps to afford workers in that country (including any designated zone in that country) internationally recognized worker rights.

Appendix 5

AFRICA INVESTMENT INCENTIVE ACT OF 2006 (AGOA IV)

AFRICA INVESTMENT INCENTIVE ACT OF 2006 (AGOA IV)

H.R.6111
SEC. 6002. PREFERENTIAL TREATMENT OF APPAREL PRODUCTS OF LESSER DEVELOPED COUNTRIES

(a) In General- Section 112 of the African Growth and Opportunity Act (19 U.S.C. 3721) is amended--

(1) by redesignating subsections (c) through (f) as subsections (d) through (g);

(2) in subsection (b)--

(A) in the matter preceding paragraph (1), by striking `The' and inserting `Subject to subsection (c), the'; and

(B) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B); and

(3) by inserting after subsection (b) the following new subsection: `(c) Lesser Developed Countries- `(1) PREFERENTIAL TREATMENT OF PRODUCTS THROUGH SEPTEMBER 30, 2012-

`(A) PRODUCTS COVERED- In addition to the products described in subsection (b), and subject to paragraph (2), the preferential treatment described in subsection (a) shall apply through September 30, 2012, to apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric or the yarn used to make such articles, in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

`(B) APPLICABLE PERCENTAGE- For purposes of subparagraph (A), the term `applicable percentage' means--

`(i) 2.9285 percent for the 1-year period beginning on October 1, 2005; and

`(ii) 3.5 percent for the 1-year period beginning on October 1, 2006, and each 1-year period thereafter through September 30, 2012.

`(2) SPECIAL RULES FOR PRODUCTS IN COMMERCIAL QUANTITIES IN AFRICA-

`(A) PETITION PROCESS- Upon a petition filed by an interested party (which may include a foreign manufacturer), the Commission shall determine whether a fabric or yarn produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser developed beneficiary sub- Saharan African countries.

`(B) EFFECT OF AFFIRMATIVE DETERMINATION-

`(i) DETERMINATION OF QUANTITY AVAILABLE- If the Commission determines under subparagraph (A) that a fabric or yarn produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser developed beneficiary sub-Saharan African countries, the Commission shall determine the quantity of the fabric or yarn that will be so available in lesser developed beneficiary sub-Saharan African countries in the applicable 1-year period beginning after the determination is made.

`(ii) DETERMINATIONS- In each case in which the Commission determines that a fabric or yarn is available in commercial quantities under subparagraph (A) for an applicable 1-year period, the Commission shall determine, before the end of that applicable 1-year period--

`(I) whether the fabric or yarn produced in beneficiary sub-Saharan African countries will be available in commercial quantities in the succeeding applicable 1-year period; and `(II) if so, the quantity of the fabric or yarn that will be so available in that succeeding 1-year period, subject to clause (iii).

`(iii) DETERMINATION REGARDING IMPORTED

ARTICLES- After the end of each applicable 1-year period for which a determination under clause (i) is in effect, the Commission shall determine to what extent the quantity of the fabric or yarn determined under clause (i) to be available in commercial quantities for use by lesser developed beneficiary sub-Saharan African countries was used in the production of apparel articles receiving preferential treatment under paragraph (1) that were entered in that applicable 1-year period. To the extent that the quantity so determined was not so used, then the Commission shall add to the quantity of that fabric or yarn determined to be available in the next applicable 1-year period the quantity not so used in the preceding applicable

1-year period.

`(C) DENIM- Denim articles provided for in subheading 5209.42.00 of the Harmonized Tariff Schedule of the United States shall be deemed to have been determined to be in abundant supply under subparagraph (A) in an amount of 30,000,000 square meter equivalents for the 1-year period beginning October 1, 2006.

`(D) PRESIDENTIAL AUTHORITY TO RESTRICT IMPORTS-

`(i) IN GENERAL- Subject to clause (ii), the President may by proclamation provide that apparel articles otherwise eligible for preferential treatment under paragraph (1) that contain a fabric or yarn determined to be available in commercial quantities under subparagraph (A) may not receive such preferential treatment in an applicable 1-year

period unless--

`(I) the fabric or yarn in such articles was produced in 1 or more beneficiary sub-Saharan African countries; or

`(II) the Commission has determined that the quantity of the fabric or yarn determined under subparagraph (B) (or (C), as the case may be) to be available in lesser developed beneficiary sub-Saharan African countries for that applicable 1-year

period has already been used in the production of apparel articles receiving preferential treatment under paragraph (1) that were entered in that applicable 1-year period.

`(ii) MANDATORY RESTRICTION- If a fabric or yarn is determined to be available in commercial quantities under subparagraph (A) in an applicable 1-year period, and for 2 consecutive applicable 1-year periods the quantities determined to be so available are not used in the production of apparel articles receiving preferential treatment under paragraph (1) that were entered during those 2 applicable 1- year periods, then beginning in the succeeding applicable 1-year period, apparel articles containing that fabric or yarn are ineligible for preferential treatment under paragraph (1) in any succeeding applicable 1-year period unless the Commission has determined that the quantity of the fabric or yarn determined under subparagraph (B) (or (C), as the case may be) to be available in lesser developed beneficiary sub-Saharan African countries for that applicable 1-year period has already been used in the production of apparel articles receiving preferential treatment under paragraph (1) that were entered in that applicable 1-year period.

`(E) PROCEDURES- The Commission shall use the procedures prescribed in subsection (b)(3)(C)(iv) for the Secretary of Commerce in making determinations under this paragraph. `(3) REMOVAL OF DESIGNATION OF FABRICS OR YARNS NOT AVAILABLE IN COMMERCIAL QUANTITIES- If the President determines that--

`(A) any fabric or yarn described in paragraph (2)(A) was determined to be eligible for preferential treatment, or

`(B) any fabric or yarn described in paragraph (2)(B) was designated as not being available in commercial quantities, on the basis of fraud, the President may remove the eligibility or designation (as the case may be) of that fabric or yarn with respect to articles entered after such removal.

`(4) APPLICABILITY OF OTHER PROVISIONS- Subsection (b)(3)(C) applies to apparel articles eligible for preferential treatment under this subsection to the same extent as that subsection applies to apparel articles eligible for preferential treatment under subsection (b)(3).

`(5) DEFINITIONS- In this subsection:

`(A) APPLICABLE 1-YEAR PERIOD- The term `applicable 1- year period' means each of the 12-month periods beginning on October 1 of each year and ending on September 30 of the following year.

`(B) COMMISSION- The term `Commission' means the United States International Trade Commission.

`(C) ENTER; ENTRY- The terms `enter' and `entry' refer to the entry, or withdrawal from warehouse for consumption, in the customs territory of the United States.

`(D) LESSER DEVELOPED BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY- The term `lesser developed beneficiary sub-Saharan African country' means--

`(i) a beneficiary sub-Saharan African country that had a per capita gross national product of less than $1,500 in 1998, as measured by the International Bank for Reconstruction and Development;

`(ii) Botswana; and

`(iii) Namibia.'.

(b) Additional Preferential Treatment- Section 112(b) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)) is amended by adding at the end the following new paragraph:

`(8) TEXTILE ARTICLES ORIGINATING ENTIRELY IN ONE OR

MORE LESSER DEVELOPED BENEFICIARY SUB-SAHARAN

AFRICAN COUNTRIES- Textile and textile articles classifiable under chapters 50 through 60 or chapter 63 of the Harmonized Tariff Schedule of the United States that are products of a lesser developed beneficiary sub-Saharan African country and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more such countries.'.

(c) Technical Amendment- Section 112(e)(3) of the African Growth and Opportunity Act (as redesignated by subsection (a)(1) of this section) is amended by striking `subsection (b)' and inserting `subsections (b) and (c)'.

SEC. 6003. TECHNICAL CORRECTIONS.

Section 112 of the African Growth and Opportunity Act (19 U.S.C. 3721) is amended as follows:

(1) Subsection (b)(5) is amended by adding at the end the following new subparagraph:

`(C) REMOVAL OF DESIGNATION OF FABRICS OR YARNS

NOT AVAILABLE IN COMMERCIAL QUANTITIES- If the President determines that any fabric or yarn was determined to be eligible for preferential treatment under subparagraph (A) on the basis of fraud, the President is authorized to remove that

designation from that fabric or yarn with respect to articles entered after such removal.'.

(2) Subsection (f), as redesignated by section 6002(a)(1), is amended by adding at the end the following:

`(5) ENTER; ENTERED- The terms `enter' and `entered' refer to the entry, or withdrawal from warehouse for consumption, in the customs territory of the United States.'.

SEC. 6004. EFFECTIVE DATE FOR AGOA.

Subsection (g) of section 112 of the African Growth and Opportunity Act (19 U.S.C.

3721), as redesignated by section 6002(a)(1), is amended by striking `2008' and inserting `2015'.

Appendix 6

THE GSP MODEL PETITION

THE GSP MODEL PETITION

Part I: General Information Required of all Petitioners:

1. Provide the name of the petitioner, and the person, firm or association represented by the petitioner. Briefly describe interest of petitioner that is being affected by the operation of the GSP.
2. Identify the product or products or interest, including a detailed description of the product(s) and the item number(s) in the Harmonized Tariff Schedule of the United States (HTSUS). Where the product or products of interest are included with other products in a basket category of the HTSUS, provide a detailed description of the product or products or interest.
3. Describe the action requested, together with a statement of the reasons therefore and any supporting information.
4. Indicate whether, to the best of the petitioner's knowledge, the reasoning and information in this request has been presented previously to the Trade Policy Staff Committee (TPSC) by the petitioner or any party. If petitioner has knowledge the request has been made previously, petitioner must include information that indicates changed circumstances or rebut the previous supporting arguments. (If it is a request for product addition, the previous request must not have been formally accepted for the review within the proceeding three calendar year period.) Information on prior petitions is available from the GSP Information Center.
5. Provide a statement of the benefits anticipated by the petitioner if the request is granted.

Part 2: Supporting Information:

NOTE: Requests to withdraw, limit, or suspend eligibility with respect to designated articles must include the information in Section I. Requests to designate new articles must include the information in Section 2.

Section 1: Request to withdraw, limit or suspend eligibility with respect to designated articles:

Provide the following information with respect to the relevant United States industry for the most recent *three* calendar year period:[1]

1. Number and location of firms;
2. Actual production figures;
3. Production capacity and capacity utilization;
4. Employment figures, including number, type, wage rate, location, and changes in any of these elements;
5. Sales figures in terms of quantity, value and price;
6. Quantity and value of exports, and principal export markets;
7. Profitability of firm(s) producing the like product, including profit data by product line, if possible;
8. Analysis of costs, including materials, labor and overhead;
9. A discussion of the competitive situation of the United States domestic industry;
10. Identification of competitors; analysis of the effect imports receiving duty-free treatment under the GSP have on competition and the business of the interest on whose behalf this request is being made;
11. Any relevant information relating to the factors listed in sections 501 and 502(c) of Title V of the Trade Act of 1974, as amended, such as identification of tariff and non-tariff barriers to sales in foreign markets;
12. Any other relevant information, including any additional information that may be requested by the GSP Subcommittee.

Section 2: Requests to designate new articles or waive competitive need limits:

Provide the following information for the most recent *three* calendar year period for the beneficiary country on whose behalf the request is being made and, to the extent possible, other principle beneficiary country suppliers:

1. Identification of the principal beneficiary country suppliers expected to benefit from the proposed modification(s);
2. Name and location of firm(s);
3. Actual production figures and estimated increase if GSP eligibility is granted;
4. Actual production and capacity utilization and estimated increase if GSP eligibility is granted;
5. Employment figures (including numbers, type, wage rate and location) and changes in any of these elements if GSP eligibility is granted;
6. Sales figures in terms of quantity, value and prices;
7. Information on total exports, including principle markets, the distribution of products, existing tariff preferences in the such markets, total quantity, value and trends in exports;
8. Information on exports to the United States in terms of quantity, value, and price, and considerations which affect the competitiveness of these exports relative to exports to the United States by other beneficiary countries of a like or directly competitive product, including, where possible, information on the development of the industry in beneficiary countries and trends in production and promotional activities;
9. Analysis of costs, including materials, labor, and overhead;
10. Profitability of firms producing the product;
11. Information on unit prices and other considerations, such as variations in quality or use, that affect price competition;
12. If the petition is submitted by a foreign government of a government controlled entity, a statement on how the requested modification would further the economic development of the country submitting the petition;
13. If appropriate, an assessment of how the article would qualify under the GSP's 35 percent value added requirements;
14. Any other relevant information, including any information that may be requested by the GSP Subcommittee.

Appendix 7

A CASE STUDY IN THE OPERATION OF THE COMPETITIVE NEED LIMITS: CERAMIC ROOFING TILES FROM THE BOLIVARIAN REPUBLIC OF VENEZUELA

A CASE STUDY IN THE OPERATION OF THE COMPETITIVE NEED LIMITS: CERAMIC ROOFING TILES FROM THE BOLIVARIAN REPUBLIC OF VENEZUELA

The case of ceramic roofing tiles from the Bolivarian Republic of Venezuela offers a useful illustration of how the CNLs operate, and also illustrates the dangers of relying solely on *de minimis* waivers in order to maintain GSP privileges. In this instance, a Venezuelan exporter lost but regained its duty-free status for a product that faces an extraordinarily high tariff rate (13.5 percent *ad valorem*). The Bolivarian Republic of Venezuela enjoyed GSP benefits for this product during 1980-1993, lost eligibility in 1994 because its shipments to the United States grew sharply (if temporarily) in 1993, but petitioned for reinstatement in 1995. The GSP Subcommittee granted this petition in 1997, but the exporter's interests would have been much better served by seeking a CNL waiver before losing GSP in the first place.

The pattern of United States imports of this product is shown in table A.1. The Bolivarian Republic of Venezuela's share of imports exceeded 50 per cent during 1991-1993, and the country could have been denied GSP eligibility in any one of those years. In each year, the GSP Subcommittee exercised its authority to waive the restrictions, and hence allow the product to continue receiving GSP treatment, because total United States imports were below the *de minimis* level. The Bolivarian Republic of Venezuela did not request a CNL waiver, however, and came to regret this omission when United States imports jumped up in 1993. The sharp increase in demand for roofing tiles was due principally to the after-effects of Hurricane Andrew. This disaster tore through Florida in August, 1992, causing some $20 billion in damages to homes, businesses, and other property, and producing a temporary boom in the construction industry and allied fields. This in turn caused imports of ceramic roofing tiles to grow rapidly, if temporarily, in the final months of 1992 and all of 1993. Total United States imports of ceramic roofing tiles in 1993 were 46.9 per cent higher than they had been in 1992, and 73.0 per cent above the 1991 level. The Bolivarian Republic of Venezuela once again accounted for just over half of United States imports in 1993, but total imports of this product were in excess of the *de minimis* level. The excess was just 2.2 percent above the *de minimis* level, but that was enough to prevent even the consideration of a waiver. Beginning on July 1, 1994, imports from the Bolivarian Republic of Venezuela were therefore subject to the 13.5 percent duty.

The rules required that, in order to be reinstated to GSP eligibility, imports from the Bolivarian Republic of Venezuela had to dip once again below the 50 per cent mark. The data in table 2 indicate that this standard clearly was met in 1994. Total United States imports fell back to the normal, pre-hurricane levels, and imports from the Bolivarian Republic of Venezuela fell at a particularly sharp rate. Indeed, the Bolivarian Republic of Venezuela's loss of GSP appeared to work to the advantage of suppliers from Mexico (which enjoyed duty-free treatment for this product under NAFTA) and Colombia (which have enjoyed duty-free treatment for this product under the Andean Trade Preferences Act since 1992).

A United States importer filed a petition to the GSP Subcommittee in the 1995 GSP review. This petition requested that (a) imports of this product from the Bolivarian Republic of Venezuela be restored to the GSP, and that (b) the Bolivarian Republic of Venezuela be granted a waiver from any further application of the CNLs for this product. The GSP Subcommittee accepted this petition for review, but it took nearly two years for the process to be completed. Because Congress allowed the GSP to lapse in 1995, the subcommittee suspended its conduct of the review until the program was reinstated. It then held hearings in October, 1996, where the United States importer of Venezuelan tiles gave testimony. The subcommittee did indeed grant the Venezuelan request, which did not take effect until Congress reinstated the GSP once again in August, 1997 (but the importer could request refunds, with interest, for any tariffs paid on these imports since May 31, 1997).

This case demonstrates the danger of not seeking a CNL waiver for a product, and relying instead on the temporary and uncertain protection of *de minimis* waivers. Suppose that in the early 1990s, one of the interested parties — the Venezuelan producer, the Government of the Bolivarian Republic of Venezuela, or the United States importer — had taken the preventive measure of seeking a CNL waiver. The unexpected surge of imports in 1992-1993 would not have led to the loss of GSP treatment in mid-1994. Instead, three years passed between the loss and restoration of GSP privileges for Venezuelan roofing tiles. During this time the United States imported $9.9 million worth of roofing tiles from the Bolivarian Republic of Venezuela, on which duties of $1.4 million were paid. Those duties represent a loss that can never be recovered. Moreover, the suspension of Venezuelan GSP during this period offered an opportunity to producers in Mexico and Colombia. These two countries' combined share of the United States market rose from 13.1 per cent in 1993 (the last year that the Bolivarian Republic of Venezuela enjoyed GSP for the full year) to an estimated 51.3 per cent in 1998. It may be a long time before the Bolivarian Republic of Venezuela recaptures the market share that it once held.

In the end, however, the petition to redesignate the product and waive the CNLs has been of great benefit to the Venezuelan industry. With an estimated $3.2 million worth of United States imports during 1998 (based on the assumption that October-December imports were at the same rate as January-September), the savings in foregone tariffs amounted to some $440,000. Moreover, this industry is permanently protected from the loss of its GSP status. Even if the Bolivarian Republic of Venezuela once again ships more than half of United States imports, it will be free from the threat of the CNLs.

United States Imports of Ceramic Roofing Tiles

(Imports of Harmonized Tariff Schedule item 6905.10.00 in thousands of current dollars, customs value; figures in parentheses are each country's share of total United States importsImports of Harmonized Tariff Schedule item 6905.10.00 in thousands of current dollars, customs value; figures in parentheses are each country's share of total United States imports)

	1991	1992	1993	1994	1995	1996	1997
Venezuela, Bolivarian Republic of	3,774 (50.5%)	4,785 (54.4%)	7,214 (55.8%)	3,539 (43.4%)	2,975 (41.1%)	3,417 (34.7%)	3,149 (32.4%)
Mexico	1,388 (18.6%)	1,411 (16.0%)	1,431 (11.1%)	2,514 (30.8%)	2,558 (35.3%)	3,973 (40.3%)	3,304 (34.0%)
Colombia	--- (0%)	--- (0%)	264 (2.0%)	240 (2.9%)	343 (4.7%)	583 (5.9%)	891 (9.2%)
Spain	347 (4.6%)	618 (7.0%)	2,209 (17.1%)	627 (7.7%)	501 (6.9%)	631 (6.4%)	549 (5.6%)
France	170 (2.3%)	148 (1.7%)	198 (1.5%)	222 (2.7%)	102 (1.4%)	338 (3.4%)	412 (4.2%)
Japan	1,294 (17.3%)	1,084 (12.3%)	908 (7.0%)	631 (7.7%)	403 (5.6%)	267 (2.7%)	264 (2.7%)
Rest of world	502 (6.7%)	757 (8.6%)	706 (5.5%)	379 (4.6%)	358 (4.9%)	639 (6.5%)	1,151 (11.8%)
Total imports	7,475 (100%)	8,803 (100%)	12,930 (100%)	8,152 (100%)	7,240 (100%)	9,848 (100%)	9,720 (100%)
De minimis level	11,276	11,819	12,649	13,346	N.A.	13,000	13,500
Total imports relative to the de minimis level	66.3%	74.5%	102.2%	61.1%	N.A.	75.8%	72.0%

Appendix 8

FREQUENTLY ASKED QUESTIONS ABOUT THE GSP

Adapted from the USTR's website

FREQUENTLY ASKED QUESTIONS ABOUT THE GSP

ADAPTED FROM THE USTR'S WEBSITE

1. GSP-Eligible Articles

Which imports into the United States qualify for duty-free treatment under the GSP?

A GSP-eligible import meets the following requirements (described in more detail below):

(1) It must be included in the list of GSP-eligible articles;

(2) It must be imported directly from a designated beneficiary developing country (BDC) or association;

(3) The BDC or association must be eligible for GSP treatment for that article;

(4) The article must be the growth, product, or manufacture of a BDC and must meet the value-added requirements;

(5) The exporter/importer must request duty-free treatment under GSP by placing the appropriate GSP Special Program Indicator (SPI) (A, A+, or A*) before the HTSUS number that identified the imported article on the appropriate shipping documents (CBP Form 7501).

Which articles are eligible for duty-free treatment?

Articles classified by CBP under approximately 3,500 eight-digit tariff rate lines are generally eligible for duty-free treatment from all GSP beneficiaries. An additional 1,500 articles are eligible for duty-free treatment when imported from LDBDCs. The combined lists include most dutiable manufactured and semi-manufactured products and also certain agricultural, fishery, and primary industrial products that are not otherwise duty-free. LDBDCs are designated as such pursuant to section 502(a)(2) of the Trade Act of 1974, as amended, and, in practice, are typically GSP beneficiaries that are on the United Nations' list of least developed countries.

How do I determine if a particular item is GSP-eligible?

Articles eligible for GSP treatment are identified in the current edition of the Harmonized Tariff Schedule of the United States (HTSUS), which is published by the U.S. International Trade Commission (USITC). The complete HTSUS can be downloaded from the USITC web site (http://www.usitc.gov/tata/hts) or obtained from the field offices of the U.S. Department of Commerce or at U.S. Embassies and Consulates. There is also a searchable version of the HTSUS available at the USITC website. The USITC also maintains "DataWeb," a searchable database of import statistics and other information, including product eligibility information for GSP and other U.S. preference programs, which can be found at: http://dataweb.usitc.gov.

Can any article be designated as eligible for GSP?

No. Certain articles are prohibited by law (19 USC 2463) from receiving GSP treatment. These include most textiles and apparel articles, watches, footwear, handbags, luggage, flat goods, work gloves, and leather apparel. In addition, the GSP statute precludes eligibility for import-sensitive steel, glass, and electronic articles.

How is an article identified as GSP eligible in the HTSUS?

The letter A in the "Special" tariff column of the HTSUS identifies GSP-eligible articles at an eight-digit level. The following table presents three HTSUS tariff lines to illustrate variations in the treatment given to different GSP articles. Under each entry for a GSP-eligible article in the HTSUS, the letter A, A+, or A* in the "Special" column identifies the article as GSP-eligible under certain conditions. The letter A designates articles that are GSP-eligible for all BDCs. The letter A+ indicates articles that are GSP-eligible only for LDBDCs. The letter A* identifies articles that are GSP-eligible except for imports from one or more specific BDCs that have lost GSP eligibility for that article. The HTSUS indicates the GSP status of articles as follows:

Rate of duty *(in percentage)*

HTSUS subheading	Article description	Column 1		Column 2
		General		Special
8406.10.10	Steam turbines for marine propulsion	6.7	Free A	20
8413.30.10	Fuel-injection pumps for compression-ignition engines	2.5	Free A*	35
8708.92.50	Mufflers and exhaust pipes	2.5	Free A+	25

For articles marked with A*, section 4(d) of the General Notes of the HTSUS identifies the BDC(s) to which the restriction applies.

What is the rate of duty on a GSP-eligible article?

All imports of GSP-eligible articles from BDCs or LDBDCs are duty-free.

How are certain products removed from GSP eligibility?

The President may remove products from GSP eligibility in three contexts:

(1) in response to petitions submitted by the interested parties in the annual review;

(2) upon designating new products, by precluding certain BDCs from GSP eligibility as to those products; and

(3) upon redesignating specific articles as GSP-eligible, by denying redesignation to certain BDCs.

How can the correct classification be determined?

United States Customs and Border Protection (formerly the United States Customs Service) is responsible for classifying imports under the HTSUS, which contains a description of each product. Any questions concerning the appropriate classification of a particular product may be directed to Customs officers at the port of entry or to Customs' Office of Regulations and Rulings in Washington, D.C. Customs provides a compliance document whose purpose is to inform importers of the basic requirements of the GSP program, and how to begin to structure a system of internal controls that addresses the regulatory requirements for substantiating GSP claims. Customs rulings are published and available on line at: http://rulings.cbp.gov.

2. How to claim GSP benefits for eligible articles upon entry into the United States

How does an importer request GSP treatment?

The burden is on the importer to say whether the products qualify, by using the A code to signify GSP as per 19 CFR 10.172. The request is made by placing the letter **A**, as a prefix, before the HTSUS tariff-line number when completing the shipment entry documentation. This letter is referred to as the Special Program Indicator (SPI). If GSP is not claimed on the entry summary, there are a few ways to claim it. One is to file a Post Entry Amendment with Customs at least 20 days prior to liquidation.

Another method is to file a protest, as per 19 USC 1514.

What documents are needed to ensure GSP duty-free treatment?

For agricultural exports:

- Producer's statement verifying which town and farm the product is grown on;
- Description of product and quantity;
- Dated invoices for costs incurred.

To verify the 35 percent rule of origin rule:

- Dated invoices for materials used to produce the good, showing from where the materials came;
- Description of product and quantity.

If processing operations are involved:

- Description of processing and location;
- Documentation of the direct costs of processing operations.

Note: The importer must keep all documents for at least five years.

3. GSP Beneficiary Developing Countries

Where are the official lists published of GSP-eligible beneficiaries – including countries, territories, associations of countries, and LDBDCs – and the articles with country restrictions on eligibility?

Section 4(a) of the General Notes at the beginning of the HTSUS contains the official list of GSP-eligible beneficiaries. Section 4(b) contains the list of LDBDCs. Section 4(d) contains the list of the imported articles that are not eligible for GSP treatment from certain GSP countries. When a BDC is first designated or otherwise undergoes a change in status with respect to GSP eligibility, a notice is published in the Federal Register. The lists contained in the General Notes are periodically modified to reflect these changes. See below.

Is the list of eligible articles and countries ever modified?

Yes. The United States Government, through the GSP Subcommittee, conducts an annual review of the list of articles and countries eligible for duty-free treatment. Modifications in the list normally take effect on July 1 of the following calendar year.

How can someone modify the list of articles or countries?

Any person may petition the GSP Subcommittee to request modifications to the list of countries eligible for GSP treatment; only an "interested party" may petition for modifications to the list of articles eligible for GSP treatment. For purposes of this provision, an interested party is any party who has significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive product, a commercial importer or retailer of a product eligible for GSP or for which eligibility is requested, or a foreign government. In order to be considered in a particular annual review, petitions must be submitted to the GSP Subcommittee by the deadline for submissions for that review, which is normally announced annually in the Federal Register. (See suggested outlines of GSP petitions below.) Petitions must conform to the applicable rules and regulations. Petitions accepted for review are subject to public hearings and a full review by the major

Executive branch departments having a role in U.S. trade policy. Modifications made pursuant to the annual review are implemented by executive order, or Presidential proclamation, and are published in the Federal Register.

What factors are taken into account in modifying the list of eligible articles or countries?

In modifying the GSP list of articles and countries, the following factors must be considered:

(1) The effect such action will have on furthering the economic expansion of the country's exports;

(2) The extent to which other major developed countries are undertaking a comparable effort to assist a developing country by granting generalized preferences with respect to imports of products of the country;

(3) The anticipated impact of such action on the United States producers of like or directly competitive products; and

(4) The extent of the country's competitiveness with respect to eligible products. In addition, the statute provides mandatory and discretionary factors the President must take into account in designating a country as eligible for GSP (19 USC 2462(b) and (c)). Finally, the statute also provides a list of articles that may not be designated eligible for GSP (19 USC 2463(b)).

Because the United States GSP program has been in operation since 1976, many of the products not currently eligible for GSP have been considered for eligibility in a prior year. Consulting the petition history for a product may provide helpful information on its potential for inclusion on the GSP eligible list. The public version of previously filed petitions is on file at USTR's Reading Room. Please call 202-395-6186 to make an appointment.

Who makes the determinations regarding GSP product and country eligibility?

GSP issues are reviewed within the interagency trade policy committee framework coordinated and chaired by the USTR. Major Executive branch departments having a role in trade policy participate in the interagency review of changes in GSP eligibility. Each of these agencies is represented on the GSP Subcommittee, which USTR chairs. USTR also maintains the day-to-day operation of the GSP under the guidance of the Executive Director. The President ultimately determines which countries and which products are eligible for GSP benefits.

Do all beneficiary countries receive duty-free treatment on the entire list of articles?

No. Particular shipments or imports from a particular BDC may be ineligible because: (1) they exceed the competitive need limitations (see below); (2) the products' GSP eligibility has been removed in response to a petition submitted in an annual review; (3) the BDC has been graduated with respect to that product; (4) the imports fail to meet the value added requirements; (5) the importer supplied incomplete documentation; or (6) the imports otherwise fail to meet other Customs requirements.

4. Competitive Need Limitations and Requests for Waivers

What are competitive need limitations?

Competitive need limitations (CNLS) provide a ceiling on GSP benefits for each product and BDC. A BDC will automatically lose its GSP eligibility with respect to a product if competitive need limitations are exceeded (and if no waiver is granted – see next table). The competitive need limitations require the termination of a BDC's GSP eligibility on a product if, during any calendar year, U.S. imports from that country: (1) account for 50 percent or more of the value of total U.S. imports of that product; or (2) exceed a certain dollar value. In accordance with the GSP statute, the dollar-value limit is increased by $5 million annually; the limit was $130 million in 2007, is $135 million in 2008, and will be $140 million in 2009. Products will be found "sufficiently competitive" when imported from a specified beneficiary, when they exceed one of these limits. By statute, GSP treatment for an article exceeding either CNL terminates July 1 of the next calendar year.

Are the competitive need limitations ever waived?

Yes. Competitive need limits can be waived under four circumstances, as described below.

Types of competitive need limitation waivers

HTSUS subheading	Percent Limit Waived		Value Limit Waived	
Petitioned waiver	Yes		Yes	
"504(d)" waiver		Yes		No
De Minimis waiver	Yes		No	
Least developed waiver		Yes		Yes

Petitioned waivers: As a result of amendments to the GSP law made in 1984, the President may grant a competitive need limitation waiver for a product imported from a BDC. Interested parties may petition for a waiver during the annual review process only when the product is below the CNL limit. In deciding whether to grant a waiver, the President is required to place "great weight" on the extent to which the country is providing reasonable and equitable access to its market for U.S. goods and services and the extent to which the country is providing reasonable and effective protection to U.S. intellectual property rights. If a waiver is granted, both the percentage limit and the dollar limit are waived. A waiver remains in effect until the President determines that it is no longer warranted due to changed circumstances; the statute also provides that the President should revoke any waiver that has been in effect for at least five years, if a GSP-eligible product from a specific country has an annual trade level in the previous calendar year that exceeds 150 per cent of the annual dollar-value limit or exceeds 75 percent of all U.S. imports.

Limitations on CNL waiver authority: The total value of U.S. imports from all beneficiary countries benefiting from the waiver cannot exceed 30 per cent of the total value of GSP imports in a calendar year. Countries having a per capita Gross National Product (GNP) in excess of $5,000 or which account for 10 per cent or more of total GSP benefits cannot be granted waivers, with an aggregate value equal to more than 15 percent of GSP imports.

"504(d)" waiver: The percentage provision is waived for certain GSP eligible articles which were not produced in the United States on January 1, 1995, as provided for in what used to be Section 504(d) of the GSP statute, now 19 USC 2463(c)(2)(E). Interested parties may petition for a waiver during the annual review process. For those products on this list, a "504(d)" waiver will automatically be granted when required each year.

De minimis waiver: A waiver may also be provided when total U.S. imports from all countries of a product are small or "*de minimis*". Like the dollar-value competitive need limitation, the *de minimis* level is adjusted each year, in increments of $0.5 million. Therefore, the *de minimis* level in 2008 is $19 million, and will be $19.5 million in 2009. Each year, a *de minimis* waiver will automatically be considered for all BDCs that exceeded the percentage competitive need limitation for a product where total imports from all countries for the preceding year were below the *de minimis* level. Such waivers cannot be requested by petition, but public comments are accepted following publication of a *Federal Register* notice. Granting such waivers is a discretionary decision of the President.

Least developed country waiver: All competitive need limitations are automatically waived for GSP beneficiaries designated as LDBDCs.

What happens if GSP imports from a beneficiary country reach or exceed competitive need limitations during the year?

GSP eligibility for articles from such countries will continue until no later than July 1 of the next calendar year, when they will be terminated, except for those products and beneficiaries granted a competitive need limitation waiver in the GSP annual review for the year in which the competitive need limitation was exceeded.

When should an interested party petition for a CNL waiver?

Waivers may only be sought before a product has exceeded the calendar-year competitive need limitations for a country. Interested parties should examine the relevant trade data to determine if a product of interest is likely to exceed the limitations and should file a petition seeking a waiver before the deadline for that year's annual GSP review. As noted above, if the CNL is exceeded, and no waiver has been granted, the product's GSP eligibility from the beneficiary country will terminate July 1 of the following year.

Can an interested party monitor the level of imports of an article?

Yes. Annual and monthly trade data can be downloaded from the USITC's DataWeb (http://dataweb.usitc.gov/). Registration is required to use the site, but it is free. Other sources include: trade data available from the U.S. Department of Commerce (http://www.export.gov/tradedata/eg_main_018547.asp) and foreign trade statistics from the Census Bureau (http://www.census.gov/foreign-trade/statistics/index.html)

Once an article is removed from GSP eligibility because it exceeded the CNL, can that article from the country ever be returned to GSP eligibility?

Yes. An interested party can seek redesignation of a product exported by a particular BDC if U.S. imports of that article from the affected country fall below the competitive need limitations in a subsequent year. Redesignation determinations are normally made in accordance with the country graduation factors described below.

5. Graduation of a Beneficiary Country from GSP

What is graduation and how is it implemented?

Graduation is the removal of GSP eligibility because a country is sufficiently developed or competitive so that it no longer requires GSP benefits, either as a whole or with respect to one or more products. The President may withdraw the application of the duty-free treatment with respect to a BDC or may suspend or limit the application of duty-free treatment with respect to a BDC.

Country graduation occurs:

- when the President determines that a beneficiary country is a "high-income country," as defined by the GSP statute (based on World Bank statistics) ("mandatory graduation"); or
- as the result of a review of a BDC's advances in economic development and trade competitiveness.

The per capita GNP limit is set at the lower bound of the World Bank's definition of a "high income" country (which was $12,616 in 2012). [Source: World Bank] Mandatory graduation takes effect January 1 of the second year after the year in which the President makes the graduation determination.

What factors are considered in graduation actions?

The GSP Subcommittee normally reviews: (1) the country's general level of development; (2) its competitiveness in regard to the particular product; (3) the country's practices relating to trade, investment, and worker rights; (4) the overall economic interests of the United States, including the effect continued GSP treatment would have on the relevant U.S. producers, workers and consumers; and (5) any other relevant information.

6. Rules-of-Origin Requirements

What are the rules-of-origin requirements?

For an imported article to be GSP-eligible, it must be the growth, product, or manufacture of a BDC, and the sum of the cost or value of materials produced in the BDC plus the direct costs of processing must equal at least 35 percent of the appraised value of the article at the time of entry into the United States. Published rulings on whether products meet the GSP rules of origin may be found at http://rulings.cbp.gov.

Can imported materials be counted toward the 35 per cent value added requirement?

Yes, but only if they are “substantially transformed” into new and different constituent materials which are then used to produce the eligible article. Inputs from member countries of GSP-eligible regional associations will be treated as single-country inputs for purposes of determining origin. U.S. Customs and Border Protection is charged with determining whether an article meets the GSP rules of origin.

How can the exporter in the developing country determine the appraised value of the article?

In most cases, the appraised value will be based on the transaction value, i.e. the price actually paid or payable for the merchandise when sold for export to the United States. This value includes the following elements: (1) the packing costs incurred by the buyer; (2) any selling commission paid by the buyer; (3) the value of any assist; (4) any royalty or license fee that the buyer is required to pay as a condition of the sale; and (5) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue to the seller. In general, shipping and other costs related to transporting the GSP articles from the port of export to the United States are neither included in the value of the article, nor in the value-added calculation.

What may be included in the direct costs of processing?

Direct costs of processing include all costs, whether directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the merchandise. These include the following: actual labor costs, including fringe benefits and on-the-job training costs for production staff and first line supervisors; dies, molds, and tooling costs, as well as depreciation on machinery and equipment; and research, development, design, blue-prints and engineering, quality control, and inspection and testing costs. This list is not exhaustive; further information on valuation can be obtained from Customs.

Which costs may not be included in the direct costs of processing?

Costs that may not be included in the direct costs of processing are those not directly attributable to the merchandise under consideration or are not costs of manufacturing, These costs include profit and general expenses and business overhead (such as administrative salaries, casualty and liability insurance, advertising, and sales representatives’ salaries, commissions, or expenses).

7. “Imported Directly” Requirement

What is meant by the requirement that the article be “imported directly”?

The article must be shipped directly from the BDC to the United States without passing through the territory of any other country, or, if shipped through the territory of any other country, the merchandise must not have entered the commerce of that country while en route to the United States. In all cases, the invoices, bills of lading, and other documents connected with the shipment must show the United States as the final destination.

Does the U.S. GSP contain any special provisions for beneficiary developing countries that are members of a regional association(s)?

Yes. If members of regional associations request and are granted recognition as regional associations under the GSP, the association’s member countries will be considered as one country for purposes of the GSP rules of origin. In other words, articles produced in two or more eligible member countries of an association will be accorded duty-free treatment if the countries together meet the rules of origin. Cumulation of production may occur between a BDC and LDBDC of a regional association to produce an article eligible for duty-free treatment only from LDBDCs, as long as the article is imported directly by the United States from the LDBDC.

The competitive need limitations will be assessed only with respect to the country of origin and not the entire association. There are currently six associations whose GSP-eligible beneficiary members can benefit from this provision: the South Asian Association for Regional Cooperation (SAARC); the Andean Group (or Cartagena Agreement); the Association of Southeast Asian Nations (ASEAN); the Caribbean Common Market (CARICOM); the Southern Africa Development Community (SADC); and the West African Economic and Monetary Union (WAEMU).

8. Handicraft Textiles

What is the certified handicraft textile agreement?

Several categories of textile products are eligible for GSP treatment when the GSP beneficiary country has signed an agreement with the United States to provide certification that the items are handmade products of the exporting beneficiary. To date, such agreements have been signed with the following beneficiaries: Afghanistan, Botswana, Cambodia, Egypt, Jordan, Mongolia, Nepal, Pakistan, Paraguay, Thailand, Timor-Leste, Tunisia, Turkey and Uruguay.

What are the products covered by the certified handicraft textile agreement?

The agreement allows the United States to give duty-free treatment to U.S. imports, that have been certified by the beneficiary country, of hand-loomed and folklore wall hangings (HTSUS 6304.99.10); and hand-loomed and folklore pillow covers (HTSUS 6304.99.40).
The special Customs procedures (including special paperwork) for importing these products are described below.

Is any special paperwork necessary to obtain GSP duty-free treatment for a shipment of eligible handicraft textiles?

For certified handicraft textile products eligible for GSP duty-free treatment to enter the United States duty-free under this arrangement, the image of the triangular seal certifying the products authenticity must be stamped on the commercial invoice and signed by one of the individuals identified by the beneficiary during the exchange of letters comprising the agreement. As noted above, only products produced in those beneficiary developing countries that have completed an official exchange of letters with the U.S. Government may receive GSP treatment. For more information, contact Customs.

How does an importer request GSP treatment for eligible handicraft textiles?

This can be accomplished by simply placing the prefix "**A**" before the HTSUS tariff number on the entry documentation.

9. Other Topics

If the GSP program expires and is later renewed retroactively, how does an importer arrange to be reimbursed for tariffs paid during the period after the expiration and before the reauthorization of GSP?

Importers who file their entries electronically should use the appropriate SPI (e.g. "**A**") as a prefix to the tariff numbers of articles that would qualify for GSP if GSP were in effect at the time of the entry. U.S. Customs and Border Protection has arranged for the timely processing of refunds of duties deposited on these GSP-eligible entries without requiring further action by the filer. Such use of the SPI, in effect, constitutes the importer's request for a refund of duties. For entries made without using the SPI, refunds of duties deposited must generally be requested in writing.

Do other countries maintain GSP programs?

Yes. More than 25 other industrialized nations maintain their own GSP programs. The beneficiaries, products, and types of preferences granted vary for each donor country.

Where may I find Federal Register notices pertinent to the GSP program?

Relevant Federal Register notices may be downloaded from the USTR website (http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html) and are available on http://www.regulations.gov.

Frequently asked questions about AGOA[3]

Q: How does AGOA benefit African countries?

A: AGOA passed as part of The Trade and Development Act of 2000 provides beneficiary countries in sub-Saharan Africa with the most liberal access to the U.S. market available to any country or region with which we do not have a Free Trade Agreement. It reinforces African reform efforts, provides improved access to U.S. credit and technical expertise, and establishes a high-level dialogue on trade and investment in the form of a U.S.-Sub-Saharan Africa Trade and Economic Forum.

Q: How does it benefit U.S. firms?

A: By creating tangible incentives for African countries to implement economic and commercial reform policies, AGOA contributes to better market opportunities and stronger commercial partners in Africa for U.S. companies. The Act should help forge stronger commercial ties between Africa and the United States, while it helps to integrate Africa into the global economy. U.S. firms may find new opportunities in privatizations of African State-owned enterprises, or in partnership with African companies in infrastructure projects.

Q: What is the "Abundant Supply" provision?

A: AGOA IV provides for special rules for fabrics or yarns produced in commercial quantities (or "abundant supply") in any designated sub-Saharan African country for use in qualifying apparel articles. Upon receiving a petition from any interested party, the International Trade Commission will determine the quantity of such fabrics or yarns that must be sourced from the region before applying the third country fabric provision. It also provides for 30 million square meter equivalents of denim to be determined to be in abundant supply beginning October 1, 2006. The U.S. International Trade Commission will provide further guidance on how it will implement this provision.

Q: What benefits are provided for Botswana and Namibia?

A: AGOA II permits Botswana and Namibia to qualify for the "Special Rule", which permits lesser developed AGOA beneficiary countries to utilize fabric manufactured anywhere in the world (extended until September 30, 2007 under AGOA III). Since Botswana's and Namibia's per capita GNP exceeded $1,500 (the 1998 World Bank level), they were not designated as a lesser developed beneficiary country and were not eligible for the Special Rule under the original AGOA legislation. The Africa Investment Incentive Act of 2006 (AGOA IV) continues to grant lesser-developed beneficiary country status to Botswana and Namibia, qualifying both countries for the Special Rule. While an amendment to the AGOA Acceleration Act of 2004 granted lesser-developed beneficiary country status to Mauritius, AGOA IV did not continue to grant Mauritius lesser-developed beneficiary country status.

Q: What conditions are placed on participation by African countries?

A: The President may designate sub-Saharan African countries as eligible to receive the benefits of the Act if they are making progress in such areas as: establishment of market-based economies; development of political pluralism and the rule of law; elimination of barriers to U.S. trade and investment; protection of intellectual property; efforts to combat corruption; policies to reduce poverty, increase availability of health care and educational opportunities; protection of human rights and worker rights, and elimination of certain practices of child labor. Progress in each area is not a requirement for AGOA eligibility.

Q: Does the United States have the right to set eligibility criteria for African countries?

A: The criteria are standards which the Africans themselves have espoused and most are striving to uphold. But Congress never intended AGOA to be a blank check for all African countries, without regard to performance. It was meant to offer tangible incentives for African governments to improve their political and economic governance, not to underwrite poor policies.

Q: What are the provisions governing apparel imports?

A: AGOA provides duty-free and quota-free treatment for eligible apparel articles made in qualifying sub-Saharan African countries through 2015. Qualifying articles include: apparel made of U.S. yarns and fabrics; apparel made of sub-Saharan African (regional) yarns and fabrics until 2015, subject to a cap; apparel made in a designated lesser-developed country of third-country yarns and fabrics until 2012, subject to a cap; apparel made of yarns and fabrics not produced in commercial quantities in the United States; textile or textile articles originating entirely in one or more lesser-developed beneficiary sub-Saharan African countries; certain cashmere and merino wool sweaters; and eligible hand loomed, handmade, or folklore articles, and ethnic printed fabrics. Under a Special Rule for lesser-developed beneficiary countries, those countries with a per capita GNP under $1,500 in 1998, will enjoy an additional preference in the form of duty-free/quota-free access for apparel made from fabric originating anywhere in the world. The Special Rule is in effect until September 30, 2012 and is subject to a cap. AGOA IV continues the designation of Botswana and Namibia as lesser-developed beneficiary countries

Q: Which countries fall under the per capita GNP ceiling for the Special Rule?

A: All Sub-Saharan African countries meet the per capita GNP requirements of the Special Rule with the exception of the following: Botswana, Gabon, Mauritius, Namibia, Seychelles, and South Africa. However, countries must meet the general AGOA eligibility requirements and the requirements for apparel benefits in order to qualify for the Special Rule. AGOA II grants Lesser Developed Beneficiary Country status to Botswana and Namibia, qualifying both countries for the Special Rule. The Africa Investment Incentive Act of 2006 (AGOA IV) continues to grant lesser-developed beneficiary country status to Botswana and Namibia.

Q: When do the apparel benefits take effect?

A: Although the apparel benefits take effect October 1, 2000, beneficiary countries must first have an effective visa system in place to prevent illegal transshipment and use of counterfeit documentation. They must also institute enforcement and verification procedures. Details were disseminated to African governments following a cable instruction to all U.S. embassies in Sub-Saharan Africa on September 21, 2000. Countries must also be beneficiary developing countries under the U.S. Generalized System of Preferences (GSP).

Q: What does the term "knit-to-shape" mean?

A: Components that take their shape in the knitting process, rather than being cut from a bolt of cloth.

Q: What are the Act's GSP provisions?

A: AGOA authorizes the President to provide duty-free treatment under GSP for any article, after the U.S. Trade Representative (USTR) and the U.S. International Trade Commission (USITC) have determined that the article is not import sensitive when imported from African countries. On December 21, 2000, the President extended duty-free treatment under GSP to AGOA eligible countries for more than 1,800 tariff line items in addition to the standard GSP list of approximately 4,600 items available to non-AGOA GSP beneficiary countries. The additional GSP line items which include such previously excluded items as footwear, luggage, handbags, watches, and flatware were implemented after an extensive process of public comment and review. Sub-Saharan African GSP beneficiary countries are also exempted from competitive need limitations. In order for any Sub-Saharan African country to receive the liberalized GSP benefits it must first be GSP eligible under the existing criteria of that law.

GSP is extended for Sub-Saharan African beneficiary countries until September 30, 2015.

Appendix 9

OTHER USEFUL DOCUMENTS

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- **Authorizing legislation for AGOA**

  http://trade.gov/agoa/legislation/agoa_main_002118.pdf

- **Trade Act of 2002 Amendments to the African Growth and Opportunity Act and the Generalized System of Preferences**

  http://www.gpo.gov/fdsys/pkg/BILLS-107hr3009enr/pdf/BILLS-107hr3009enr.pdf

- **AGOA Acceleration Act of 2004**

  http://otexa.ita.doc.gov/PDFs/AGOA_Acceleration_Act_2004_Pub_Law_108-274.pdf

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