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Report to Congressional Requesters

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INTERNATIONAL TRADE

Assessment of the Generalized System of Preferences Program

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The Honorable Harris Wofford

The Honorable Byron Dorgan
United States Senate

The Honorable Steve Gunderson

The Honorable William Hughes

The Honorable Collin Peterson

The Honorable David Obey
House of Representatives

As you requested, we examined the U.S. Generalized System of Preferences Program to assess program benefits and administration prior to your consideration of reauthorization legislation.

We will send copies of this report to the U.S. Trade Representative, the Commissioners of the U.S. International Trade Commission, and interested congressional committees. Copies will also be made available to others on request.

Please contact me at (202) 512-4812 if you have any questions concerning this report. The major contributors to this report are listed in appendix IV.

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Executive Summary

Purpose

The Generalized System of Preferences (GSP) Program, which provides duty-free access to the United States for products of developing countries, is awaiting congressional reauthorization. This program eliminates tariffs on certain imports from eligible developing countries in order to promote development through trade rather than traditional aid programs. Concerns have been raised as to whether administration of the program adequately considers the impact of GSP imports on domestic producers and effectively enforces beneficiary country obligations. Reauthorization of the program provides an opportunity to consider the need for changes.

As requested, GAO reviewed the effectiveness of the GSP Program by analyzing program benefits, administration, and policy issues for Congress to consider in reauthorizing GSP legislation. Specifically, GAO analyzed (1) benefits provided to beneficiary developing countries, (2) limitations on GSP imports, (3) administration of the program for adding or removing products from GSP coverage, and (4) administration of program provisions requiring that countries follow certain intellectual property and worker rights practices.

Background

The GSP Program was authorized by title V of the Trade Act of 1974 (P.L. 93-618, Jan. 3, 1975) and reauthorized by the Trade and Tariff Act of 1984 (P.L. 98-573, Oct. 30, 1984). The interagency GSP Subcommittee is chaired by the Office of the U.S. Trade Representative and consists of members from the Departments of Agriculture, Commerce, the Interior, Labor, State, and the Treasury. This subcommittee administers an annual review process for petitions to add products to or remove products from GSP coverage, as well as petitions related to country eligibility. Petitions to add products to GSP coverage are generally submitted by foreign companies, trade associations, or governments, and petitions to remove products from GSP coverage are generally submitted by U.S. companies or trade associations. The GSP Subcommittee is a working group of the interagency Trade Policy Staff Committee, which, in turn, reports to the Trade Policy Review Group, a policy-making body composed of subcabinet-level officials. The interagency recommendations on changes to GSP Program coverage are sent to the President for his decision.

GSP Program eligibility is offered to a wide range of products and to 145 developing countries and territories. However, not all products that are eligible to enter the United States under GSP actually enter duty free due to several program provisions that limit benefits. The administration may decide that an eligible product shipped by a specific country should be

denied duty-free entry into the United States because the country is competitive in shipping that product to the U.S. market (permanent "product graduation"). Products can also be denied duty-free entry because a country exceeds a limit placed on import levels ("competitive need limits") in the GSP statute, capping a country's benefits for that product after a certain dollar level or percentage of imports has been reached, and thus competitiveness presumptively demonstrated. Finally, duty-free treatment can be denied because products fail to meet beneficiary country domestic content or direct shipping requirements ("administrative exclusions"). In addition to product exclusion, countries can be graduated, or removed, from the program.

When the program was reauthorized in 1984, new "country practice" eligibility criteria were added, including requirements that beneficiary countries provide adequate and effective protection of intellectual property rights and take steps to observe internationally recognized worker rights. Intellectual property rights refer to legal rights and enforcement associated with patents, copyrights, and trademarks. Petitions to suspend benefits to beneficiary countries that do not meet these criteria for country practices can be filed as part of the GSP annual review process. Typically, such petitions are filed by U.S. industry associations that believe their members' intellectual property rights have been infringed or by U.S. labor and human rights groups that advocate observance of internationally recognized worker rights standards.

Results in Brief

GSP is a unilateral program that extends duty-free entry to a small share of U.S. imports. Most GSP benefits accrue to fewer than 10 beneficiary countries. Imports from beneficiary countries in the program have steadily increased each year. However, the graduation of several major beneficiary countries in 1989 resulted in a decline in GSP imports of 45 percent; another decline is expected in 1994 due to Mexico's graduation. In addition, the tariff reductions specified in the recently completed Uruguay Round of the General Agreement on Tariffs and Trade (GATT) (see ch. 1, p. 18) would decrease the value of the GSP duty-free benefit, if the reductions are implemented. These tariff reductions would, therefore, reduce U.S. leverage to demand compliance with country practice requirements.

Most GSP benefits go to the relatively small number of more advanced or larger developing countries that can produce and export items that meet U.S. market demands. Government officials and business representatives from six case study beneficiary countries GAO visited—Brazil, the

Dominican Republic, Hungary, Malaysia, Thailand, and Turkey—told GAO they have realized increased economic development as a result of GSP benefits, even though the level of development attributable to GSP cannot be accurately determined. In 1992, $16.7 billion, or about 3 percent of total U.S. imports, entered duty free under GSP. U.S. duties forgone on these imports were almost $900 million. Eighty-five percent of duty-free imports under the GSP Program were from 10 countries. Mexico was the largest beneficiary in recent years, but was graduated when the North American Free Trade Agreement was implemented on January 1, 1994. Industrial goods dominated GSP imports.

Although many products have been designated as eligible under the GSP Program, several program provisions can limit duty-free entry in specific cases. While 4,326 products shipped were eligible for GSP tariff preferences in 1992, only 47 percent of imports by value of these items received duty-free entry into the United States under GSP. (Another 8 percent entered duty free under other programs.) Administrative exclusions accounted for 56 percent of the excluded imports. Another 42 percent of exclusions were due to legislated competitive need limits, which foreign officials claimed can be disruptive to beneficiary country exporters and may not accurately reflect their true export competitiveness. The relative importance of administrative exclusions should diminish with Mexico's graduation from GSP, since about two-thirds of these exclusions were attributable to Mexico, and because competitive need limit exclusions have been growing quickly for other beneficiary countries such as Malaysia and Thailand.

The GSP Program has a generally well-structured administrative process for consideration of petitions to add products to or remove products from GSP coverage. The interagency structure of the GSP Subcommittee and its consensus decision-making process are designed to ensure that the program's goals are balanced to provide benefits to beneficiary countries while taking care not to unduly harm domestic interests. However, GAO noted opportunities to promote better program administration by disseminating more information on the decision-making process, including guidelines for analysis, and by strengthening information requirements for acceptance of product petitions.

Administering the intellectual property and worker rights provisions of GSP within a review process designed for product petitions has resulted in certain administrative problems. Advocacy groups have argued for further strengthening country practice provisions. However, beneficiary country

officials and many trade experts GAO consulted objected even to the current country practice provisions. GAO noted that because GSP benefits are limited and declining, they provide only modest leverage to encourage beneficiary country governments to change their practices. Adding new provisions during program renewal would reduce the leverage of GSP in achieving the objectives of the existing provisions. Furthermore, if too many conditions are imposed, beneficiary countries may feel the compliance burden is too great and forgo all benefits, thereby eliminating the existing leverage in the program.

GAO's Analysis

GSP Duty-Free Imports Dominated by Relatively Few Beneficiary Countries

Although the development impact of GSP cannot be precisely measured, an indicator of the value of the GSP Program to developing countries can be determined by examining the level and composition of duty-free shipments to the U.S. market. In 1992, $35.7 billion in imports were eligible under the program, and $16.7 billion, or 47 percent, entered duty free (see p. 32). Of total beneficiary country imports to the United States, duty-free shipments under GSP accounted for 15 percent. Duties forgone were almost $900 million; however, the cost to the U.S. government is estimated at 75 percent of this amount due to certain income increases and tax revenue offsets, according to the Congressional Budget Office. The value of duties forgone will decrease with implementation of the tariff reductions negotiated under the Uruguay Round of the GATT for products eligible under GSP, if GATT implementing legislation is enacted. According to the Office of Management and Budget, these duties will decrease by an estimated 48 percent over 10 years, with 95 percent of the tariff reductions phased in within the first 5 years.

Duty-free imports under the GSP Program have long been dominated by a handful of countries. In 1992, Mexico accounted for 29 percent of GSP duty-free imports. Other top shippers included Malaysia, Thailand, Brazil, and the Philippines. Most of the GSP-eligible and duty-free goods by value were industrial goods, rather than agricultural goods. The single largest category of duty-free imports was electrical machinery and equipment and related items, which accounted for 22 percent of all duty-free imports.

Other duty preference options exist for some beneficiary countries, such as the Caribbean Basin Economic Recovery Act, that reduce duty-free

shipments under the GSP Program. In 1992, $2.9 billion (8 percent) of all GSP-eligible imports entered the United States under a duty preference provision other than GSP. Together with the $16.7 billion that entered duty free under GSP, 55 percent of all GSP-eligible goods received duty-free entry.

Limitations on GSP Benefits Are Significant

The GSP Program has several provisions that limit the level of duty-free entry. In 1992, $16 billion, or 45 percent, of GSP eligible imports were excluded from duty-free entry under the program. Administrative exclusions, due to such factors as noncompliance with the beneficiary country domestic content requirements (rule of origin requirements) and the stipulation that a product be shipped directly from the beneficiary country, accounted for 56 percent of all program exclusions. The graduation of Mexico, which accounted for 67 percent of administrative exclusions from GSP in 1992, is one reason why the relative importance of this type of exclusion should diminish.

The rule of origin for GSP has been criticized by trade experts for lack of predictability because beneficiary country exporters often have no way of knowing whether their exports will meet the rule of origin requirements until U.S. Customs makes a determination. The U.S. Customs Service is currently considering changing the rule of origin system to one that would be more predictable and simpler to administer. It would use a "change of tariff classification" system such as that adopted in the North American Free Trade Agreement. This system confers country origin when imported materials, parts, and components are used to make a new product that would fall under a new tariff heading. Although more predictable, such a new rule of origin could be more difficult for beneficiary countries to comply with due to the extensive documentation requirements necessary to establish change of tariff classification, according to an official of the International Trade Commission.

In addition, importers have criticized the current rule of origin, which requires that at least 35 percent of the product must originate or be substantially transformed within the beneficiary country, because it does not allow U.S.-source material to count in any way in meeting the domestic content requirements. They have suggested that U.S. components be allowed to apply toward the 35-percent requirement. GAO agrees that GSP items should not be penalized for having U.S. content but believes that a better alternative would be to subtract the value of U.S. components from the total value before determining compliance with the 35-percent standard.

Other limitations involve product graduations and competitive need limits. In 1992, 2 percent of all exclusions, valued at $276 million, were due to permanent product graduations from the program. Product graduations are discretionary and are implemented after assessing a beneficiary country's competitiveness, usually at the request of U.S. producers. Competitive need limit exclusions are automatically triggered for a country's product when a legislative ceiling on either the dollar value or share of imports from a country is exceeded in a calendar year. These exclusions accounted for $6.7 billion, or 42 percent, of all exclusions in 1992 and grew rapidly for top shippers like Malaysia and Thailand. Competitive need limit exclusions are based on the assumption that a country's export competitiveness has been demonstrated. However, external factors that may have little to do with the competitiveness of a particular beneficiary country's industry can affect U.S. import levels during the 1-year period used to trigger an exclusion. GAO found that in 37 of the 57 cases examined, a loss of GSP status due to a competitive need limit exclusion was immediately followed by a loss of import market share (although a direct causal relationship could not be established). In addition, the schedule for implementing these exclusions allows beneficiary country exporters and U.S. importers only a few months' notice to adjust business plans before losing GSP benefits.

Process to Review Product Petitions Generally Well Structured, but Specific Concerns Remain

The consensus decision-making process of the interagency GSP Subcommittee is designed to balance the full spectrum of views of interested parties to each petition. GAO's analysis found that the annual review process, with clearly delineated procedures and time frames, provides a well-structured means for administration of the program. This review process also provides for transparency and consideration of all interested parties' views. For example, a complete list of all product petitions accepted for review is published in the Federal Register along with the hearing schedule so that all interested parties may make their views known.

While most of the participants GAO consulted agreed that the process was well administered, they identified some specific opportunities for improvements. The GSP statute does not define key decision-making criteria such as import sensitivity or sufficient competitiveness. This has led some petitioners to complain that the criteria allow subjective decision-making on product additions and removals. However, GAO believes these criteria would be difficult to quantify for use in every case because they are highly qualitative and judgmental. Most observers GAO

talked with said that an attempt to define these criteria statutorily would result in overly rigid definitions that could hamper achievement of program objectives. The GSP Subcommittee has developed some informal guidelines but has not published them.

GAO found, based on a review of the decision-making process in 45 case studies, interagency decision documents, and interviews with GSP Subcommittee members, that most petitions have not been controversial and have been routinely decided based on their economic merit. However, the more controversial the case and the higher in the trade policy structure it was elevated in order to reach consensus, the more other policy factors became determinative. Fifteen percent of the cases GAO reviewed had been identified by the subcommittee as controversial and had been elevated for resolution.

The GSP Subcommittee has not issued public explanations of program decisions, although by regulation it will respond to a written request for information from petitioners. However, foreign and domestic participants told GAO that many parties were unaware of their right to request such explanations.

The GSP Subcommittee has on occasion accepted for review product-addition petitions that did not provide all required information, if the subcommittee believed the petition might have had merit and the petitioner had made a good faith effort to obtain the information. Although this practice is allowed by the regulations, it places domestic producers at a disadvantage in raising objections. Domestic producers complained that acceptance of incomplete petitions effectively shifted the burden of proof from the petitioner to those opposing the petition. A new product in the program may be shipped by any beneficiary country, and there may be few sources of information on potential suppliers among beneficiary countries. GSP product-addition petitions require detailed information, such as (1) actual production figures and capacity utilization and their estimated increase with GSP and (2) exports to the United States in terms of quantity, value, and price, and considerations that affect the competitiveness of these exports relative to exports by other beneficiary countries.

GSP's 3-year rule, prohibiting rejected product-addition petitions from being refiled until 3 years have passed, protects domestic industries from repeatedly having to come to the defense of their products in program proceedings. Representatives of affected domestic industries told GAO that waiver of this rule during the 1991 Special Review for Central and Eastern

Europe initiated by the administration undermined the credibility of the program. The representatives said the waiver caused an unfair burden on them by reconsidering the addition of products that had just been denied. The U.S. Trade Representative has noted that the Trade Policy Staff Committee has the right to waive the 3-year rule since it is the committee's own procedural rule and the rule did not vest a right in any party. Further, the GSP Director pointed out that the regulations allow the Trade Policy Staff Committee to self-initiate cases "at any time," which can have the same effect. Domestic industries have argued for codifying the 3-year rule with no possibility of a waiver in the GSP statute. However, codifying the 3-year rule alone may not necessarily guarantee strict application of the 3-year rule if the administration still retains the ability by regulation to self-initiate cases. Therefore, if Congress were to satisfy the problem perceived by domestic industries (i.e., the administration's ability to make exceptions to the 3-year rule), the GSP statute would also have to be amended to prohibit the administration from self-initiating cases for the purpose of effectively waiving the 3-year rule.

A major issue raised by the requesters of this report was whether it is legal to offer different benefits to the various beneficiary countries under a generalized system, which in spirit is like the most-favored-nation principle central to the GATT system. Program benefits are generally extended equally to all beneficiary countries due to this principle. In some circumstances, however, when a beneficiary country is considered to be sufficiently competitive for a particular product without the GSP benefit, the benefit may be removed. Such permanent product graduations are made at the discretion of the President. GAO concurs with the position taken by the Office of the U.S. Trade Representative that the GSP statute gives the President authority to make such decisions for differential treatment.

Country Practice Petitions Engender Controversy

There is a split in opinion about the desirability of country practice provisions. Beneficiary countries and many trade experts GAO talked with objected to the presence of country practice provisions in the GSP Program. They said these conditions contravene the original spirit of GSP as a trade assistance program requiring no reciprocity on the part of the recipient country. Other countries' GSP programs do not have such conditions. While United Nations officials, beneficiary country officials, and many trade experts GAO talked with acknowledged that these are important issues, they said they should be addressed in other forums. However, advocates of these provisions maintain that the GSP Program's

objective of aiding economic development should not be carried out without parallel development of adequate intellectual property rights and worker rights standards. They argue that promotion of these rights is important to sustainable economic growth in developing countries.

Administrative difficulties have resulted from adding consideration of country practice petitions to the existing annual review process designed for product petitions. Country practice cases are fundamentally different from product cases, since they involve adherence to international standards of behavior rather than evaluation of trade flows. The rigidity of the annual review cycle, where all petitions must be filed by the June 1 deadline or wait until the next review, is not well suited to dealing with intellectual property rights- or worker rights-related events, which can precipitate crises at any time during the year. Country practice cases could be better addressed with separate time frames and review procedures that better fit their different dynamics. Further, acceptance of emergency petitions for review out of cycle when events warrant such action, as well as for expedited review, could improve the timely consideration and, potentially, more effective response to these provisions.

The GSP law and regulations do not specify the program's policies and standards for accepting country practice petitions for review. The GSP Subcommittee has internal policy guidelines, but few of these have been made public. Worker rights advocates have said they disagree with GSP policies (1) classifying certain offenses as human rights issues outside GSP purview and (2) requiring presentation of substantially new information for reconsideration of denied petitions. As currently administered, this "new information" standard has prevented further review of worker rights cases in which a beneficiary country's promised progress in improving worker rights has stopped after the GSP review was concluded with a finding favorable to the country.

Finally, the only sanction available in GSP country practice cases is suspension from all GSP benefits. A policy of graduated sanctions, such as suspension of one or more industry sectors rather than the entire country, would provide greater flexibility and could improve the effectiveness of these provisions in encouraging changes in country behavior.

The differing expectations held by GSP officials and intellectual property rights and worker rights advocates are at the root of much of the controversy over administration of country practice provisions. GSP officials generally said that these provisions have been used and have

leveraged results from beneficiary countries to the extent possible, given other trade and foreign policy concerns. However, intellectual property rights and worker rights advocates said they wanted country practice cases more vigorously prosecuted and sanctions more frequently exercised. Worker rights advocates were particularly concerned. While intellectual property rights advocates have more powerful trade law remedies they can pursue, worker rights advocates must depend on the GSP provisions to trigger actions under most of the worker rights provisions in U.S. trade law.

Because of its limited benefits, the GSP Program provides only a modest degree of leverage to encourage beneficiary country governments to change country practices. Proposals to add new country practice provisions during program reauthorization, particularly for environmental protection purposes where there are no international standards, were opposed by most GSP trade experts and program participants GAO interviewed. Because it was beyond the scope of this review, GAO did not interview representatives of environmental groups. GAO noted that adding new provisions would reduce the leverage of existing provisions by diluting them with other requirements, and the cumulative obligations might be a greater burden than beneficiary countries would be willing to bear for the benefits received. Further, tariff reductions negotiated in GATT, if implemented, will reduce the value of the GSP's tariff preference and the incentive for beneficiary countries to participate in the program.

Recommendations

In order to provide greater transparency to the GSP decision-making process and the GSP petition process, GAO recommends that the U.S. Trade Representative

(1)make public the guidelines the GSP Subcommittee uses in analyzing product petitions, with the stipulation that the guidelines provide a framework for, but do not limit the extent of, the Subcommittee's analysis;

(2)indicate clearly in Federal Register notices of final decisions on GSP petitions that petitioners can write to request a written explanation of any decision; and

(3)modify GSP regulations to specify a mandatory core of information required for acceptance of product petitions.

To improve the administration of country practice petitions, GAO recommends that the U.S. Trade Representative

(1)review country practice petitions on a separate and more flexible time frame from product petitions that better fits their different dynamics;

(2)accept emergency petitions for expedited review out of cycle, when warranted by events;

(3)make public the guidelines used in deciding whether or not to accept country practice petitions for full review;

(4)clarify the "new information" standard in the GSP regulations to indicate that failure of a beneficiary country to fulfill the promises of progress that were instrumental in the decision to deny a petition would constitute substantial new information that could be the basis for acceptance of a petition; and

(5)take all steps necessary to expand the range of sanctions that can be taken when beneficiary countries have not met GSP country practice standards to include partial sanctions when appropriate.

Matters for Congressional Consideration

In considering whether to reauthorize the GSP Program, Congress may wish to consider altering the competitive need limit process by, for example, extending the amount of time before exclusions under competitive need limits are implemented. This would allow for a more thorough assessment of the competitiveness of the affected imports and allow affected industries more time to adjust.

Congress may also wish to consider whether to alter the GSP rule of origin so that items are not penalized for having U.S. content. For example, any U.S.-origin value of a shipped item could be subtracted from the total value of the item before the 35-percent beneficiary country origin value added is calculated.

If Congress considers whether or not to incorporate the 3-year rule, and a provision disallowing its waiver, in the GSP statute, it should recognize that the Trade Policy Staff Committee's regulatory authority to self-initiate cases can have the same effect. Congress may wish to consider stipulating whether or not self-initiation of cases should be allowed where it would have the effect of waiving the 3-year rule.

Agency Comments

The Office of the U.S. Trade Representative, on behalf of the administration, provided written comments on a draft of this report. Its comments are presented and evaluated in chapters 4 and 5 (see pp. 90 and 119-120), and the letter is reproduced in appendix III. The administration generally supported the overall findings and conclusions of the report, stating that GAO's findings reflected considerable balance and reasonableness. It agreed with many of the objectives behind specific recommendations, and it has adopted some of GAO's recommendations in its legislative proposal to renew the GSP Program.

However, the administration (1) did not agree with GAO's recommendation that the U.S. Trade Representative make public the guidelines used in analyzing product petitions and (2) did not fully agree with GAO concerning the acceptance of emergency country practice petitions for expedited review out of cycle when warranted by events. GAO continues to believe that greater public understanding of the analytical framework used by the GSP Subcomittee in analyzing product petitions would contribute to more effective participation by interested parties in the petition process. This will be even more important in the future if the administration's proposal to review product-addition petitions only every 3 years is implemented. However, GAO modified the draft recommendation to respond to the administration's concern that the guidelines not limit the analysis. GAO also believes that emergency country practice petitions should be accepted for review out of cycle when domestic interests provide substantial evidence of harm, such as discovery of a major regional piracy operation, or when warranted by events in a beneficiary country.

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Figures

Abbreviations

AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
ATPA	Andean Trade Preference Act
BDC	beneficiary developing country
CBERA	Caribbean Basin Economic Recovery Act
CBI	Caribbean Basin Initiative
CNL	competitive need limit
EU	European Union (formerly European Community)
FTA	free trade agreement
GNP	gross national product
GSP	Generalized System of Preferences
GATT	General Agreement on Tariffs and Trade
HTS	Harmonized Tariff Schedule
IIPA	International Intellectual Property Alliance
ILRERF	International Labor Rights Education and Research Fund
ILO	International Labor Organization
IPR	intellectual property rights
ITC	International Trade Commission
LDC	least developed country
MFA	Multifiber Arrangement
MFN	most favored nation
MPAA	Motion Picture Association of America
NAFTA	North American Free Trade Agreement
NIE	newly industrializing economy
OMB	Office of Management and Budget
OPEC	Organization of Petroleum Exporting Countries
PRMA	Pharmaceutical Research and Manufacturers of America
TRIPs	Trade-Related Aspects of Intellectual Property Rights
TPRG	Trade Policy Review Group
TPSC	Trade Policy Staff Committee
U.N.	United Nations
UNCTAD	United Nations Conference on Trade and Development
USDA	U.S. Department of Agriculture
USTR	Office of the U.S. Trade Representative
WIPO	World Intellectual Property Organization

Introduction

The Generalized System of Preferences (GSP) was proposed by the United Nations Conference on Trade and Development (UNCTAD)[1] in the 1960s as a way to promote economic growth in developing countries. GSP allows developing countries to enjoy import tariff "preferences" (tariff elimination or reduction)[2] when shipping certain goods to industrialized nations. Because these preferences are applied only to developing countries, however, GSP is inconsistent with article I of the General Agreement on Tariffs and Trade (GATT).[3] Article I is commonly referred to as the most-favored-nation (MFN) clause.[4] Therefore, in 1971, the GATT organization granted a 10-year waiver of article I and made it permanent in 1979.

The United States implemented its GSP Program in 1976. The program grants duty-free preferences to certain designated items from eligible countries, although there are restrictions on GSP benefits. Legislative provisions prevent certain products and countries from ever receiving eligibility. Benefits for eligible items may be restricted based upon (1) a product's "import sensitivity," that is, the degree to which a foreign product will compete with and negatively affect a U.S. product; or (2) the competitiveness of certain beneficiary developing countries (BDCs) in exporting specific items to the United States. Countries may be completely removed from the program if they no longer meet various eligibility requirements, such as by exceeding a specific gross national product (GNP) per capita level[5] or failing to provide internationally recognized worker rights.

In 1992, $35.7 billion in GSP-eligible imports entered the United States from beneficiary developing countries. About $16.7 billion, or 47 percent, of these imports actually received GSP duty-free entry. The U.S. GSP Program provided benefits to 145 developing countries and territories as of

[1]UNCTAD is a permanent organization under the General Assembly of the United Nations. Its mandate is to promote international trade, and particularly that of developing countries, with a view to accelerating their economic development.

[2]While the U.S. GSP Program offers total duty elimination, the GSP programs of other countries offer duty elimination and/or duty reductions.

[3]GATT, which entered into force in 1948, is a multilateral framework agreement to govern trade practices among over 100 nations and territories that are contracting parties to the agreement.

[4]Article I of GATT provides that contracting parties to GATT must grant to each other treatment as favorable as they give to any country in the application and administration of import duties. This concept is known as "most-favored-nation" treatment.

[5]The GNP per capita ceiling for GSP eligibility, which is indexed to increase with growth in U.S. GNP, was $8,500 in 1984 and reached $10,647 in 1992.

March 1994 and included 4,578 items on the U.S. Harmonized Tariff Schedule (HTS).[6]

Over the years, GSP programs have been introduced by numerous nations; 16 programs are currently in effect. The two other major GSP programs, those of the European Union (EU) and Japan, are structured quite differently from the U.S. system and were considered more complex by UNCTAD and foreign officials we interviewed.

The Creation of the GSP Program

The GSP concept was first proposed by UNCTAD in the mid-1960s. According to an UNCTAD official, UNCTAD's GSP developers were strong advocates of the idea that "trade, not aid" was an effective way for industrialized nations to assist developing countries. GSP was viewed as a way to promote economic growth and industrialization in developing countries through, for example, increased foreign investment and exports of manufactured goods. This would allow beneficiary countries to earn foreign exchange and interact on a global scale. Another UNCTAD official added that GSP was viewed as a particularly effective "assistance program" because it rewarded competitiveness and encouraged increased participation in international trade based on market demands. UNCTAD fully endorsed the GSP concept in 1968 and completed it by passing a resolution in UNCTAD's Special Committee on Preferences in 1970.

As originally envisioned by UNCTAD, GSP was to follow three primary principles: (1) GSP was to be "generalized," meaning that all "donor" countries that granted GSP benefits were to implement basically the same GSP program; (2) GSP was to be "nonreciprocal," with donor countries exacting no concessions from benefiting nations in return for the tariff preferences; and (3) GSP was to be "nondiscriminatory" so that every eligible developing country would enjoy the same benefits as every other eligible developing country. According to an UNCTAD official, none of these goals has been met: each of the 16 donor countries (including the EU) has adopted its own separate version of a GSP scheme; demands for reciprocity have clearly been made through imposition of eligibility obligations such as U.S. "country practice" requirements related to worker rights and intellectual property rights (IPR)[7] (discussed in ch. 5); and discrimination among developing countries exists within schemes.

[6]The U.S. HTS identifies all items that are imported into the United States, classifying each with an 8-digit numerical code and listing the import tariff that must be paid for each of these items.

[7]The protection of intellectual property refers to legal rights, and enforcement of such rights, associated with patents, copyrights, and trademarks.

GSP and GATT

Granting GSP tariff preferences to developing countries is inconsistent with the GATT's article I MFN provision because it excludes developed countries. Therefore, during the creation of GSP, the contracting parties to GATT determined that the authority for the GSP Program would have to be in the form of a GATT waiver to the MFN clause. The waiver, which was granted in 1971 for 10 years, authorized each industrial country to establish its own GSP program, provided that these programs benefited all "developing countries." However, it was left to each industrial country to define what it considered to be a "developing country." Thus, although the GATT waiver established the GSP framework, a great deal of individual discretion was left to each nation implementing a GSP program.

The 10-year GATT waiver would have expired in 1981. However, as part of the Tokyo Round negotiations,[8] the contracting parties to GATT entered into a new derogation, or exception, from the MFN principle of article I in 1979, this time on a permanent basis, in a declaration entitled "Differential and More Favorable Treatment, Reciprocity, and Fuller Participation of Developing Countries." This declaration, commonly referred to as the "enabling clause," stated that "[C]ontracting parties may accord differential and more favorable treatment to developing countries, without according such treatment to other contracting parties. . .," notwithstanding the provisions of the GATT MFN clause.

According to a GATT official, this permanent waiver makes GSP autonomous and outside the GATT legal system. He stated that GSP beneficiaries have no formal legal recourse under GATT to seek changes in GSP programs over historically contentious GSP issues. These issues include, for example, the U.S. practice of maintaining "differential treatment," or unequal product coverage, among GSP countries. A developing country may, however, apply to GATT for consultations as provided for in the enabling clause. The GATT official said that GSP programs have been employed in a more restrictive manner in the last few years, with a trend toward discretionary removal of GSP benefits for certain products from specific countries. However, for political reasons, no developing country has yet requested a consultation.

The GATT official added that the country practice provisions currently in U.S. GSP law may be contrary to the spirit of the enabling clause due to their nontrade nature. However, in granting the GSP waiver from GATT, no guidelines, principles, or other criteria were provided on how to structure a GSP program. Further, the areas addressed in country practice provisions

[8]The Tokyo Round was the name given to the round of multilateral trade negotiations under GATT that was completed in 1979.

have been outside the purview of issues currently addressed by GATT.[9] The official said that, essentially, the waiver provided donor countries with a carte blanche that allows them to implement this unilateral "gift" as they see fit.

The GSP Program Director said he did not concur with the categorical nature of some of the statements made by the GATT official. He said that by ratifying the GATT enabling clause, countries have agreed that their GSP programs would grant "generalized, nonreciprocal, and nondiscriminatory preferences." Interpretation of these terms is unclear. However, one interpretation has been that the intention of this provision is to prevent GSP donors from using GSP to obtain explicit tariff concessions, especially "reverse preferences." Moreover, the provision could be interpreted as involving explicit obligations, subject to GATT dispute settlement procedures.

Aside from the autonomy of GSP from GATT rules, an official within the Office of the U.S. Trade Representative (USTR) said that the GATT enabling clause itself establishes a foundation to justify a previously mentioned, historically controversial aspect of the U.S. GSP Program: maintaining "differential treatment," or unequal product coverage, among BDCs. This provision of the U.S. program, which allows the President selectively to remove GSP eligibility for certain items from particular countries that ship these items competitively, has been criticized by some BDCs. They note that GSP was meant to be a nondiscriminatory program. Such removal is commonly referred to as "product graduation."

According to USTR's General Counsel (in October 1992), GSP is meant to temporarily assist developing countries to progressively become full GATT participants. USTR points out that one provision in the enabling clause speaks to the possible improved ability of developing countries to make "contributions or negotiated concessions or take other mutually agreed action" under the provisions of GATT as their economies develop and their trade situations improve. When a particular industry in a developing country has become sufficiently advanced so as to be globally competitive, it no longer needs GSP benefits to compete with industries in developed countries. With respect to that competitive industry, the developing country is expected to participate "fully" in GATT. This process envisions

[9]Intellectual property protection is not part of the current GATT system. However, an intellectual property agreement was negotiated in the Uruguay Round trade talks that were concluded on December 15, 1993. In addition, the United States is pressing to add worker rights to the matters to be addressed by the World Trade Organization (WTO), the organization scheduled to succeed GATT, if enacted.

differentiation or product graduation—removing GSP benefits for items from particular BDCs that export the articles competitively, while maintaining benefits on these items for other BDCs. A GATT official agreed with this analysis, stating that because product graduation deals specifically with trade in goods, it is possible for USTR to interpret this section of the enabling clause in this manner. He added, however, that USTR could not "invoke" this argument on a legal basis within GATT since no direct link exists between this provision of the enabling clause and the GSP Program.

The Structure and Usage of the U.S. GSP Program

The U.S. GSP Program is administered by the GSP Subcommittee, a staff-level working group of the interagency Trade Policy Staff Committee (TPSC). Agency representatives from the Departments of Agriculture, Commerce, the Interior,[10] Labor, State, and the Treasury[11] are on the GSP Subcommittee. TPSC comprises officials from these agencies at the office director level. TPSC, in turn, reports to the Trade Policy Review Group (TPRG), the policy-making body composed of subcabinet level officials. All three groups are chaired by USTR.

The GSP Subcommittee administers an annual review process for petitions to add products to or remove products from GSP coverage, as well as petitions related to country eligibility. The GSP annual review is a 13-month cycle, with petitions submitted by June 1 and triggering a two-stage decision cycle. In the first stage, a decision is made on which petitions to accept for review; in the second stage, the accepted petitions are fully reviewed and a decision is made on which petitions to grant or deny for GSP coverage. All GSP eligibility changes go into effect on the following July 1.

The GSP Program has undergone several changes since its implementation that tend to limit benefits available under the program. Legislative restrictions on eligible products and countries have been added. As a result of the program's restrictions on benefits, not all imports that are technically eligible under the program actually receive duty-free entry.

[10]The Department of the Interior includes the Bureau of Mines and has expertise in mineral products that have been or can be granted GSP eligibility.

[11]The Department of the Treasury has a long-standing interest in international trade and tariff revenue and also includes the U.S. Customs Service.

The Original Structure of the U.S. GSP Program

The U.S. GSP Program was originally authorized by title V of the 1974 Trade Act (P.L. 93-618, Jan. 3, 1975), codified in title 19 of the U.S. Code (U.S.C.). The program became operational on January 1, 1976, and provides duty-free entry for designated items from eligible developing countries and territories. According to the 1974 act, the GSP Program was meant to provide fair and reasonable access to products of less-developed countries in the U.S. market. Statutory restrictions placed on product eligibility indicate that the need to protect domestic producers and limit use of the program by competitive countries was also to be recognized in administering the program.

The 1974 Trade Act allows the President to designate BDCs, as well as specific articles, as eligible under the program. He must consider several factors when making country designations, such as the effect of GSP preferences on the economic development of BDCs and the anticipated impact of granting GSP on U.S. domestic producers. The 1974 act enumerated several factors that automatically eliminate countries from consideration for GSP eligibility, such as whether a country is communist (unless certain criteria are met); is a member of the Organization of Petroleum Exporting Countries (OPEC); or has expropriated U.S. property without compensation, negotiation, or arbitration. Some additional, discretionary factors to be considered in granting (or maintaining) GSP status for a country include the country's level of economic development and the country's provision of equitable and reasonable access to its markets.

The 1974 Trade Act contains several provisions that limit potential product benefits available under the program. Items such as most textiles, footwear, and other import-sensitive articles are statutorily prohibited from GSP eligibility. Further, items that are granted eligibility can later be restricted from actually receiving duty-free entry in many ways. For example, GSP has a "rule of origin" requirement. This requirement states that at least 35 percent of the content and processing of an item shipped under GSP must have come from the shipping BDC in order to receive duty-free entry. The item must also be shipped directly from the BDC to the United States.

In addition, as previously mentioned (see pp. 21-22), the 1974 act provides for "graduation," or the permanent removal of GSP benefits, under the section that allows the President to withdraw, suspend, or limit preferences at any time for any article or beneficiary country. Finally, the program contains a "competitive need limit" (CNL) exclusion provision,

which is the temporary removal of GSP preferences for a particular item from a particular BDC. This provision automatically suspends GSP preferences if, in any 1 calendar year for any individual item, a beneficiary country ships above a statutorily determined import level. Benefits can be reinstated subsequently if the BDC's exports fall below the legislated limits. (These limitations are further discussed in ch. 3.)

The Structure of the U.S. GSP Program as Amended in 1984

When GSP was reauthorized by the Trade and Tariff Act of 1984 (P.L. 98-573, Oct. 30, 1984), some of the program's benefits were reduced, and the program became more reciprocal in nature. The 1984 act states that GSP is intended to promote the economic development of BDCs and notes that trade, rather than aid, is a more effective way of achieving this goal. The 1984 legislation also points out that the amended GSP law is meant to provide trade and development opportunities for BDCs without adversely affecting U.S. producers and workers and "to integrate developing countries into the international trading system with its attendant responsibilities in a manner commensurate with their development." U.S officials whom we interviewed reinforced this last idea, pointing out that GSP has an increased focus as a leveraging tool that can be used to encourage desired behaviors in beneficiary countries in exchange for continued GSP benefits.

As a result, the 1984 act's eligibility criteria for countries and products under GSP are stricter. For example, a country must now have taken or be taking steps to afford internationally recognized worker rights in order to be eligible for GSP. The provision of adequate and effective protection of intellectual property by beneficiaries is also assessed in determining whether to grant (or maintain) GSP eligibility. Further, a GNP per capita eligibility limit was enacted, excluding countries that exceed the ceiling.

The 1984 law also required the administration to conduct a general review of the GSP Program, and, based upon that review, to identify products from individual countries that could be considered sufficiently competitive. Results of the review were published in 1987. Many sufficiently competitive items shipped from specific BDCs were identified and are now subject to reduced statutorily defined CNL import levels. However, at the same time, the amended law gave the President the authority to waive these CNL exclusions if a country exceeds the legislated limits.

Utilization of the U.S. GSP Program

The value of imports under the U.S. GSP Program has grown substantially over the years. In 1978, soon after the program was implemented,

GSP-eligible imports (all imports from BDCs that are technically eligible to receive GSP duty-free access) amounted to $9.7 billion in 1978 dollars.[12] Fifty-three percent of this amount ($5.2 billion) actually received GSP duty-free entry into the United States. By 1992, the value of GSP-eligible imports was $35.7 billion, with 47 percent of this amount ($16.7 billion) actually entering duty free under GSP. An additional $2.9 billion (8 percent of eligible imports) received duty-free access through other programs. Forty-five percent of the GSP-eligible imports that entered the United States in 1992 were actually assessed MFN tariffs due to the legislative reasons stated earlier (see pp. 23-24).

Table 1.1 shows that as of March 1994, 119 independent countries and 26 nonindependent countries and territories were eligible for the U.S. GSP Program. The most recent countries to be designated as eligible were Kazakhstan and Romania, which were granted GSP status in February 1994. Russia, which was granted GSP eligibility status on September 30, 1993, had exports to the United States of $46.2 million in goods that would have been eligible for GSP benefits in 1992. All former Soviet republics combined (excluding Estonia, Latvia, and Lithuania, which have already been designated as GSP beneficiary countries) shipped $56.9 million in goods to the United States that would have been eligible in that year. As of January 1, 1994, half of the items at the 8-digit level of the U.S. HTS (4,578) were eligible for GSP out of the 9,219 total items.

[12]This amount is equivalent to $19.5 billion when expressed in 1992 dollars.

Table 1.1: Beneficiaries of the U.S. Generalized System of Preferences as of March 1994

Independent countries			Nonindependent countries/territories
Albania	Fiji	Philippines	Anguilla
Angola	The Gambia[a]	Poland	Aruba
Antigua and Barbuda	Ghana	Romania	British Indian Ocean Territory
Argentina	Grenada	Russia	Cayman Islands
The Bahamas	Guatemala	Rwanda[a]	Christmas Island (Australia)
Bahrain	Guinea[a]	St. Kitts and Nevis	Cocos (Keeling) Islands
Bangladesh[a]	Guinea-Bissau[a]	Saint Lucia	Cook Island
Barbados	Guyana	Saint Vincent and the Grenadines	Falkland Islands
Belize	Haitia	Sao Tome and Principe[a]	French Polynesia
Benin[a]	Honduras	Senegal	Gibraltar
Bhutan[a]	Hungary	Seychelles	Greenland
Bolivia	India	Sierra Leone[a]	Heard Island and McDonald Islands
Bosnia-Hercegovina	Indonesia	Slovakia	Macao
Botswana[a]	Israel	Slovenia	Montserrat
Brazil	Ivory Coast	Solomon Islands	Netherlands Antilles
Bulgaria	Jamaica	Somalia[a]	New Caledonia
Burkina Faso[a]	Jordan	Sri Lanka	Niue
Burundi[a]	Kazakhstan	Suriname	Norfolk Island
Cameroon	Kenya	Swaziland	Pitcairn Islands
Cape Verde[a]	Kiribati[a]	Tanzania[a]	Saint Helena
Central African Republic[a]	Kyrgyzstan	Thailand	Tokelau
Chad[a]	Latvia	Togo[a]	Trust Territory of the Pacific Islands (Palau)
Chile	Lebanon	Tonga	Turks and Caicos Islands
Colombia	Lesotho[a]	Trinidad and Tobago	Virgin Islands, British
Comoros[a]	Lithuania	Tunisia	Wallis and Futuna
Congo	Macedonia	Turkey	Western Sahara
Costa Rica	Madagascar	Tuvalu[a]	
Croatia	Malawi[a]	Uganda[a]	
Cyprus	Malaysia	Uruguay	
The Czech Republic	Maldives[a]	Vanuatu[a]	
Djibouti[a]	Mali[a]	Venezuela	
Dominica	Malta	Western Samoa[a]	
Dominican Republic	Mauritius	Yemen Arab Republic (Sanaa)[a]	
Ecuador	Morocco	Zaire	
Egypt	Mozambique[a]	Zambia	
El Salvador	Namibia	Zimbabwe	
Equatorial Guinea[a]	Nepal[a]		
Estonia	Niger[a]		
Ethiopia	Oman		
	Pakistan		
	Papua New Guinea		
	Panama		
	Paraguay		
	Peru		

[a]Least developed country, as defined by USTR.

Sources: Office of the U.S. Trade Representative; Federal Register.

GSP Programs Worldwide

According to an UNCTAD GSP official, there are 16 GSP programs throughout the world (which includes 1 program for all 12 member states of the EU) that have been introduced over a number of years. The EU and Japan introduced their GSP programs in 1971, East European countries throughout 1972, Australia and Canada in 1974, and the United States in 1976.

The GSP Program of the EU is quite different from that of the United States and was generally considered to be more complicated by foreign officials and industry representatives with whom we met. The program is divided into four product areas for eligible countries: industrial, textile (including items subject to the Arrangement Regarding International Trade in Textiles[13] for some countries), agricultural, and steel products. For agricultural items, tariffs are eliminated or reduced. Specified items in all other areas enjoy total duty-free entry. Some items are subject to fixed duty-free amounts, or tariff quotas beyond which MFN rates are automatically reinstated. For other items, MFN duties may be reintroduced once a duty-free import tariff ceiling amount is met, based on an exchange of information between the member states and EU authorities. GSP access is reinstated at the end of the calendar year for all items. The amount eligible for preferential entry often varies by product and beneficiary country for specific items (though not for agricultural products, which are subject to global reduced-duty amounts). An UNCTAD official told us that the EU has been waiting until the completion of the Uruguay Round of multilateral trade negotiations before it renews its GSP Program.

The Japanese GSP Program, which has been extended to the year 2001, is also structured very differently from the U.S. system. This system was cited as complex by eligible beneficiary country officials we interviewed. The Japanese program comprises a positive list of agricultural items that are eligible for GSP, and a negative list of industrial goods (including textiles) that are ineligible. Similar to the EU's GSP, the Japanese program provides for duty-free as well as reduced-duty access under GSP. Reduced duties apply to both agricultural and industrial items. Import ceilings apply to some industrial products (though not agricultural goods) and may lead to a reinstatement of MFN tariff rates; imported products posing no threat or injury to Japan's domestic industry can continue to receive GSP

[13]The Arrangement Regarding International Trade in Textiles, known as the Multifiber Arrangement (MFA), governs much of the world trade in textiles and apparel. It allows for the regulation of textile and apparel trade through import quotas. These quotas are established through the negotiation of bilateral agreements or, in the absence of mutually agreeable limits, and with certain qualifications, unilateral actions. As a result of the Uruguay Round trade negotiations, quotas established pursuant to MFA are to be phased out over 10 years if the results of the Uruguay Round are enacted.

preferences even after a country exceeds ceiling levels. Japan has adopted a graduation policy, whereby a particular country can lose its GSP benefits for a specific product when the beneficiary is viewed as internationally competitive.

From a beneficiary's perspective, Australia's GSP program has been mentioned by UNCTAD officials as straightforward and simple. They explained that Australia's GSP scheme includes almost every item on its tariff schedule, with all developing countries receiving a tariff reduction of 5 percentage points. Australia's average tariff is around 10 percent, so the program offers a duty preference of about 50 percent.

Objectives, Scope, and Methodology

At the request of Senators Harris Wofford and Byron Dorgan and Representatives Steve Gunderson, William Hughes, Collin Peterson, and David Obey, we analyzed (1) benefits provided to beneficiary developing countries, (2) limitations on GSP imports, (3) administration of the program for adding or removing products from GSP coverage, and (4) administration of program provisions requiring that countries follow certain intellectual property and worker rights practices.

To assess the benefits and limitations experienced from the GSP Program, we obtained, through the Office of the U.S. Trade Representative, computer tapes of data on GSP imports. These data are maintained by the Department of Commerce's Bureau of the Census. We did not verify the accuracy of these data. We examined data for 1989-92.[14] We also assessed overall imports by GSP-eligible countries using data from the COMPRO system maintained by the Census Bureau. All dollar amounts in this report are current dollar figures, unless otherwise noted.

The database figures we analyzed contained specific semiannual information on the amount (U.S. dollars) of GSP-eligible imports. These imports were categorized in the data by those imports that received GSP duty-free entry (with flags identifying those that entered duty free due to competitive need limit waivers), those that were dutied (with flags identifying imports dutied due to graduation or competitive need limits), and those that were eligible for GSP but instead entered the United States duty free under another preferential option. In order to determine imports dutied because of administrative exclusions, we subtracted those imports

[14]Before 1989, the United States did not use the current HTS to classify imports and their rates of duty. We did not attempt to use data before 1989, as they do not provide figures consistent with the current tariff schedule.

specifically tagged as dutied due to graduation or competitive need limits from the total dutied imports figure for each of the 4 years of data.

We compiled data to identify the top country exporters for each year, as well as the top products that were shipped. We estimated U.S. duties forgone figures due to the GSP Program by multiplying the GSP duty-free amount that entered for each product by its MFN tariff rate and then adding these amounts together. We frequently consulted USTR and International Trade Commission (ITC) officials to discuss the accuracy of our methodologies and data.

To assess the degree to which BDC representatives and others believe they are benefiting from or experiencing restrictions in using the U.S. GSP Program, we interviewed BDC government officials and business representatives in six case study countries: Brazil, Thailand, Malaysia, the Dominican Republic, Hungary, and Turkey. We also interviewed Mexican embassy officials in Washington, D.C. During early 1993, we discussed the program with several U.S. businesses, primarily importers, many of whom contacted us after learning about this study from the American Association of Exporters and Importers, or business associations representing importers. We also reviewed documents submitted to ITC by U.S. companies that were, or could have been, in competition with GSP imports in 1991.

To analyze concerns related to the administration of the program for adding or removing products and examine whether the program was generally well structured, we interviewed a broad spectrum of participants in the GSP process. These participants included GSP Subcommittee officials; former GSP officials; ITC officials; U.S. embassy and foreign government officials in our six case study countries as well as Mexican embassy officials in the United States; and UNCTAD, GATT, and USTR officials in Geneva, Switzerland. We also interviewed trade experts, academics, and industry and trade association representatives in the United States and the six case study countries. We reviewed GSP and ITC interagency documents, including certain case study petition files. We examined 45 cases out of 175 considered in the 1991 GSP Program review and 1991 Special Review for Central and Eastern Europe, with our selection based on the cases (1) being designated by USTR as controversial (and thereby being elevated from the GSP Subcommittee to the TPSC and TPRG), (2) being filed by petitioners in our six case study countries, or (3) resulting in recommendations for differential treatment. We also attended USTR, ITC,

and congressional GSP hearings. We did not review U.S. Customs' administration of imports under the program.

To determine the President's authority for allowing differential treatment of BDCs through permanent product graduation under U.S. GSP law and the U.S.' GATT obligations, our Office of General Counsel obtained and reviewed a written explanation of such legal authority from USTR's Office of General Counsel. We interviewed GSP officials and examined the GSP statute and the legislative history of the program. We also interviewed GATT officials to obtain their views on this issue.

To analyze concerns about the administration of country practice provisions and the amount of leverage available from the GSP Program, we interviewed a broad spectrum of GSP participants in the United States, in the six case study countries, and at UNCTAD and GATT in Geneva. In addition, we interviewed representatives of the major IPR and worker rights advocacy groups in the United States that have participated in the GSP Program. These included, for IPR, the International Intellectual Property Alliance (IIPA), the Motion Picture Association of America (MPAA), and the Pharmaceutical Research and Manufacturers of America (PRMA); and for worker rights, the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), the International Labor Rights Education and Research Fund (ILRERF), and Human Rights Watch. In the Dominican Republic, we interviewed representatives of MPAA and the Dominican Cable Operators Association, as well as representatives of a pharmaceutical manufacturers' group. We interviewed representatives of labor groups and the free trade zone owners' association; we also visited three factories in a free trade zone. In Malaysia and Thailand, we interviewed representatives of labor groups and manufacturers' associations. We also examined data on overall country practice petition results since 1984, as well as eight cases in the 1990-92 annual reviews. We selected these cases based on (1) our finding that they were filed against one of our six case study countries and (2) our desire to obtain a cross-section of IPR and worker rights cases. The cases selected were not a statistically representative sample.

We performed our review from May 1992 to May 1994 in accordance with generally accepted government auditing standards.

USTR, on behalf of the administration, provided written comments on a draft of this report. USTR comments are presented and evaluated in chapters 4 and 5 and are reprinted in appendix III. USTR also suggested

technical changes and clarifications that, to the extent we deemed appropriate, have been incorporated into the report. In addition, ITC provided us with technical comments on the section in chapter 4 that addresses ITC's role in the GSP Program. We considered these comments and revised the report as appropriate.

Duty-Free Benefits Under the GSP Program

The primary goal of the GSP Program is to assist BDCs in strengthening their economic development by granting preferential tariff access to the U.S. market. This preferential access can help BDCs to realize benefits, such as increased production and exporting of industrial goods, greater foreign investment in their countries, and increased foreign exchange earnings. However, it is not possible to measure the extent to which these objectives have been realized specifically because of GSP. The impact of GSP cannot be isolated from other factors, such as foreign assistance or internal policies adopted by BDCs that promote increased commercial activity and stable economic growth.

Though the impact of GSP on BDC economies cannot be accurately determined, it is possible to examine the GSP Program as a part of total U.S. trade and assess the level and composition of duty-free access to the U.S. market provided to BDCs by the GSP Program. These figures serve as an indicator of the value of the GSP Program to developing countries.

GSP duty-free imports into the United States in 1992 were $16.7 billion. This figure was less than half of the $35.7 billion in imports that were eligible to receive GSP preferences and amounted to 3 percent of total U.S. imports. U.S. import duties forgone on GSP imports were almost $900 million in 1992. In that year 3,370 eligible items shipped to the United States received GSP duty-free entry on some shipments; 9 percent of these items had MFN tariff rates of at least 10 percent. The value of the difference between GSP zero tariff preferences and MFN tariff rates (i.e., duties forgone) would decrease if the MFN tariff reductions achieved under the Uruguay Round of multilateral trade negotiations are enacted.

Imports under the GSP Program are dominated by a handful of countries. Mexico, which was removed from the program upon the implementation of the North American Free Trade Agreement (NAFTA) on January 1, 1994, accounted for 44 percent of all GSP-eligible imports and 29 percent of all GSP duty-free imports in 1992. The top 10 exporting countries of GSP duty-free items in 1992, including Mexico, Malaysia, Thailand, Brazil, and the Philippines, accounted for 85 percent of the value of all duty-free shipments from the 127 countries that shipped eligible items under the program. For the 1989 and 1990 GSP annual reviews, which we reviewed, top shipping countries also submitted the majority of petitions to grant GSP status to new products.

From a product perspective, GSP duty-free import values are dominated by industrial articles. The legislative exclusion of textile goods from GSP

eligibility was an issue of concern raised by foreign officials we interviewed. Finally, numerous items that were eligible to receive GSP benefits actually entered the United States duty free or partially duty free under alternative programs or provisions.

Overview of the U.S. GSP Program

In 1992, imports receiving GSP duty-free entry constituted 47 percent of all imports that were eligible under the program. This proportion is a slight increase from 1989, when GSP duty-free imports were 41 percent of all eligible imports.

The benefit of not having to pay duties under the GSP Program is referred to as "duties forgone." In 1992, this amount was almost $900 million. In that year, 3,370 items, including 302 with MFN tariff rates of 10 percent or higher, received some duty-free entry. The advantage of these duties forgone would decrease if the Uruguay Round market access commitments, which would require the United States to lower its MFN tariff rates, are enacted.

The Value of Shipments Under the GSP Program

GSP imports are a small component of overall U.S. imports, as shown in table 2.1.

Table 2.1: GSP Program Imports as a Component of Overall U.S. Imports, 1989-92

U.S. dollars in millions

	1989		1990		1991		1992	
Type of trade	Value	Percent of total U.S. imports	Value	Percent of total U.S. imports	Value	Percent of total U.S. imports	Value	Percent of total U.S. imports
Total U.S. imports	$466,379	100%	$488,495	100%	$481,349	100%	$523,326	100%
Total imports from BDCs	86,085	18	94,965	19	96,011	20	109,656	21
Imports of GSP-eligible items from BDCs	24,431	5	27,196	6	29,361	6	35,723	7
Imports from BDCs receiving duty-free GSP entry	10,015	2	11,100	2	13,675	3	16,746	3

Note 1: All dollar amounts are in current dollars.

Note 2: All import figures in this report are the customs value of imports for consumption.

Sources: U.S. International Trade Commission; U.S. Department of Commerce/Bureau of the Census.

The value of GSP duty-free imports increased steadily between 1989 and 1992, as can be seen in table 2.1, though their share of total U.S. imports has remained small. Eligible imports grew by 46 percent overall from 1989 to 1992, which was much faster than the 27-percent growth in total U.S. imports from beneficiary countries during that period. Over these years, GSP duty-free imports under the program grew even faster, by 67 percent. In 1992, 33 percent of the almost $110 billion in imports from GSP beneficiaries were eligible for GSP. As shown in table 2.2, the share of eligible imports that received GSP duty-free entry increased somewhat, from 41 percent in 1989 to 47 percent in 1992. It should also be noted that in 1992, of total U.S. imports from the BDCs, duty-free shipments under GSP accounted for 15 percent.

Table 2.2: Utilization of the GSP Program, 1989-92

U.S. dollars in millions

	1989		1990		1991		1992	
Type of trade	Value	Percent of GSP eligible	Value	Percent of GSP eligible	Value	Percent of GSP eligible	Value	Percent of GSP eligible
GSP eligible	$24,431	100%	$27,196	100%	$29,361	100%	$35,723	100%
GSP duty free	10,015	41	11,100	41	13,675	47	16,746	47
Dutied	12,334	50	13,742	51	13,242	45	16,084	45
Other duty free	2,081	9	2,354	9	2,444	8	2,892	8

Note 1: All dollar amounts are in current dollars.

Note 2: GSP-eligible and dutied figures are overstated somewhat because the data include (1) shipments by countries for an entire calendar year of products that only gained eligibility in July and (2) entire calendar year shipments by countries that were designated as GSP beneficiaries at some point during the year. We do not know the size of this overstatement and so did not adjust our figures.

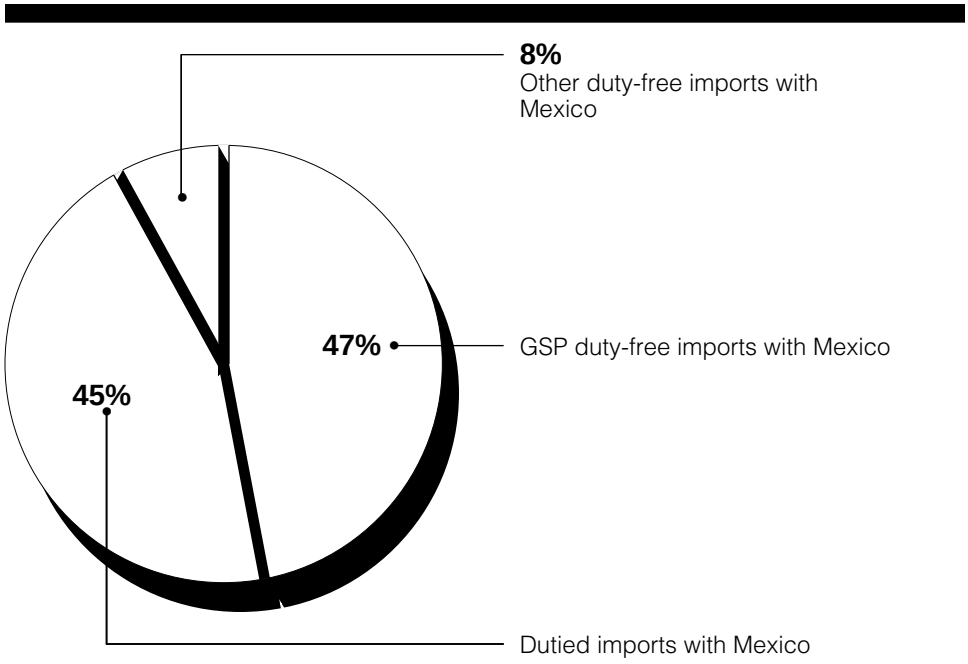
Note 3: Totals may not add due to rounding.

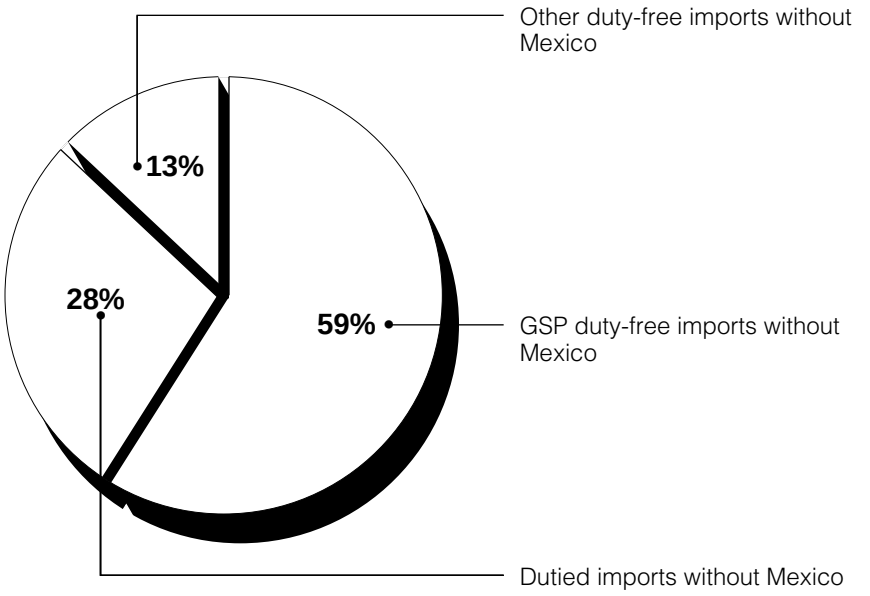
Source: U.S. Department of Commerce/Bureau of the Census.

Mexico's participation in the GSP Program was terminated when NAFTA was implemented on January 1, 1994. Because Mexico was the largest shipper under the program in 1992, we examined the structure of the GSP Program with Mexico data excluded. Since a high proportion (67 percent) of Mexico's GSP-eligible shipments were dutied in that year, the program's coverage changes significantly if that country's figures are removed. For 1992, GSP-eligible imports without Mexico would have been $20.2 billion, dutied imports from BDCs would have been $5.7 billion, and GSP duty-free

imports would have been $12 billion. Therefore, as shown in figure 2.1, without Mexico a higher proportion, 59 percent, of eligible imports would have received GSP duty-free entry, while 28 percent of imports would have been subject to duties.

Figure 2.1: Relative Utilization of the GSP Program With and Without Mexico, 1992





Note 1: With Mexico: GSP-eligible imports were $35.7 billion, with GSP duty-free imports at $16.7 billion, dutied imports at $16.1 billion, and other duty-free imports at $2.9 billion.

Note 2: Without Mexico: GSP-eligible imports would have been $20.2 billion, with GSP duty-free imports at $11.9 billion, dutied imports at $5.7 billion, and other duty-free imports at $2.6 billion.

Source: U.S. Department of Commerce/Bureau of the Census.

Duties Forgone Due to the GSP Program

Table 2.3 shows that as GSP duty-free imports increased between 1989 and 1992, duties forgone by the United States under the GSP Program increased as well, from an estimated $569 million in 1989 to $894 million in 1992. Duty-free imports grew by 11 percent in 1990 from the 1989 level, and then increased by 23 percent and 22 percent in 1991 and 1992, respectively. Duties forgone followed a similar pattern, but at slower rates, growing 11 percent in 1990 compared to 1989, and then increasing by 19 percent and 20 percent in the following years, respectively. Since the level of duty-free imports increased more quickly over this period than did duties forgone, it is apparent that the average tariff savings and the associated advantage provided by the program have decreased. The average tariff that would apply to all duty-free imports in the absence of GSP fell slightly, from almost 5.7 percent in 1989 to just over 5.3 percent in 1992.

Table 2.3: U.S. Duties Forgone Due to the GSP Program, 1989-92

U.S. dollars in millions

Year	Total imports entering GSP duty free		GAO-estimated total duties forgone		Ad valorem equivalent average tariff
	Value	Annual percent increase	Value	Annual percent increase	
1989	$10,015	•	$569	•	5.68%
1990	11,100	11%	631	11%	5.68
1991	13,675	23	748	19	5.47
1992	16,746	22	894	20	5.34

Note 1: All dollar amounts are in current dollars.

Note 2: An ad valorem equivalent tariff is an import duty rate expressed as a percentage of an imported commodity's value.

Source: U.S. Department of Commerce/Bureau of the Census.

The level of duties forgone will now likely be smaller than in past years due to the removal of two BDCs. In 1992, duties forgone attributable to GSP imports from Mexico and Israel (which is being removed from the program over a 2-year period ending July 1, 1995) amounted to an estimated $243 million and $26 million, respectively. This $269 million was 30 percent of total duties forgone for the year.

In 1992, 3,370 GSP-eligible items had some shipments that entered the United States GSP duty free. The top item responsible for duties forgone was raw cane sugar, with duties forgone estimated at $29.5 million. Other top items and their duties forgone included telephone sets ($26.7 million), tequila ($17.2 million), precious metal jewelry ($15.5 million), and cordless handset phones ($12.3 million).

Certain items shipped under GSP have high MFN tariff rates. Of the 3,370 items that received some GSP duty-free preferences, 302 of them (9 percent) had MFN tariff rates of 10 percent or higher, and 44 of these 302 items had MFN rates of 20 percent or more. The highest MFN tariff rate was an estimated 81.4 percent for undenatured ethyl alcohol for beverages. The 302 items accounted for 19 percent of the total value of duties forgone.

The Congressional Budget Office calculates the revenue loss from the GSP Program to the United States by estimating duties forgone and then

applying a standard 25-percent offset. This offset, which is employed in estimating costs for all programs or initiatives that reduce customs duties, recognizes that imports will decrease in cost. This reduction will, assuming a constant GNP, put incomes at higher levels than if MFN duties were in force. As a result, government direct tax revenues (corporate, individual, and payroll) will also be higher. Therefore, the overall cost of the GSP Program is considered lower than the actual value of duties forgone.

The advantage of duty preferences for GSP (and other preferential programs) will erode if the results of the Uruguay Round of multilateral trade negotiations under GATT are enacted. Specifically, as a result of tariff negotiations, the United States will have lower committed or "bound" MFN tariff levels. The United States already has a comparatively low average tariff level; the average tariff on all goods subject to duties that were imported into the United States in 1991 was 5.3 percent. As a result of the Uruguay Round, U.S. tariffs are expected to fall on average by around one-third. The United States has agreed to largely eliminate tariffs for GSP-eligible items such as pharmaceuticals, toys, and furniture. The Director of the GSP Program has estimated that if the results of the Uruguay Round are enacted, the trade-weighted average tariff for GSP goods will decrease from around 5.5 percent to about 3 percent once all tariff reductions are implemented.[1] This would mean that tariffs for GSP-eligible goods will be reduced by an estimated 48 percent over 10 years, according to the Office of Management and Budget (OMB). An OMB official said that 95 percent of these tariff reductions would be phased in within the first 5 years and around 25 percent during the first year.

Finally, although GSP duty-free exports are a small component of trade for GSP beneficiaries, these countries still enjoy strong duty-free market access to the United States, as can be seen by examining the combined results of GSP with exports that enter the United States from BDCs under an MFN tariff rate of zero. As of January 1, 1994, 1,420 items at the 8-digit level of the U.S. HTS had MFN rates of zero. We analyzed the top 50 imports from all GSP beneficiaries (at the 8-digit U.S. HTS level) in 1992 that accounted for $56.3 billion, or over half (51 percent), of total imports to the United States from BDCs. Of this amount, around $1.8 billion, or 3 percent of the total value of the top 50 imports, received GSP duty-free entry. In addition, another $14.8 billion (26 percent) entered MFN duty free. Therefore, almost

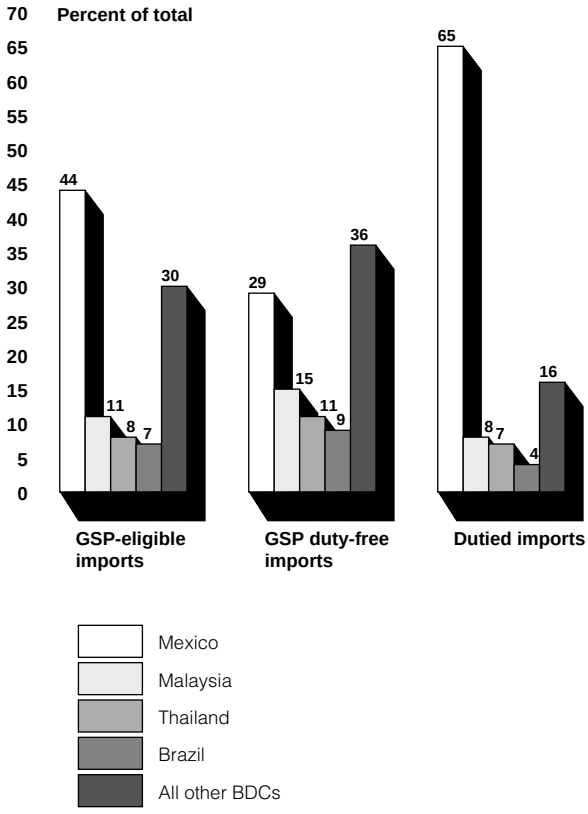
[1]The GSP Program Director stated that the GSP Subcommittee coordinated its actions with USTR officials involved in both NAFTA and Uruguay Round negotiations. For example, during NAFTA negotiations, the GSP Subcommittee denied product addition petitions from Mexico in order to avoid undercutting the U.S.' negotiating position.

30 percent of these imports entered the United States duty free for these two reasons. Furthermore, several GSP countries are able to further augment their duty-free access through other preferential or reciprocal arrangements, described later in this chapter (see p. 44).

GSP Shipments by Eligible Countries

As previously noted (see pp. 34-37) and as shown in figure 2.2, Mexico was the dominant BDC in terms of the value of imports shipped to the United States under the GSP Program. In 1992, Mexico accounted for $15.6 billion of GSP-eligible imports to the United States, or 44 percent of all such imports from GSP countries. While the $4.8 billion in GSP duty-free imports from Mexico accounted for 29 percent of all such imports, that country also had 65 percent of the GSP imports into the United States that were dutied. Other top duty-free shippers that accounted for the majority of shipments under the program included Malaysia, Thailand, and Brazil.

Figure 2.2: Share of Total GSP Imports for Top Shipping Countries, 1992



Source: U.S. Department of Commerce/Bureau of the Census.

Table I.1 in appendix I (see p. 129) shows in more detail that the program's GSP-eligible imports are clearly dominated by just a few countries. The top 10 shipping countries accounted for 87 percent of all eligible imports in 1992, and the top 25 countries accounted for 97 percent.[2] For the year, GSP-eligible imports came from 127 countries. The percentages of imports of GSP duty-free goods from the top shipping countries were similar.

For the top four GSP countries shipping duty-free items (other than Mexico), these duty-free imports into the United States accounted for around 20-30 percent of each country's total shipments to the United

[2]By contrast, the 35 least developed countries (LDCs) accounted for just $66 million (0.2 percent) of all GSP-eligible imports to the United States in 1992. Imports from these countries were very low overall in 1992 at $1.5 billion, or 0.3 percent of all U.S. imports.

States in 1992. In contrast, Venezuela, the ninth largest GSP duty-free beneficiary, had GSP duty-free shipments equal to only 4 percent of that country's total shipments to the United States. The ratio of GSP duty-free shipments to total shipments for each BDC that received GSP duty-free entry in 1992 is listed in table I.2 in appendix I (see pp. 130-133).

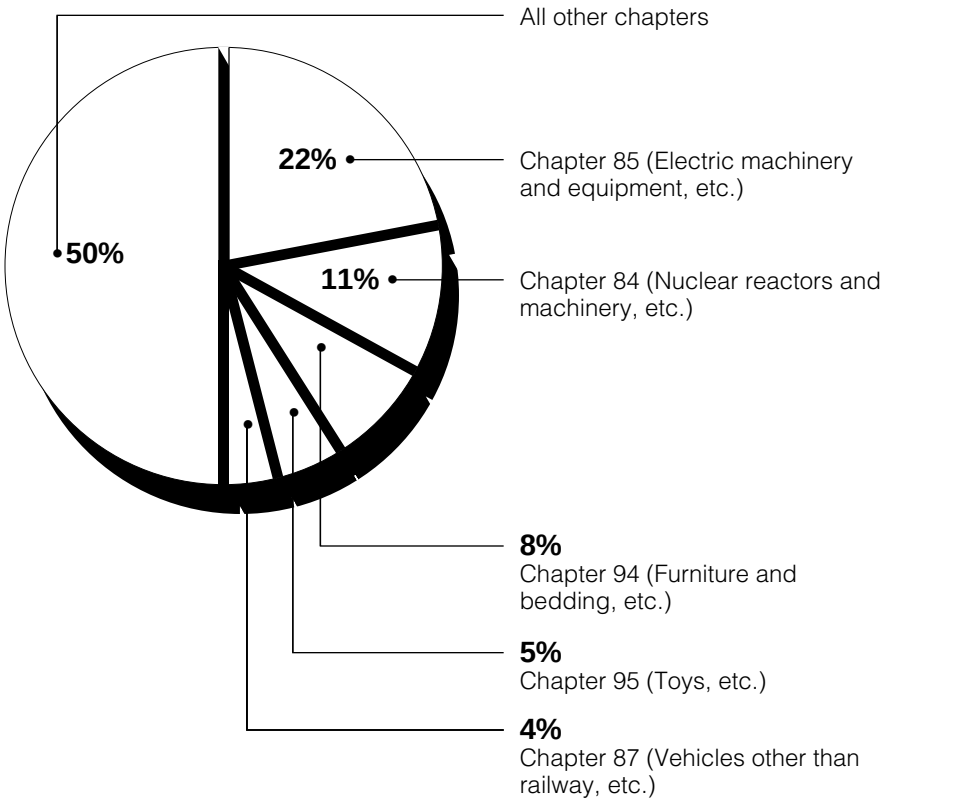
The top-shipping BDCs have dominated the process of petitioning to add products eligible for GSP preferences. GSP exporters that ranked among the top 20 shippers of GSP duty-free goods had submitted all of the 81 petitions granted in the 1989 and 1990 review cycles. These petitioners had the highest percentage of duty-free shipments of any BDC after GSP status was granted for about half or more of the new items that BDCs exported. Our analysis also showed that granting eligibility to items did not ensure that they would be shipped by the petitioner or any other BDC, or that GSP export values would increase. These figures related to product additions are discussed in more detail in appendix II (see pp. 146-147).

GSP Shipments by Eligible Products

The industrial and other goods contained in chapters 25-96[3] of the U.S. HTS accounted for 90 percent of all GSP duty-free imports in 1992. Most of the value of GSP-eligible and duty-free imports comes from industrial goods concentrated in a few chapters of the U.S. HTS. In 1992, imports under U.S. HTS chapter 85 (electrical machinery and equipment, etc.) had the highest import value of any one chapter, with $10.9 billion in GSP-eligible imports. These imports received GSP duty-free entry on $3.7 billion in shipments. As shown in figure 2.3, this amount accounted for 22 percent of all GSP duty-free imports for 1992. More complete information is provided in table I.3 of appendix I (see pp. 134-145).

[3]A description of the items contained in chapters 1-96 of the U.S. HTS is given in table I.3 in appendix I (see pp. 134-145).

Figure 2.3: Top Five U.S. HTS Chapters Accounted for the Majority of GSP Duty-Free Shipments, 1992



Note: See appendix I, table I.3 (pp. 134-145), for detailed descriptions of the items contained in each U.S. HTS chapter.

Source: U.S. Department of Commerce/Bureau of the Census.

Agricultural items included in chapters 1-24 accounted for almost $3.8 billion (11 percent) of all GSP-eligible imports in 1992.[4] Of this amount, 43 percent received GSP duty-free entry into the United States. This percentage is slightly lower than the overall average of GSP-eligible goods

[4]In 1992, 13 percent of total U.S. imports from BDCs in HTS chapters 1-96 to the United States were agricultural goods.

that received duty-free access (47 percent). U.S. HTS chapter 17 (sugars and sugar confectionery) had the highest level of agricultural imports receiving duty-free entry, at about $387 million.

The top five items having the highest value in GSP duty-free shipments in 1992 were auto seat parts ($373 million), telephone sets ($315 million), precious metal jewelry ($239 million), raw cane sugar ($225 million), and display units for automatic data processing equipment ($215 million). These items had duty-free shipments totaling $1.37 billion, or 8 percent of total duty-free shipments under GSP.

Textile items were cited by BDC officials as an area where BDCs have potential for improved GSP utilization: about 15 percent or more of the total exports of several BDCs comprised textiles and clothing in 1991. Textile and apparel articles are largely precluded from receiving GSP benefits due to a statutory exclusion that prevents items subject to textile agreements from receiving GSP benefits (see fn. 13 on p. 27). Total U.S. imports of BDC textile and apparel items in U.S. HTS chapters 50-63 amounted to $14.7 billion in 1992. This amount equaled 13 percent of total U.S. imports from BDCs. At the same time, GSP-eligible imports of these same items totaled $461 million, or 1 percent of total GSP-eligible imports into the United States.

Alternative Duty Preference Options That Complement GSP Benefits

Other duty preference options exist for GSP beneficiaries that replace some duty-free benefits that could have been realized under the GSP Program: many items that are eligible under the GSP Program instead receive tariff preferences through alternative means. These options include the Caribbean Basin Economic Recovery Act (CBERA), the U.S.-Israel Free Trade Agreement (FTA), and the Andean Trade Preference Act (ATPA). BDCs can also ship items under U.S. HTS chapter 98, subchapter II ("9802") or utilize the temporary duty suspensions contained in U.S. HTS chapter 99, subchapter II (most of which recently expired). In 1992, $2.9 billion (8 percent) of the $35.7 billion in imports that were eligible for GSP entered the United States under a duty preference provision other than GSP. When this amount is combined with the $16.7 billion that entered duty free under GSP, the data show that 55 percent of all GSP-eligible goods received duty-free entry.

Conclusions

While many BDCs ship under GSP, the preponderance of benefits provided by the program's duty elimination are concentrated toward the relatively

small number of more advanced or larger BDCs that can produce and export goods that meet U.S. market demands. In addition, GSP is furthering developmental goals in that industrial products, rather than agricultural products, dominate duty-free imports.

Limitations on Benefits Under the GSP Program

A number of factors limit the level of duty-free benefits that BDCs receive under the GSP Program. In 1992, 45 percent of the $35.7 billion in GSP-eligible imports did not receive duty-free entry. During recent years, administrative program provisions, such as the requirement for a certain percent of domestic content in exported products or for direct shipment of goods from the BDC to the United States, have increasingly become the factor that excludes GSP-eligible imports from receiving duty-free preferences. Administrative exclusions accounted for 56 percent of all exclusions in 1992, up from 31 percent in 1989. However, the removal of Mexico, which accounted for the majority of these exclusions, from the program is one factor that may alter this trend.

Some import-sensitive items, such as textiles and footwear, are legislatively prohibited from receiving GSP eligibility. For those items that are granted GSP eligibility, the GSP law permits improvements in BDC competitiveness to limit duty-free imports for specific products from particular countries. Such exclusions include discretionary permanent "product graduation" or removal from the program of a product shipped by a particular BDC, as well as legislated annual import ceilings for individual items beyond which GSP preferences will automatically be suspended for a country. Product graduations have accounted for only a very small proportion of all exclusions. The statutory ceilings, called "competitive need limits" or CNL, were responsible for the majority of exclusions from GSP duty-free entry during 1989 and 1990, but had lost some importance by 1992. As a result of the 1989 GSP annual review, a policy was adopted that makes it easier for products from more economically advanced BDCs that are excluded under CNL to regain GSP status. However, CNL exclusions for certain countries have grown quickly in recent years. In 1992, all CNL exclusions were responsible for 42 percent of total exclusions. Although the overall value of shipments excluded from GSP due to CNL declined between 1989 and 1992, foreign officials we interviewed cited CNL as the main obstacle to obtaining GSP duty-free entry for eligible articles. Further, BDC officials we interviewed said that CNL exclusions actually result in a reduced ability to export to the United States, although items are excluded because the United States believes a BDC is competitive in exporting them. In examining two cycles of CNL exclusions, we found an immediate loss of market share once a CNL was implemented in a majority of cases for the country involved (though no causal link was identified).

If BDCs are unable to produce and export eligible items, then they cannot participate in the program. Conversely, if a country is found to be

competitive overall or sufficiently developed, then it can be permanently removed from the GSP Program. Such removal has been applied to several countries and in some cases has proven controversial.[1]

Administrative Exclusions

As shown in sable 3.1, there are several reasons why GSP-eligible imports into the United States did not actually receive GSP duty-free entry. The prominence of the different types of exclusions from GSP duty-free entry has changed between 1989 and 1992, with administrative exclusions now dominating limitations under the program. Administrative exclusions can occur for reasons such as a failure to meet program requirements on product domestic content (rule of origin) or on direct shipment of an item from a GSP country to the United States. Inadequate customs paperwork can also lead to this type of exclusion. In 1989, administrative exclusions amounted to $3.8 billion and accounted for 31 percent of all exclusions. By 1992, they had grown substantially to over $9 billion to become the primary reason (56 percent) for exclusions from GSP duty-free entry in that year.

[1]Benefits can also be eliminated for countries due to internal actions, or "country practices," considered unacceptable by the United States. These practices include providing inadequate worker rights or failing to provide adequate and effective protection of intellectual property. Country practice exclusions are discussed in chapter 5 and are not analyzed in the following data.

Table 3.1: Value of GSP-Eligible Imports Excluded From GSP Duty-Free Entry, 1989-92

U.S. dollars in millions

	1989		1990		1991		1992	
Exclusion type	**Value**	**Percent of total exclusions**	**Value**	**Percent of total exclusions**	**Value**	**Percent of total exclusions**	**Value**	**Percent of total exclusions**
Administrative reasons	$3,800	31%	$5,322	39%	$6,664	50%	$9,076	56%
Graduation	293	2	306	2	246	2	276	2
Competitive need limits	6,829	55	6,889	50	5,424	41	5,827	36
Reduced competitive need limits	1,413	11	1,224	9	908	7	905	6
Total exclusions	**$12,334**	**100**	**$13,742**	**100**	**$13,242**	**100**	**$16,084**	**100**
Total GSP-eligible imports	**$24,431**		**$27,196**		**$29,361**		**$35,723**	

Note 1: All dollar amounts are in current dollars.

Note 2: Competitive need limit exclusion figures also include data for items that were dutied for countries due to reasons not directly tied to their competitiveness. For example, in 1992 India lost GSP benefits on pharmaceutical, chemical, and related products following a Section 301 review (this law is discussed further in ch. 5) that determined that the country's failure to provide adequate and effective patent protection was unreasonable and burdened or restricted U.S. commerce (see fn. 12, p. 56). Such exclusions have not been removed from the data.

Note 3: Totals may not add due to rounding.

Source: U.S. Department of Commerce/Bureau of the Census.

Some trade experts and U.S. officials we interviewed commented on one type of administrative exclusion as being in need of change—domestic content or "rule of origin" requirements. Title 19 U.S.C., subsection 2463(b), establishes specific criteria (rules of origin) that articles must meet in order to be eligible for GSP preferences. These criteria are in place to determine an imported good's "legal nationality." Under these rules, GSP duty-free entry is allowed only if the cost or value of materials produced in the beneficiary country, plus the direct costs of processing in the country, equals at least 35 percent of the appraised value of an article upon its entry into the United States. Product components from a third country must be "substantially transformed" into new and different constituent materials, of which the eligible article is composed, in the exporting BDC before they can be considered part of this 35-percent domestic content rule.[2] For the GSP Program there is no measurable definition of the term substantially

[2]An existing provision in the GSP Program makes it easier for countries that have formed regional associations to meet rule of origin requirements. For example, components of a product from any Caribbean Common Market country are considered domestic content and are counted toward the 35-percent requirement for a GSP article shipped from one particular Caribbean Common Market country.

transformed, and the determination as to whether such a requirement has been met is made on a case-by-case basis that involves subjective judgment. In addition, goods must be imported directly from the beneficiary country into the customs territory of the United States to obtain the duty preference (although entrepôt[3] trade may be allowed in some instances).

There has been criticism of this type of rule of origin requirement, with U.S. officials we interviewed claiming that BDCs may have no predictable (i.e., clear) way of knowing before shipment whether foreign components will be considered to have been substantially transformed and can be included as part of the 35-percent domestic content. Therefore, some U.S. officials and one trade expert have suggested that the GSP Program should adopt a different rule of origin approach, similar to that of NAFTA, where substantial transformation is clearly defined by changing a product's tariff classification. Under NAFTA, goods containing imported materials from outside the free trade area are generally considered NAFTA originating if the foreign materials undergo processing or assembly in North America sufficient to result in a specified change in the HTS tariff classification. Under this tariff-shift rule, depending on the good involved, NAFTA requires non-NAFTA components to be in a predetermined different HTS chapter, heading, subheading, or tariff item than the final product if the final product is to receive the agreement's preferential duty treatment. Therefore, North American exporters know whether they have met NAFTA rule of origin requirements before shipments are sent. In January 1994, the U.S. Customs Service proposed adopting a change of tariff classification system that would affect GSP and other preferential programs (though the 35-percent rule would remain independent) and was collecting public comments on this possibility until early April.

U.S. government officials and a trade expert we interviewed said that the NAFTA approach is clear and leaves little doubt as to whether a partially non-NAFTA item has been substantially transformed and will, therefore, qualify as having sufficient North American content. However, some contend that an attempt to create such a system for the GSP Program could lead to disagreements over what constitutes adequate transformation or could result in an overly protective scheme. An ITC official also pointed out that a tariff classification change system would require massive paperwork for BDC companies where documentation would be involved at every stage of transformation in order to substantiate the required change. Such a

[3]Entrepôt exports are exports from a BDC that are transshipped through another country, BDC or non-BDC, before arriving in the United States. Such shipments are sent through free trade zones and must meet specific criteria in order to remain eligible for GSP in the United States.

process could make compliance with rule of origin requirements difficult and discourage BDCs from using the GSP Program.

Another issue was raised about the current rule of origin system related to U.S. source content of GSP items. Currently, the GSP Program does not allow for U.S. components of BDC items shipped to be considered in any way in meeting domestic content requirements (unless substantially transformed). Private sector officials expressed concern over this situation and suggested that U.S. component input be included as counting toward the 35-percent requirement.

In 1992, Mexico accounted for 67 percent of all administrative exclusions. Foreign and U.S. government officials told us that they believed Mexico's large proportion of such exclusions could possibly be attributed to high levels of imports that were eligible for GSP but instead were shipped under HTS chapter 98, subchapter II ("9802"), which provides for partial tariff elimination.[4] These items were not shipped under GSP presumably because they could not meet GSP's 35-percent domestic content rule of origin or simply because 9802 was the preferred option. The dutiable value of all GSP-eligible goods imported under 9802 is categorized as an administrative exclusion. In 1991, Mexico was the largest beneficiary of 9802. However, in that year $7 billion of dutiable U.S. imports from Mexico were shipped under 9802.

Import Sensitivity and Competitiveness Exclusions

Restrictions on GSP benefits have been enacted due to the need to balance benefits provided to BDCs with concerns over the impact on domestic interests. Further, these restrictions draw upon a recognition that GSP benefits to a BDC are meant to be temporary. The restrictions are based upon the import sensitivity of domestically produced items that would compete with GSP imports and the level of competitiveness of BDC GSP exports.

Statutorily Excluded Import-Sensitive Items

Some goods are statutorily prohibited from ever obtaining GSP eligibility due to the sensitivity of specific domestic sectors to the effects of imports. These items are listed in 19 U.S.C., subsection 2463(c), and include certain

[4]Under 9802, an article that contains U.S. components and that was processed or assembled in a BDC and then returned to the United States will be assessed duties only on the value of the foreign processing or assembling associated with the item.

textile and apparel articles[5] and watches,[6] as well as footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not eligible for GSP on April 1, 1984. This subsection also excludes import-sensitive electronics, steel, and glass items. These exclusions are not captured in GSP data because they are not eligible for the program in the first place. Excluded textile articles were named by foreign officials we interviewed as a sector in which BDCs could benefit greatly from tariff preferences, as discussed in chapter 2.

Further, any article determined to be "import-sensitive in the context of the Generalized System of Preferences" is ineligible for the program. This criterion lacks any clear definition and, as such, GSP Subcommittee members noted, allows for flexibility in administering a program that involves thousands of items in the U.S. HTS. Decisions are open to individualized considerations during the annual decision-making process, discussed in chaper 4.

Product Graduation

Articles that are granted eligibility under GSP can also be restricted from actually receiving GSP duty-free entry entirely or with respect to specific countries. According to USTR's General Counsel (as of October 1992), 19 U.S.C., sections 2461 and 2464, can limit benefits available under the GSP Program once specific countries are deemed to be competitive in exporting specific items. Title 19 U.S.C., section 2461(4), allows the President to grant GSP benefits while keeping in mind "the extent of the beneficiary developing country's competitiveness with respect to eligible articles." Title 19 U.S.C., subsection 2464(a)(1), gives the President discretionary authority to "withdraw, suspend or limit the application of duty-free treatment accorded under 19 U.S.C., section 2461, with respect to any article or with respect to any country." These provisions allow either for the permanent removal of countries (country graduation), or the removal of items from particular countries (product graduation), from GSP eligibility status.

In 1981, the administration committed itself to fully utilizing product graduation policy. Product graduation is more common than the graduation of an entire country and has been controversial because it does not treat all BDCs uniformly (see pp. 20-22). USTR documents state that

[5]Except for handicraft textiles from beneficiary countries that have agreements with the United States to provide certification that the items are hand-made products of the exporting country.

[6]Except for watches that the President finds will not cause material injury to U.S. watch or watch band manufacturing and assembly operations, as allowed for in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, Aug. 23, 1988).

product graduation determinations are made after considering, among other things, the competitiveness of the BDC involved, as well as the effect of GSP treatment on U.S. interests. However, the GSP Director told us that the focus for these decisions rests on the former: an acknowledgement that a BDC's industry is competitive, making GSP preferences no longer necessary. Permanent product graduations come about as a result of petitions submitted during the annual review process (typically by competing U.S. interests), or by precluding specific BDCs from GSP eligibility on newly designated articles.

Trade experts and U.S. government officials we interviewed said that this surgical approach of graduating specific items for particular countries has increasingly become a preferred tool for the GSP Program. They said it recognizes the competitive capabilities of certain BDCs and might allow for a more even distribution of benefits among countries. One former GSP Program official told us that BDC representatives were previously openly hostile to product graduation, due to its discriminatory nature, when the United States initially committed to use it in the early 1980s. However, she said that BDCs are now accepting the credibility and usefulness of this approach, as well as the intended temporary nature of benefits under GSP. A former GSP Program director told us that since the 1989 graduation of the four Asian "newly industrializing economies" (NIE)[7] that had dominated the program, the pressure to use product graduation to target exclusions toward competitive BDCs has been greatly diminished.

Compared to other types of exclusions, permanent product graduations[8] do not pose much of a barrier for GSP countries. As shown in table 3.1, exclusions from GSP benefits due to product graduations amounted to $293 million in 1989 and were $276 million in 1992. Product graduations have remained constant at 2 percent of total exclusions every year between 1989 and 1992. Only a few countries have been graduated for specific products. In 1992, countries shipping affected articles were Mexico (three items dutied on almost $156 million in U.S. imports); Brazil (five items dutied on almost $68 million); two of the four eligible republics of the former Yugoslavia; Venezuela; and Israel.

[7]The NIEs are South Korea, Taiwan, Hong Kong, and Singapore.

[8]In our analysis, permanent product graduations exclude decisions by the President not to redesignate items whose shipments in 1 year exceeded legislative limits (discussed in the next section), but whose later shipments have fallen below these limits and so are no longer legislatively required to be excluded from GSP benefits. The President's decision to continue denial of GSP treatment to these items is often referred to as "graduation" but is not included in our analysis of product graduations because such denial of GSP is not necessarily permanent; the President may reinstate GSP status at any time and has done so in past cases.

Competitive Need Limit Exclusions

Title 19 U.S.C., subsection 2464(c), allows for the suspension, often temporary, of GSP preferences for shipments of a particular item from a particular country that are defined as competitive. U.S. government officials say that these restrictions are in place because BDCs exporting at high levels tend to be more industrialized and have better export-oriented development strategies; therefore they do not need assistance to be competitive. In order to define competitiveness, the subsection enumerates specific annual import levels for any GSP-eligible item that, if exceeded in 1 calendar year by a beneficiary country, will lead to the suspension of GSP duty-free preferences for shipments of the item by the BDC that exceeded the limit. These levels equal 50 percent of total U.S. imports of an item or an absolute import value that changes from year to year.[9] This type of exclusion is referred to as a competitive need limit.

Following a statutorily mandated general review of the GSP Program that ended in January 1987, some CNL exclusions were made more restrictive. USTR reviewed itemized GSP imports from BDCs and determined which ones had "a sufficient degree of competitiveness" (relative to other BDCs). These particular articles shipped from individual BDCs are now subject to reduced CNL levels. These lower levels equal 25 percent of total U.S. imports of the item, or an absolute value.[10] Though CNL exclusions occur much more frequently and involve more countries than product graduations, they are not necessarily permanent.

A country whose exports of a CNL-excluded item subsequently fall below the percentage or value levels that initially led to the CNL exclusion may have the item "redesignated" as eligible for GSP duty-free preferences, according to 19 U.S.C., subsection 2464(c)(5). Until 1989, U.S. policy was to graduate—through failing to redesignate—products from more economically advanced BDCs. Beginning in 1989, this policy was eased, and redesignation decisions for all BDCs are now made on the same basis. These decisions are at the discretion of the President. Numerous redesignations have subsequently been made, as discussed on page 58.

In addition, 19 U.S.C., subsection 2464(c)(3), states that GSP benefits can be reinstated (a waiver can be granted) for items subject to CNL restrictions. Waivers can be granted for parties that submit a petition during the annual review process. For items subject to reduced and

[9]The absolute dollar level is pegged to growth in U.S. GNP. The limit was originally set at $25 million in 1974 and reached $101 million in 1992.

[10]As with regular CNL, the absolute dollar limit that triggers reduced CNL exclusions is pegged to growth in U.S. GNP. The limit was set at $25 million in 1984 and reached $39 million in 1992.

regular CNL, a petitioned waiver can be granted for either just the lower, more restrictive limits, or for both the lower and upper limits. A waiver will remain in effect until the President determines that it is no longer warranted due to changed circumstances. In deciding whether to grant a petition for a CNL waiver, the President shall give "great weight" to accessibility to the BDC's markets for U.S. goods and services, as well as the extent to which the BDC provides reasonable and effective protection of U.S. intellectual property rights.

A CNL waiver may also be granted when total U.S. imports of a product are small, or de minimis. In 1992, the level of imports for a particular good to become eligible for a de minimis waiver was $11.8 million. All CNL waivers are automatically granted for items that were not produced in the United States on January 3, 1985, and for all items shipped from the 35 BDCs that have been designated as least developed countries by USTR (see p. 26 for a listing).

Numerous Concerns Over CNL Exclusions

Foreign business representatives we interviewed expressed concern about the unpredictable nature of CNL exclusions, under which a country will lose GSP for a certain item with only a few months' prior notice.[11] After the exclusion, a BDC has no way of knowing when, or even if, GSP eligibility will be reinstated through a waiver or redesignation. A former GSP director agreed with foreign and U.S. officials we interviewed that USTR's 10-month "warning list" of items that are approaching CNL limits (using data through October and published in the Federal Register in January of the next calendar year) is essentially useless as a tool to alert countries to potential CNL problems so that action can be taken to avoid the exclusion (though it is useful as an informational source). This situation is further compounded by the lack of data on GSP exports by beneficiary countries themselves. For example, as of 1992, Brazil, the program's fourth largest user, maintained no official data on its exports to the United States under GSP (although a computerized trade data system is being developed that would capture GSP exports). An official from the Ministry of Industry, Commerce, and Tourism told us that the Brazilian government relies on UNCTAD for data on its GSP exports to the United States.

Foreign company representatives in affected industries we interviewed said that they experience immediate production and export planning problems once they learn that their article will lose GSP. Foreign government officials said that businesses also experience long-term

[11]Based on trade data for 1 calendar year, CNL exclusions take effect on July 1 of the following year, as do most changes to the U.S. HTS concerning GSP.

planning problems. Further, one foreign businessman noted that not only is future planning disrupted by a loss of GSP, but past planning efforts that were aimed at initially entering the U.S. market are lost. Foreign industry officials we interviewed said that the effect on profitability due to a lost tariff differential of just a few percentage points can be very great. A Brazilian economist working for the United Nations (U.N.) noted that the impact could be particularly strong for undifferentiated items where price is the primary factor that distinguishes the beneficiary's product in the U.S. marketplace.

Suggestions were offered to soften the perceived severe impact of CNL exclusions. Foreign and UNCTAD officials we spoke with suggested that a longer adjustment period should be granted to businesses to plan for the tariff change and to find potential alternate markets before CNL exclusions are implemented. One point made by BDC government and industry officials was that CNL exclusions should be based on sustainable GSP export performance, rather than on only 1 year's data. Unusual circumstances in 1 year that trigger a CNL exclusion may not be typical or indicative of an industry's capability to export at competitive levels over the long run from a specific country. For example, a representative of one Brazilian sector (rods/bars of copper-zinc base) explained that the industry found itself subject to a CNL export percentage exclusion in 1991 even though its exports to the United States had not changed significantly from previous years. However, exports to the United States from other countries had decreased, and so the Brazilian industry's proportion of U.S. imports of the item had exceeded the CNL percentage level.

A former GSP Program director questioned these requests for increased leniency before exclusions are implemented, pointing out that BDCs should be taking a more active role in reducing the impact of CNL exclusions. He noted that BDCs should act to avoid CNL exclusions altogether. BDC governments should more closely monitor U.S. import statistics to determine which industries may be at future risk of exceeding competitive need limits. The BDC government could then alert industry representatives, who could file for a CNL waiver during the annual review process before any CNL level was even exceeded. The industry would then be unaffected by any future CNL exclusion if the waiver were granted. Another former GSP Program official suggested that once a product from a BDC exceeds CNL levels for a certain number of years, U.S. policy should be to completely graduate the item for the country involved. This action would add an element of predictability to the process of reducing GSP benefits for specific countries.

Decreasing Size of CNL Exclusions

Some foreign government officials and an industry official we interviewed referred to CNL exclusions as the major barrier to receiving benefits from the program; however, as discussed previously (see pp. 47-48), we found that the majority of exclusions from duty-free entry were due to administrative reasons in 1991 and 1992. In 1989, total CNL exclusions accounted for the largest share (66 percent) of all exclusions and were valued at $8.2 billion. Reduced CNL, which affected primarily Mexico and Brazil, accounted for 17 percent of total CNL exclusions. By 1992, total CNL exclusions had dropped to $6.7 billion (42 percent of total exclusions), with 13 percent of all CNL exclusions due to reduced CNL.

One Brazilian trade association official suggested that the reason for the decreased level of CNL exclusions may be that companies simply stopped shipping the items subject to CNL or graduation limitations because of a lost crucial competitive edge. This situation would make CNL exclusions appear relatively less serious than they actually were, when compared to other types of exclusions. (This argument could also be made for permanent product graduations.) Our analysis, based on exclusions in force in 1992, concluded that the assertion that countries completely stopped shipping CNL-excluded items was mistaken, at least for that year. At the end of 1992, although 245 product/BDC pairs were officially excluded from GSP eligibility, 225 (92 percent) items had been shipped by the affected country despite a lack of GSP duty-free benefits.[12]

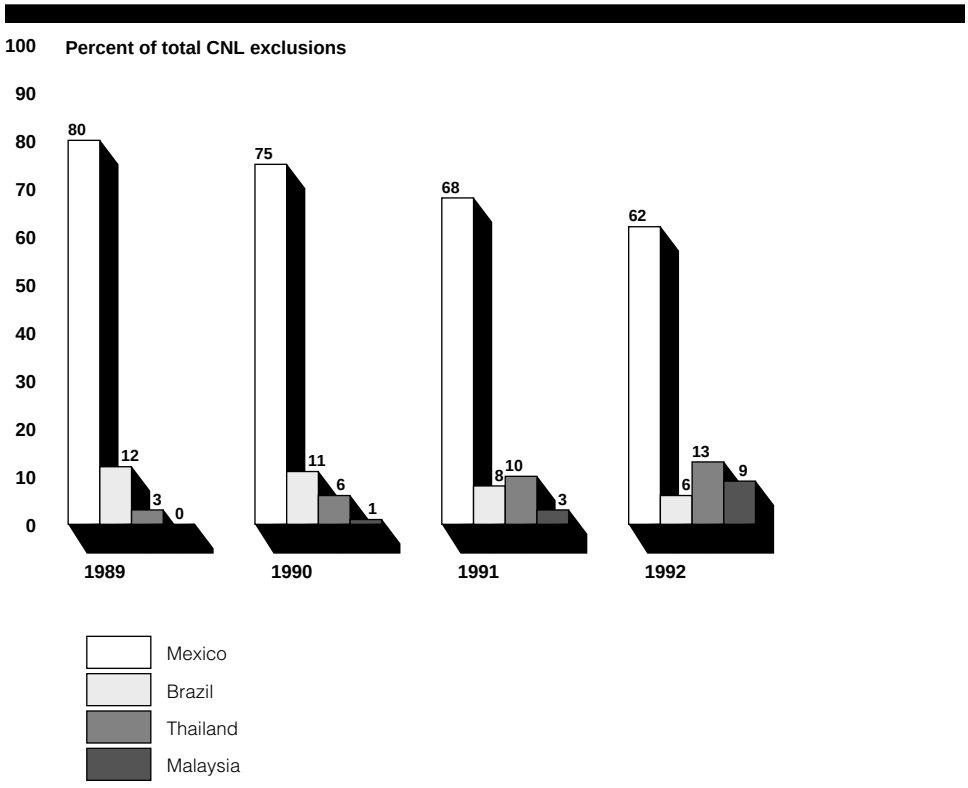
Instead, the recent proportional decrease in the importance of CNL relative to other exclusions over the years can be attributed to the fact that (1) administrative exclusions have increased substantially and (2) fewer items are now subject to continued CNL limitations for key countries, primarily Mexico and Brazil, because of an eased redesignation policy adopted as part of the 1989 annual review. Following implementation of this policy, the value of CNL exclusions for these countries has decreased.

Mexico and Brazil accounted for the majority of CNL exclusions in 1989 and 1990 (with Mexico continuing to account for over half of all CNL

[12]At the end of 1992, 1,129 product/BDC pairs were technically ineligible for GSP duty-free treatment. However, 884 of these items were exclusions applied to India, virtually all of them imposed as trade sanctions rather than exclusions strictly related to performance under the GSP Program. In 1991, USTR's annual review of intellectual property protection among U.S. trading partners named India as a "priority foreign country." An investigation under Section 301 of the 1974 Trade Act was initiated in May of 1991. In February 1992, USTR concluded that India's failure to provide adequate and effective patent protection was unreasonable and burdened or restricted U.S. commerce. In April 1992, the President suspended India's GSP privileges for chemicals, pharmaceuticals, and related products and later excluded India from enjoying benefits from products granted eligibility as a result of the 1991 GSP annual review. Therefore, subtracting India's unique limitations under the program leaves 245 product/BDC pairs subject to competitiveness exclusions.

exclusions in 1991 and 1992), and the size of their CNL exclusions has, to a large degree, dictated the importance of CNL in the program overall over time. The number and value of Mexican and Brazilian CNL exclusions were greatly reduced by 1992. As shown in figure 3.1, Mexico and Brazil had a smaller share of total CNL exclusions in that year when compared to 1989.[13]

Figure 3.1: Percentage of Total CNL Exclusions for Top Four Countries Affected, 1989-92



Source: U.S. Department of Commerce/Bureau of the Census.

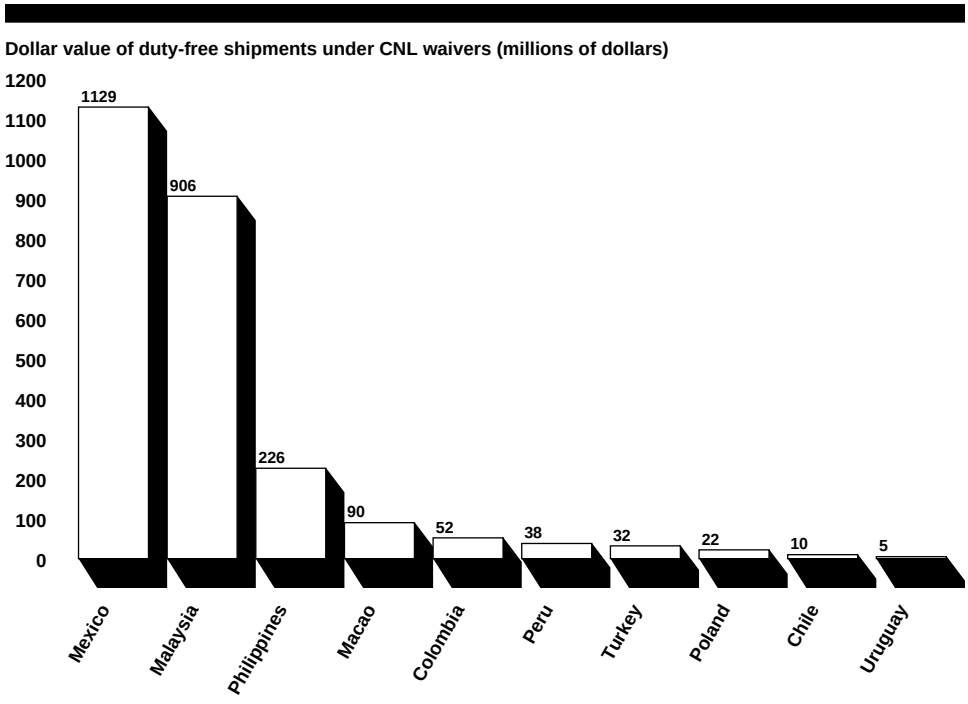
[13]In addition to Mexico and Brazil, countries affected by CNL exclusions (other than India) in 1992 included Thailand, Malaysia, Indonesia, Chile, Argentina, the Dominican Republic, Colombia, Guatemala, Turkey, and Israel.

At the end of 1989, Mexico was officially subject to exclusions for 285 items.[14] Following implementation of the eased redesignation policy, Mexico had 209 items that were returned to GSP-eligible status in 1990. By the end of 1992, Mexico was officially subject to limitations for 91 products. Similarly, at the end of 1989, Brazil had 132 items that were officially excluded from receiving GSP preferences. As with Mexico, Brazil had many items (90) that regained GSP eligibility after the redesignation policy was altered. At the end of 1992, Brazil was officially excluded from GSP duty-free entry for 55 items, most of which were eligible for redesignation.

Just as the eased redesignation policy has allowed items to return to GSP status, so, too, have CNL waivers lessened the impact of CNL exclusions in recent years. Items entering with CNL waivers have increased in value and proportion, from $533 million (2 percent of eligible imports) entering GSP duty free under waivers in 1989, to $2.5 billion (7 percent of eligible imports) in 1992. As seen in figure 3.2, the two countries that benefited most from CNL waivers in 1992 were Mexico and Malaysia. Mexico was the primary beneficiary, with $1.1 billion entering duty free under waivers (45 percent of all waiver benefits). While Malaysia had $593 million in imports to the United States dutied under CNL in 1992, $906 million entered duty free under CNL waivers. However, Thailand and Brazil, in addition to being two of the countries most affected by CNL exclusions, shipped no items that benefited from CNL waivers.

[14]In addition to CNL restrictions, the number of exclusions that were officially applied to Mexico and Brazil also included a small number of items that have been permanently graduated.

Figure 3.2: Top 10 Beneficiaries of CNL Waivers in 1992



Note: U.S. dollars in millions.

Source: U.S. Department of Commerce/Bureau of the Census.

The reduced size of CNL exclusions may not last. While smaller CNL restrictions for Mexico (in particular) and Brazil have resulted in a reduced importance for CNL exclusions in the program overall, other top shipping countries, such as Malaysia and Thailand, have had very different experiences. These two countries had growth rates in GSP duty-free shipments of about 31 and 27 percent, respectively, between 1991 and 1992. However, they had even higher increases in shipments to the United States dutied under CNL that year. Thailand had about $845 million in GSP imports enter the United States dutied because of CNL in 1992, an increase of 33 percent from 1991. Malaysia reached a level of $593 million in shipments to the United States dutied under CNL in 1992, a 245-percent increase from 1991. This growth was largely due to increased levels of exports of the same excluded items over time, rather than an increase in the number of items excluded. For example, Malaysia's CNL exclusions in 1992 were attributable to just six products. Malaysia and Thailand now

rank ahead of Brazil for imports entering the United States subject to duties due to CNL exclusions. Continued rapid growth in these CNL exclusions, combined with the graduation of Mexico, could result in an increased relative impact of CNL on the GSP Program.

The Impact of CNL Exclusions

Due to the concern expressed about CNL exclusions by foreign business and government officials, we examined exports to the United States of (1) the affected BDC, (2) other BDCs, and (3) ineligible countries following a CNL exclusion. BDC company officials we interviewed said that a loss of GSP tariff preferences means a decreased ability to compete for sales. However, some U.S. officials said that BDCs are competitive without GSP if they are exporting beyond the statutory limits and that CNL exclusions provide increased opportunities for other BDCs.

We examined data on 57 CNL product exclusions[15] that took effect in 1990 (40 items) and 1991 (17 items) to assess the import position for the affected BDC, other BDCs, and non-GSP countries. Many of these exclusions were applied to Mexico. Our analysis showed that the results were mixed. Following the CNL exclusion, the affected BDC experienced a reduced competitive position, measured as a loss in U.S. import market share, in about 65 percent of the cases for both sets of exclusions by July 1992. The range of this share loss varied widely, from a few percentage points to a 100-percent loss. There was no pattern of share loss or gain for certain types of products.

However, the excluded country was actually able to maintain or increase its import market share in up to 35 percent of the cases after the exclusion. Further, subsequent redesignations or CNL waivers softened the impact of lost import market share for about half of the 25 items excluded in 1990 that regained GSP status in 1991. The amount of GSP duty-free shipments before the CNL exclusion did not appear to be predictive of the impact the exclusion would have on the particular BDC.

In addition, our analysis showed that the import market share lost by excluded BDCs was somewhat more likely to accrue to non-GSP countries, although other BDCs also improved their share, and often for the same items as non-GSP countries. In cases where the excluded BDC lost share,

[15]These 57 products were all those excluded because specific BDCs had exceeded statutory limits. Other items were excluded in 1990 for certain BDCs, but this action occurred as a result of the GSP special review for Andean countries. In many cases, products granted eligibility for these countries under the special review were excluded for other particular BDCs. These exclusions were, therefore, not based on competitiveness achieved while participating in the GSP Program and so were not included in our analysis.

non-GSP countries increased their import market share for over 70 percent, while remaining BDCs increased their share for over 60 percent, of the items.[16]

Awareness of the Program and Ability of BDCs to Produce and Export GSP-Eligible Products

In addition to the legislative prohibition of eligibility for certain items, there are other reasons for limited use of the GSP Program that are not captured in data. It is possible that GSP is not used as much as it might be because exporters simply are not familiar with GSP, particularly in countries that are not large users of the program. For example, a U.S. government official in Turkey, as well as a Turkish government official, said that the Turkish government does an inadequate job of informing Turkish exporters about the opportunities provided by the GSP Program. A business representative in Brazil said that smaller firms in that country do not even know that the program exists.

In addition, some U.S. government officials and GSP experts we interviewed told us that they believe an important limitation on GSP participation is that many BDCs cannot produce and export items that are eligible under the program. This conclusion led to varying opinions by these officials on the appropriate country focus of the GSP Program.

Some U.S. government officials said that there is little that the United States can do to increase use of the program for many countries. They explained that the United States should realize that domination of the program by the few countries that can produce and export is to be expected. A former GSP director pointed out that too many people mistakenly view the GSP Program as a traditional aid program, believing that if the U.S. government removes benefits from some countries, it can allocate more to other countries. He said that such an action simply is not possible with the GSP Program, where the benefits of tariff preferences are not transferable to countries that are not strong producers or exporters of the GSP-eligible goods shipped by a graduated country.

For example, our analysis of CNL exclusions showed that, in the short run, other BDCs were often able to increase their U.S. import market shares when certain BDCs were excluded from receiving GSP preferences for particular items. However, these increases in market share occurred for remaining BDCs that were already shipping the affected articles. This conclusion suggests that the universe of remaining eligible BDCs that could

[16]Because the CNL data available covered only 1-2 years of post-exclusion figures and did not account for external events that could have affected import market share, our findings on loss of GSP preferences due to CNL and subsequent losses in import market share are only indicative.

benefit in the short run from an exclusion, whether it is a CNL, product graduation, or country graduation exclusion, is limited to those countries that are already shipping the relevant articles. The impact in the long run for all remaining BDCs is not clear.

Country Graduation

In opposing the views just mentioned, some U.S. government and trade experts said that the program should refocus its efforts to assisting and promoting growth in the less developed BDCs, rather than leaving most GSP benefits to countries that are already on the road to industrialization and would export regardless of the GSP Program. They saw the original intention of the GSP Program as one of working to improve the economic condition of the developing countries that need an extra advantage to begin or increase exporting. They said that the largest, most competitive program beneficiaries should be completely removed, or graduated, from GSP eligibility.

As with product graduations, 19 U.S.C., subsection 2464(a), allows the President to graduate an entire country on a discretionary basis after examining criteria in the law used to determine a country's original eligibility status. Since the late 1980s, eight countries or economies have been graduated from the GSP Program (Bermuda, Brunei, Hong Kong, Mexico, Nauru, Singapore, South Korea, and Taiwan), and an additional country (Israel) is in the process of being removed from the program.

According to some U.S. government officials and trade experts, complete graduation from the GSP Program is appropriate for countries that realize high exporting levels under the program (although most government officials interviewed felt that product graduation was a more effective way to deal with competitive GSP exporters.) They stated that strong exports indicate competitiveness, probable improved economic development, and a subsequent decreased need for tariff preferences. Further, they contended that graduation of competitive and dominating countries could provide improved exporting and market opportunities for the remaining BDCs.

Some U.S. government and industry officials felt that current prominent GSP users, such as Malaysia and Thailand, should be graduated from the program. One U.S. official added that if graduation is not undertaken for top-shipping BDCs, then at the very least, these countries should be held to higher standards in areas such as intellectual property protection or BDC market access.

Graduation of the Four Asian NIEs

The most visible use of country graduation occurred in January of 1989, when the four NIEs (Hong Kong, South Korea, Singapore, and Taiwan) were graduated from the GSP Program. This graduation came about because of (1) concern expressed about the dominant position these four countries held in the GSP Program (58 percent of all GSP-eligible imports and 54 percent of GSP duty-free imports in 1988) and (2) a determination that the economic development of these countries had reached a level that no longer justified their participation in the program. Formal criteria cited in making the decision to remove the NIEs, in addition to their GSP shipment levels, were GNP per capita, economic growth rates, and an ability to export manufactured items into the United States. While some hoped that the graduations would improve exporting opportunities under GSP for other BDCs, others argued that it would be just as likely that developed, non-GSP countries would increase their exports of these goods.

The circumstances surrounding Singapore's graduation were often singled out as unacceptable by trade experts we interviewed. Throughout most of the 1980s, Singapore did not protect U.S. (or any foreign) copyrighted goods. According to an official representing U.S. intellectual property interests, the U.S. government, pointing out the magnitude of financial losses to U.S. interests due to pirating of copyrighted U.S. works, informed Singapore that if copyright protection for U.S. goods were not soon provided, then that country would lose GSP benefits. Singapore, the fourth largest beneficiary under GSP, had duty-free shipments under the program of $1.3 billion in 1987.

This industry representative pointed out that in order to protect U.S. copyrighted goods, Singapore needed to (1) pass a new copyright law and (2) either sign a multilateral convention to protect copyrighted works of other signatories (such as the Berne Convention for the Protection of Literary and Artistic Works) or enter into a bilateral agreement with the United States to afford reciprocal protection. Singapore passed a new copyright law in February 1987, and the United States and Singapore subsequently extended reciprocal copyright protection, through a bilateral agreement, in April of that year.

With this newly enacted protection of U.S. copyrighted works, Singapore believed its status under GSP to be secure. However, just 9 months later, in January 1988, the United States announced that Singapore would be graduated entirely from the program beginning in 1989. Many U.S. intellectual property representatives were alarmed by this move, stating that it signaled bad faith on the part of the United States. One industry

official stated that Singapore still resents and raises this issue, which has made current intellectual property discussions with that country more difficult. A former USTR official we interviewed countered that the decision to graduate Singapore was made based on overriding trade and economic factors entirely apart from IPR, and, under the political climate of the time, the country would have been removed regardless of the status of its IPR regime.

Although the graduation of the four Asian NIEs had a great impact on the overall GSP Program figures and saw the imports of GSP-eligible goods from the four NIEs decrease, the action appears to have had an unclear effect on the level of GSP-eligible exports of the remaining BDCs, as shown in table 3.2. In 1988, the last year of program eligibility for the four Asian NIEs, total GSP-eligible imports to the United States from all BDCs amounted to almost $50 billion. Over $18 billion received GSP duty-free entry. The NIEs shipped almost $29 billion, or 60 percent, of eligible imports, and $9.85 billion of this amount received duty-free entry. Once the NIEs were graduated, GSP-eligible imports from BDCs dropped by over 50 percent, to $24.4 billion in 1989, while duty-free imports fell by 45 percent, to $10 billion.

Table 3.2: Imports of GSP-Eligible Items Before and After the January 1, 1989, Graduation of Taiwan, South Korea, Hong Kong, and Singapore (1987-92)

U.S. current dollars in millions

	1987		1988	
	Value	Percent of total eligible imports	Value	Percent of total eligible imports
GSP - Eligible Imports				
Total imports of eligible items	$134,478	100.0	$154,121	100.0
All eligible GSP beneficiaries	42,773	31.8	49,957	32.4
Non-GSP countries	91,705	68.2	104,164	67.6
Graduated Countries				
Taiwan	14,131	10.5	14,548	9.4
South Korea	6,174	4.6	7,401	4.8
Hong Kong	4,008	3.0	4,207	2.7
Singapore	2,074	1.5	2,822	1.8
Subtotal	**26,387**	**19.6**	**28,978**	**18.8**

1989		1990		1991		1992	
Value	Percent of total eligible imports	Value	Percent of total eligible imports	Value	Percent of total eligible imports	Value	Percent of total eligible imports
$178,929	100.0	$183,467	100.0	$187,402	100.0	$210,944	100.0
24,431	13.7	27,196	14.8	29,361	15.7	35,723	16.9
154,498	86.4	156,271	85.2	158,041	84.3	175,221	83.1
14,234	8.0	13,249	7.2	13,643	7.3	15,326	7.3
7,154	4.0	6,484	3.5	6,294	3.4	6,331	3.0
3,853	2.2	3,323	1.8	2,944	1.6	2,782	1.3
3,050	1.7	3,248	1.8	3,453	1.8	3,702	1.8
28,291	**15.8**	**26,304**	**14.3**	**26,334**	**14.1**	**28,141**	**13.3**

Sources: USTR; U.S. Department of Commerce/Bureau of the Census.

The four NIEs accounted for almost 19 percent of total U.S. imports of GSP-covered articles in 1988. This U.S. import market share dropped upon graduation to about 16 percent in 1989 and reached a low of just over 13 percent in 1992. With the NIEs now among their ranks, non-GSP countries increased their share of GSP-eligible U.S. imports in 1989 to over 86 percent, from about 68 percent in 1988. This share has been decreasing slightly ever since. All GSP-eligible countries increased their share of U.S. imports of eligible items every year following the graduations, rising from almost 14 percent in 1989 to 17 percent in 1992.

However, it is difficult to conclude that the modest increase in U.S. import market share of imports from GSP-eligible countries was specifically due to the NIEs' 1989 graduations, since these BDCs had increased their portion of eligible imports even before the graduations. Further, the NIEs had been losing U.S. import market share before the graduations occurred.

An evaluation of country graduation done through the U.N.'s Economic and Social Commission for Asia and the Pacific in 1992 suggested, as did our analysis, that the trade impact on the graduated countries was negative. The evaluation also claimed that remaining Asian GSP-eligible countries realized an influx of foreign direct investment after the NIEs' graduation at the expense of the four NIEs. The U.N. study stated that other Asian BDCs

were able to increase imports to the United States somewhat because of the NIE graduations. However, these countries maintained internal production and regulatory barriers that have kept them from fully exploiting any increased opportunities provided by the removal of the NIEs from the program. Officials from some of the program's current top user countries told us that they did not believe their countries had been able to benefit more from GSP after the NIE graduations.

Some U.S. government officials said that they do not believe country graduation based on economic development will be used again any time soon. They pointed out that there are not likely to be cases as clear-cut as the Asian NIEs in the near future. A U.S. Department of Agriculture (USDA) official pointed out that even Mexico is not yet at the development level of the Asian NIEs.[17] Other top-ranking users of the program, such as Brazil, have such disparate development levels within the countries themselves that it could be counterproductive to the BDC development goals of the GSP Program to graduate an entire country, including sectors that use GSP and are located in underdeveloped regions of the country.

GNP Per Capita and Country Graduation

Title 19 U.S.C., subsection 2464(f), mandates that no country may continue to receive GSP preferences if it exceeds a specific GNP per capita level. The GNP per capita ceiling for GSP eligibility in 1984 was $8,500, and increases in this amount are pegged to growth in U.S. GNP. The GNP per capita ceiling in 1992 was $10,647.[18]

In 1988, Bahrain, Bermuda, Brunei, and Nauru were removed from GSP eligibility due to their having per capita GNPs that were over the legislated limit. Bahrain was reinstated in 1990, after an analysis of revised national income data and a subsequent determination that the country had in fact not exceeded the statutory GNP per capita limit. Having a high GNP per capita level was the stated reason for graduating Israel over a 2-year period, to be completed in July 1995. The Bahamas, a current BDC, has a GNP per capita (1991 GNP per capita of $11,720) over the legislated limit.

[17]U.S. government officials have raised the point that due to the uncertainty about how and when Mexico would be removed from the GSP Program, clear guidelines should be developed for reducing or removing a country's GSP benefits if it enters into a free trade agreement with the United States.

[18]The GSP Director pointed out that the 1974 Trade Act, as amended, states that if a country exceeds the GNP per capita limit in 1 calendar year, then actions should be taken the following year to begin graduating the country. However, GNP per capita data, as compiled by the World Bank, are available only with an approximately 2-year time lag. Therefore, for example, if a country exceeds the GNP per capita limit in 1994, that information would not be available until 1996. This situation makes it impossible to begin graduation procedures against a country the year immediately following that in which it actually exceeded the GNP per capita limit, as required by the statute.

Conclusions

Nearly half of GSP-eligible imports did not receive duty-free entry in 1992. Although administrative exclusions have accounted for the majority of total exclusions in recent years, it is probable that with Mexico's removal from the program, along with the rapid growth in competitive need limit exclusions for top shippers such as Malaysia and Thailand, competitive need limits will again become the primary type of exclusion. The BDCs we visited have legitimate concerns over CNL. The premise behind the automatic CNL exclusions—that a BDC's industry is a competitive exporter once these levels are reached and so no longer needs GSP—can be questioned. Only 1 year of data is used in order to trigger an exclusion, during which time external factors that may have little to do with a specific BDC industry's competitiveness can affect U.S. import levels. While CNL exclusions are intended to remove products that are considered competitive, our data indicated that a loss of GSP due to CNL was often followed by a decrease in import market share. Further, unlike product graduation, domestic interests have no input into this process, and no U.S. government judgment is made concerning particular items and their competitiveness.

The implementation of a CNL exclusion can be disruptive and destabilizing for the BDC industry and U.S. importers affected. GSP duty-free preferences are lost for at least a year, unless the industry has the foresight to apply for a waiver a year before it is needed. Once a CNL exclusion is triggered, the industry has only a few months' notice to prepare for the loss of GSP duty elimination. This circumstance undermines the program's intent of fostering economic growth and stability for BDCs.

It is possible that granting a longer period before CNL exclusions take effect could counteract these problems. For example, after a BDC's industry exceeds the CNL, the industry could be granted an additional 1-year period during which the BDC industry could apply for a waiver and a second year of data would be collected. At the end of this additional year, a decision would be made whether to grant the waiver or, if the data show an import situation consistent with the first year for the industry, to deny it and allow the CNL exclusion to take effect. Any domestic concerns over whether to extend duty-free preferences with a waiver could be assessed on a case-by-case basis during the additional year. For example, product graduation could be applied to BDC items that are found to be exported competitively as a result of examining domestic concerns.

Product graduation, while currently accounting for a small percentage of exclusions, is an effective way of targeting competitive BDC products for

exclusion from GSP. Concerned U.S. producers, at their request, can receive relief from imports that they consider competitive. Further, product graduation is executed in a targeted manner that does not disrupt a country's less competitive industries, as can happen when an entire BDC is graduated. However, once a certain overall level of country development is reached, country graduation is appropriate.

GSP rules of origin cause problems due to the lack of predictability. BDC shippers cannot be sure that their products will meet the rules and qualify for GSP. In addition, the current rule states that at least 35 percent of the product must originate or be substantially transformed within the BDC and does not allow for any consideration of U.S. source material in meeting this requirement.

NAFTA, and the Canadian Free Trade Agreement before it, has rules of origin largely based on an imported product's change of U.S. HTS tariff heading from its constituent parts. This system has generally proven to be simpler and surer to administer and allows exporters to know their eligibility status before shipping. However, it may be more difficult for BDCs to comply with the paperwork requirements associated with a change in tariff classification system.

In addition, some items utilize provisions of trade law (U.S. HTS heading 9802) that allow the U.S.-origin content of certain goods to reenter the United States duty free. Therefore, it seems inconsistent to U.S. interests to disqualify items from entering GSP duty free because they have significant U.S. input that precludes the items from attaining 35-percent BDC content.

Matters for Congressional Consideration

In considering whether to reauthorize the GSP Program, Congress may wish to consider altering the competitive need limit process in order to allow for a more thorough assessment of the competitiveness of the affected imports by, for example, extending the amount of time before exclusions under CNL are implemented. This would allow for a more thorough assessment of the competitiveness of the affected imports and allow affected industries more time to adjust.

Congress may also wish to consider whether to alter the GSP rules so that items are not penalized for having U.S. content. For example, any U.S.-origin value of a shipped item could be subtracted from the total

value of the item before the 35-percent BDC origin value added is calculated.

Administrative Process for Product Cases

The GSP Program has a generally well-structured administrative process for consideration of petitions to add or remove products from GSP coverage. The interagency structure of the GSP Subcommittee and its consensus decision-making process is designed to ensure that the program's goals are balanced to provide benefits to BDCs while taking care not to unduly harm domestic interests. The annual petition review process, with clearly delineated procedures and time frames, provides an effective means for management of the program. The GSP review process is transparent up to the decision-making point. It provides interested parties with the opportunity to petition for changes and for a public hearing on these petitions. It allows all parties to know who is petitioning or opposing a petition and the evidence they have presented to support their position, as well as an opportunity to rebut opposing views.

A number of specific issues were raised in our interviews, however, about certain aspects of the administrative process. Decision-making criteria, such as the "import sensitivity" of a product or the achievement of "sufficient competitiveness" in the U.S. market, that are provided in the GSP statute are undefined. Such criteria are difficult to articulate or quantify, requiring case-by-case judgments. This difficulty was the source of much of the controversy in the product petitions we reviewed. While most petitions were not controversial and were routinely decided based on economic merit, we found that the more controversial the case and the higher in the trade policy structure it was elevated, the more other policy factors became determinative. Another issue raised related to the transparency of the reasoning behind decisions on whether to grant or deny a product petition. USTR makes no public statement, although by regulation it must respond in writing to a written request for information by the petitioner. During the 1991 Special Review for Central and Eastern Europe, the administrative waiver of the rule that 3 years must pass before a product addition petition is refiled caused much controversy. The waiver created the perception among affected domestic industries that the program had been politicized, and they questioned the credibility of the program. Finally, the GSP Subcommittee has occasionally accepted petitions that did not contain information required in the regulations. Although the regulations allow such an action if the petitioner made a good faith effort to obtain the missing information, domestic producers felt they were disadvantaged because often very little information was available to oppose a petition.

A fundamental issue was also raised about providing differential treatment to BDCs under a generalized system. Specifically questioned was whether

differential treatment was legal under the U.S.' GATT obligations, and whether the President had statutory authority and discretion to make such differential decisions. "Differential treatment" means that imports of a particular product from a particular BDC lose GSP eligibility if such imports are deemed to be sufficiently competitive. Such decisions ("permanent product graduations") are made at the discretion of the President. We found that the GSP statute provides the President with full authority to differentiate between countries as well as to make product designations on a differential basis. Further, the practice is not inconsistent with U.S. obligations under GATT because the GSP Program is exempt from GATT obligations, according to a GATT official. (See also ch. 1.)

The GSP law requires ITC advice on the probable economic impact of granting GSP duty-free treatment to a product. Most of the GSP Subcommittee members we spoke to said that this advice is valuable to the interagency decision-making process as an impartial analysis of the likely economic effects on U.S. producers and consumers. However, U.S. industry officials expressed some concern that the usefulness of ITC advice might be limited by outdated information used in ITC analyses. U.S. industry officials also complained that USTR's classifying as confidential ITC's assessment of probable economic effect undercuts program transparency.

Decision-Making Process in Product Cases

USTR's annual review of product eligibility focuses on petitions to add or remove items, which petitioners must submit by the June 1 deadline. At that time, USTR launches a two-stage decision cycle. In the first stage, June 1 to about mid-July, a decision is made on which petitions to accept for review. In the second stage, late July to around the end of the following April, the accepted petitions are reviewed and a decision is made on which petitions should be granted and which denied.[1] GSP eligibility changes go into effect on July 1.[2] This GSP decision-making time frame and the broad outlines of the review process are stipulated in the GSP regulations.

GSP petitions are reviewed by members of the interagency GSP Subcommittee. One agency takes the lead on each petition, providing a

[1]The GSP Subcommittee generally completes its recommendations by late February, so that sufficient time is left for approval by TPSC and TPRG, and a decision by the President by late April.

[2]The GSP annual review is a 13-month cycle. For instance, for the 1993 annual review started June 1, 1993, decisions should be announced in April 1994, and the effective date for all eligibility changes is July 1, 1994. Meanwhile, the 1994 annual review would normally start on June 1, 1994, but was deferred pending program changes anticipated as a result of GSP reauthorization by September 30, 1994.

written report and recommendation on each. Generally, the Departments of Commerce and Agriculture review the largest number of petitions because they have the relevant industry sector expertise. However, GSP officials repeatedly stressed that the recommendation of the lead agency is not always followed. The GSP Subcommittee deliberates on each case and makes its decisions by consensus.

Decisions are made by consensus because the GSP Subcommittee tries to balance the basic program objective of assisting developing countries against possible harm to domestic industries. The GSP Subcommittee includes the various government agencies that are integral to achieving this balance of interests. ITC and GSP agency officials told us that generally, USTR, State, and the Treasury support free trade and enhancing assistance to BDCs, while Agriculture, Commerce, and the Interior represent their particular domestic constituencies. Labor, while concerned with product petitions, is more focused on worker rights petitions (discussed in ch. 5). The need for consensus forces the GSP Subcommittee to balance the diverse views and interests of its members.

In the first stage of the annual review, which begins on June 1, the GSP Subcommittee has a 6-week period in which to decide which petitions to accept for full review. It checks that none of the petitions had been submitted and denied in the past 3 years and that none of the products already had duty-free status under MFN. It reviews import statistics for the prior 3 years and the first quarter of the current year to identify growth rates and trends over time. The recommendation of the lead agency is considered, together with views of other members. At the end of the 6-week period, the GSP Subcommittee makes its consensus recommendations, which are submitted for approval to TPSC and TPRG and then forwarded for the President's final decision. The decision on which petitions to accept for full review is published in the Federal Register. This notification also announces the hearing schedule and invites interested parties to testify or submit written statements.

The second stage of the GSP decision-making process, the full interagency review of accepted petitions, begins in mid-July and ends the following April. USTR requests economic impact advice from ITC, as mandated by GSP law. The GSP Subcommittee and ITC hold separate hearings to receive public comment. USTR makes a point of ensuring that the public comment process and hearings are as "transparent" as possible by making petitions and all submissions by interested parties publicly available in the USTR reading room. It allows all parties to know who is petitioning or opposing

a petition and the evidence they have presented to support their position, as well as an opportunity to rebut opposing views. USTR will also accept subsequent written submissions by interested parties right up to the point at which the GSP Subcommittee's recommendations are due.

The GSP Subcommittee does not officially solicit advice on petitions from either Industry Sector Advisory Committees or Agricultural Technical Advisory Committees[3] as a part of the review process, according to the GSP Deputy Director. However, he said that such advice would be welcome at GSP hearings or during the review process and that members of these advisory committees have testified at hearings and sent written comments in the past.

After its review of petitions is completed and a consensus is reached, the GSP Subcommittee makes its recommendations in a draft TPSC paper that is circulated among TPSC members for their approval. Because the agencies are encouraged to take positions and resolve differences at the GSP Subcommittee level, disputes are generally settled there, according to subcommittee members. However, if consensus is not reached by the GSP Subcommittee, TPSC will meet to resolve disputes.

GSP Subcommittee members noted that no agency agrees on all recommendations, but that they operate on a consensus basis. The subcommittee's draft TPSC paper is a package, and is approved as a package, even though an agency may not agree on all the individual cases. Depending on how strong an agency's opposition is, it may go along with the group consensus or fight certain recommendations at the TPSC or the TPRG level.

The members of TPRG are generally political appointees at the under secretary level, or their representatives. TPRG is chaired by a deputy U.S. Trade Representative. TPRG focuses on resolving areas of disagreement and is considered to be "the end of the line" in resolving disputes over petitions. According to the GSP Director, no problems have been elevated to the cabinet level. The TPRG recommendation is sent for approval to the U.S. Trade Representative, who in turn sends the decision package to the President.

[3]Congress established a private sector advisory committee system in 1974 to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Each technical and sectoral committee represents an individual industry sector or commodity group (such as steel or dairy products) and provides specific, often highly technical, advice concerning the effects that trade policy decisions may have on its sector.

The White House has its own deliberations on any contentious issues. Under the GSP statute, the President has the ultimate authority to decide GSP petitions. The GSP Subcommittee, TPSC, or TPRG can only recommend; the decision is the President's. White House staff may request additional facts from USTR. However, according to the GSP Director, they normally defer to the recommendations of TPRG as forwarded to the White House by the U.S. Trade Representative. Then the President makes the decision for each petition, leaving no written explanation behind.

According to the GSP Deputy Director, no voting record is available for the GSP Subcommittee, TPSC, or TPRG. The decision process is consensus based and, for the GSP Subcommittee and TPSC, the members usually vote on a package, not on individual petitions.

GSP Petition Results

We compiled information on decisions made on petitions filed in the 1989-91 annual reviews and the two special reviews[4] in 1989 and 1991. Table 4.1 shows petition results in these five reviews.

[4]"Special reviews" have twice been held at the President's direction to benefit specific countries. In 1989, there was a special review for four Andean countries (Bolivia, Colombia, Ecuador, and Peru) as part of the Andean Trade Pact Initiative to encourage legitimate alternatives to the production and export of illegal narcotics. In 1991, there was a special review for Central and East European countries as part of the Trade Enhancement Initiative for that region, in order to bolster new democracies in Bulgaria, Czechoslovakia, Hungary, and Poland.

Table 4.1: Product Petition Results in Annual and Special Reviews, 1989-91

	Review				
	Special	Annual			Special
Number of cases	1989 Andean special review	1989 annual review	1990 annual review	1991 annual review	1991 Central and Eastern Europe special review
Accepted					
Total cases	**83**	**129**	**124**	**83**	**92**
Add	36	128	71	47	92
Remove	11	0	9	4	0
CNLW	36	1	44	32	0
Granted					
Total cases	**51**	**66**	**68**	**29**	**74**
Add	23	66	58	23	74
Remove	6	0	2	2	0
CNLW	22	0	8	4	0
Denied					
Total cases	**29**	**62**	**20**	**53**	**16**
Add	10	62	12	23	16
Remove	5	0	7	2	0
CNLW	14	0	1	28	0
Withdrawn					
Total cases	**2**	**0**	**1**	**1**	**2**
Add	2	0	1	0	2
Remove	0	0	0	0	0
CNLW	0	0	0	0	0
Deferred					
Total cases	**1**	**1**	**35**	**0**	**0**
Add	1	0	0	0	0
Remove	0	0	0	0	0
CNLW	0	1	35 (Mexico)	0	0

Legend:

Add = Petition to add a product to GSP eligibility.
Remove = Petition to remove a product from GSP eligibility.
CNLW = Competitive need limit waiver.

Note 1: There are sometimes multiple petitions for the same article under the same HTS heading; these petitions are treated as one case.

Note 2: Two cases to add products that were granted in the 1991 annual review were implemented early as part of the 1991 special review. They are counted in the 1991 annual review in this table.

Source: USTR.

In the 1990 and 1989 annual reviews and the 1989 Andean special review, about 50-60 percent of the petitions were granted to add or remove items,

or to waive competitive need limits. Approvals dropped to 35 percent in the 1991 annual review because all petitions submitted by Mexico were denied in order not to undercut ongoing NAFTA negotiations. However, without the petitions related to Mexico, 67 percent of the cases were granted. In the 1991 Central and East European special review, 80 percent of the cases were granted.[5]

However, the number of petitions granted should also be looked at in the context of the potential import value of the items. For example, the 74 items granted and added in the 1991 special review had imports valued at $19 million from the target Central and East European countries and $52 million from all GSP beneficiaries in 1991, the year before the inclusion of these items in GSP. In contrast, while only 23 new items were granted and added in the 1991 annual review, their imports in 1991 reached a value of over $400 million, of which one item (oriental tobacco) alone had imports valued at $248 million. Therefore, though far more items were granted and added in the 1991 special review, the potential value of GSP shipments was far greater as a result of the 23 items added in the 1991 annual review.

Concerns Raised About the GSP Process

Most interested parties we interviewed were generally satisfied with the administrative structure of the GSP Program in regard to product petition cases, although some specific concerns were raised about program administration, particularly by some U.S. producers. A positive assessment of GSP was provided over a broad spectrum of "interested parties"—foreign government officials, UNCTAD officials, U.S. and foreign business representatives, trade experts, and trade association officials—whom we interviewed. We found that there was a general view that the GSP Subcommittee has done a good job in administering the program for product petitions.[6] The exception to this opinion was in the U.S. agricultural sector, where there were mixed views, and the chemical sector, where there were negative views.

[5]In the two special reviews to date, petitions to add products or waive competitive need limits were accepted only from the target beneficiary countries, although once granted, benefits would extend to all BDCs. No petitions to remove products were accepted for review.

[6]The administrative process for country practice petitions is examined separately in chapter 5. Consideration of product petitions is completely separate from consideration of country practice petitions in the GSP review process. Country practice issues are not considered in reviews of product eligibility because product coverage extends to all BDCs, not just the petitioning BDC. Conversely, if a BDC is found not to meet country practice eligibility requirements, that BDC is suspended for all products.

UNCTAD officials knowledgeable about GSP praised the U.S. program as being the most transparent and among the simplest of GSP programs worldwide. Many foreign government officials and business representatives, as well as U.S. business representatives, believed that the U.S. program was fairly and transparently administered and gave them adequate opportunity to present their views on product cases of interest to them.

However, some U.S. agricultural and chemical producers had negative views, asserting that the GSP Program's duty-free imports could harm the competitiveness of their companies. Such concern was expressed by agricultural sectors such as the dairy and cheese industry, wine producers, and California pear growers.

A number of specific issues were raised, however, pertaining to program administration. We analyzed concerns that were raised about the GSP process relating to decision-making criteria, decision-making based on economic merit or policy considerations, transparency of the reasoning used in decisions, waiver of the 3-year rule, and completeness of petitions.

Decision-Making Criteria Are Not Defined

Statutory criteria for decision-making in GSP cases, such as "import sensitivity" and "sufficient competitiveness," are not defined. Some foreign government officials, business representatives, and petitioners noted that a lack of objective criteria allows the GSP Subcommittee to interpret GSP provisions subjectively and makes it difficult for petitioners to assess the strength of their cases, detracting from the transparency of the program.

The GSP statute, in section 2463(c), provides that the President may not designate any article as an eligible article that he determines to be import sensitive in the context of GSP. (The GSP statute is found in title V of the Trade Act of 1974, as amended.) However, the statute does not define import sensitivity in the GSP context. In section 2464(c)(2)(B), the statute provides that the reduced competitive need limits provision will apply if, after a general review, the President determines that "a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article . . . ." Again, no definition of what constitutes "sufficient competitiveness" is provided.

According to GSP officials, ITC officials, and trade experts, such definitions are difficult to articulate or quantify. They run the risk of being so broad as

to be meaningless or so narrowly and rigidly defined as to be limiting. What is import sensitive or sufficiently competitive is essentially a judgment that needs to be made on a case-by-case basis for each product and beneficiary country. The records of the interagency deliberations and public hearing briefs provided ample evidence that, even when the same data were used, differing parties could arrive at vastly different judgments. And in most cases, opposing parties were not in agreement on the data, let alone the economic impact.

Many of the GSP Program experts that we interviewed said that although well-defined and articulated GSP criteria would be nice to have, they did not believe such definitions were feasible. Further, they feared that an attempt to statutorily define these criteria would result in rigid, narrowly focused definitions that could hamper achieving program objectives.

The GSP Subcommittee has, however, developed its own informal guidelines for use in its decision-making process. According to the GSP Director, some key factors the GSP Subcommittee considers in determining import sensitivity include

(1)the current share of the U.S. market accounted for by imports, both from GSP and non-GSP countries;

(2)growth trends, both of imports and of U.S. production, consumption, and exports;

(3)the current tariff levels;

(4)the overall health of the U.S. industry and trends in U.S. industry performance;

(5)the international competitiveness of imports from GSP countries, in terms of factors such as price and quality; and

(6)the extent to which GSP imports could be expected to displace imports from non-GSP countries, as opposed to U.S. production.

However, the GSP Subcommittee has not formalized these guidelines or made them publicly available.

A related issue raised by some domestic industries was whether the GSP Subcommittee assessed injury or threat of injury to U.S. industry when

considering a product petition. The GSP Director said that the subcommittee does not directly consider injury or threat of injury during its deliberations.[7] The concept of injury or threat of injury does not arise in the GSP statute. Rather, the statute requires that the President base a decision regarding a product's eligibility on whether it is import sensitive. However, the GSP Director stressed that import sensitivity clearly has a lower threshold than injury: if an industry is injured, it is import sensitive, but it can be import sensitive long before the industry is injured. In addition, GSP coverage is affected by other U.S. government trade actions, such as antidumping duties or duties levied to counteract foreign government subsidies.

Decision-Making Based on Economic Merit

The difficulty in defining what is import sensitive or sufficiently competitive has direct implications for decision-making in GSP cases. According to current and former GSP Subcommittee members, most product petitions are not controversial and do not lead to strong opposition by domestic producers. GSP Subcommittee recommendations are routinely based on economic merit. However, when petitions are controversial, decision-making becomes more complex. Our review of 45 cases in the 1991 annual review and the 1991 Central and Eastern Europe special review indicated that the inability to reach consensus on what is import sensitive or sufficiently competitive is often at the heart of the interagency debate. And clearly, the more controversial the case and the higher it is elevated in the trade policy structure, the more other policy factors become determinative. BDC governments may use foreign policy leverage; Members of Congress weigh in for or against; and domestic producers and industry associations, as well as importers, may stress their view of the petition's potential impact.

A relatively small percentage of the cases in the 1991 annual review or the 1991 special review were controversial. GSP Subcommittee members emphasized that most petitions were not opposed by domestic producers and were decided based on their economic merits. Typically, from 80 to 130 petitions may be considered during the stage two full review (see table 4.1), and only a few are controversial. In the 1991 annual review and the 1991 special review, about 15 percent of cases were considered to be problematic enough to elevate to TPRG for resolution. In both reviews, the controversial cases included multiple petitions for various types of the

[7]"Injury" has a specific meaning in U.S. trade law. For example, see subtitle IV of the Tariff Act of 1930, as amended, 19 U.S.C. section 1671. The meaning of "injury" in trade law is separate and distinct from the concept of harm.

same general product (i.e., four petitions on four different kinds of widgets).

We examined the case study records and interagency documents to see how the decision-making process worked in cases that caused interagency controversy or were strongly opposed by a domestic industry. We found that in cases in which the GSP Subcommittee reached consensus that a product was not import sensitive and that the petition should be granted, but domestic producers were vehemently opposed, the petition was generally elevated to TPSC or TPRG for resolution. In cases in which the GSP Subcommittee was unable to reach consensus, it was usually because one or two agencies strongly dissented from the majority view. The stronger the dissent, the higher the case was elevated in the trade policy structure. Invariably, in these high-profile cases, there were deep divisions on what the economic impact would be, to what extent domestic producers were import sensitive, and what constituted a level of imports that would harm domestic industry.

The recommendations of the GSP Subcommittee were at times reversed by TPSC or TPRG, and the President decided cases differently from the recommendations forwarded to him as well. In 14 of the 45 cases we studied, recommendations were reversed, with 5 by TPSC, 6 by TPRG, and 3 by the President. In most cases, the action was to reverse a petition approval to a denial. This reversal rate is not representative of the reversal rate for all cases because we specifically included all of the controversial cases in our case study analysis, and, according to the GSP Director, the 1991 special review had a higher number of controversial cases than normal. This selection of cases may account for a higher percentage of changed results than would be usual.

Trade policy is generally acknowledged to be a part of foreign policy; it is also a function of domestic policy. The fact that the GSP Program sits at the juxtaposition of these two sometimes opposing forces is at the heart of the balancing act required of the GSP Subcommittee: to assist developing countries to increase exports to the U.S. market while not harming domestic producers. The easy decisions on petitions only happened when the product was not domestically produced or when the BDC only took market share away from developed country exports, resulting in a neutral impact for the domestic market. But where there were domestic producers who were likely to lose any notable degree of market share, then the debate over what level of imports causes harm was triggered. The debate became even more contentious when there were domestic importers who

did want the benefit of duty-free entry of that product. Obviously, the domestic producer was not enthusiastic about any loss of market share, while domestic importers generally disputed estimates of harmful impact and stressed potential benefits to themselves, U.S. consumers, and the BDC producers.

One of the problems related to perspective. ITC and the GSP Subcommittee looked at the big picture and at aggregate or economywide effects ("only 3 percent potential loss of U.S. market share"). The domestic producer whose plant may have been the one experiencing a hefty portion of the potential 3-percent sales loss took a strongly micro view ("losses of this magnitude may put me out of business and mean a loss of hundreds/thousands of local jobs").

In our case studies, the higher in the trade policy structure the controversial cases were elevated, the more other policy considerations assumed importance. GSP Subcommittee members and a GSP expert confirmed that when a petition becomes controversial and is elevated in the trade policy decision-making structure, economic merit becomes less determinative and other policy considerations become more determinative of the final decision. In the end the decision is made by the President, who is the ultimate arbiter of policy decisions. We believe this is in keeping with the tenor of the GSP statute, which gives the President broad discretion in decision-making.

Transparency of Reasons for Product Decisions

The GSP Program is highly transparent in terms of receiving public comments from all interested parties and holding public hearings on petitions accepted for full review. However, once the public comment and hearing process is completed and the interagency decision-making process begins, transparency largely ends. The decision-making process itself is confidential. Only the membership of the GSP Subcommittee is made public; the membership of TPSC and TPRG is not disclosed. The internal deliberations of the GSP Subcommittee, TPSC, TPRG, and the White House are kept confidential. The reason given by USTR is the desire to avoid pressure on individuals by foreign or domestic interests. Many parties we interviewed accepted this process but complained that there is no public statement explaining the decision made by the President.

GSP regulations require that a written request by a petitioner for an explanation of a decision will receive a written response from the GSP office. The GSP Director stated that such requests are honored and noted

that such responses are the only public information about decisions in product cases. Foreign participants in the GSP Program expressed concern that many parties were unaware of the reasoning for petition decisions and often did not know that they had a right to request and receive an explanation. Some said that they simply assumed petitions were denied due to protectionism—that domestic interests had prevailed. Likewise, a domestic agricultural industry association representative said that his membership generally has not gotten any feedback on decisions. He also noted that his association had lost very few cases and had not requested explanations.

Waiver of the 3-Year Rule

GSP regulations (15 C.F.R. 2007.0(a)(1)) state that a petition to add a product, once denied, cannot be refiled for 3 years. The rule was added in 1984 to preclude the filing of the same GSP petition year after year, which can unduly burden the GSP review process. Defending against repetitive petitions was also seen as an unacceptable burden for domestic producers.

Our review indicated that the first waiver of the 3-year rule, during the 1991 Central and East European special review, was an administrative action that caused particular concern for domestic industries. The administration decision to rereview five cases that had been denied in the 1990 annual review just 97 days earlier created the perception in the affected industries that the GSP Program had been politicized. This perception undermined the credibility of the program and the sense of stability of those industries.

The administration had decided as a matter of policy that it would examine every petition that it could legally accept in order to demonstrate its commitment to assisting the emerging democracies in Central and Eastern Europe. USTR officials advised Members of Congress and domestic industries on numerous occasions that this did not predispose the results of the special review; the administration just needed to take a comprehensive look as part of the President's Trade Enhancement Initiative for the region.

The affected domestic industries did not assume that the five rereviewed cases would again be denied. The industries had to mobilize and fund opposition in another review cycle, which they said they bitterly resented in the midst of the 1991 recession.

In the end, as shown in table 4.2, the President decided to grant GSP status for two rereviewed cases and deny it for two others. One case was withdrawn by the original petitioner.

Table 4.2: Results of Five Rereviewed Cases in the 1991 Special Review for Central and East European Countries

Product	HTS Number	Petition decision
Goya cheese, in original loaves	0406.90.30	Denied
Prepared or preserved mushrooms	2003.10.00	Withdrawn
Grape wine, not sparkling or effervescent, not over 14% volume alcohol, in containers holding 2 liters or less	2204.21.40	Denied
Grape wine, other than Marsala, not sparkling or effervescent, over 14% volume alcohol, in containers holding 2 liters or less	2204.21.80	Granted
Screws & bolts of iron or steel, having shanks or threads 6 mm or more in diameter	7318.15.80	Granted

Source: USTR.

Interviews with affected domestic industries, and information in hearing records, made it clear that the waiver of the 3-year rule undercut the credibility of the GSP Program and its image of fairness. Although the affected industries said they were sympathetic to U.S. assistance to the emerging democracies in Central and Eastern Europe, the waiver of the 3-year rule for GSP cases that had just been decided was not acceptable to them. The domestic industries said that GSP reauthorization should codify the 3-year rule and disallow waivers. In spring 1993, the U.S. Trade Representative assured Members of Congress that no cases would be rereviewed during the interval before program renewal.

The Director of the GSP Program advised us that TPSC's action was not a waiver of the 3-year rule, but its self-initiation of cases as allowed by the GSP regulations at 15 C.F.R. 2007.0(f). Subsection (f) states that TPSC "may at any time, on its own motion, initiate any of the actions described in paragraph (a) or (b) of this section" to request reviews of GSP eligibility for products and BDCs. He said that TPSC had erred in originally referring to its action as a waiver of the 3-year rule in the Federal Register notice announcing the special review. However, he also acknowledged that this action had the same effect as a waiver.

The GSP Director's position was that the 3-year rule applies to new petitions to add products and not to reviews self-initiated by TPSC. Therefore, the 3-year rule did not have to be waived and was not waived. It

is our opinion that there is merit in the Director's position that the "at any time" language in subsection (f) could overcome the 3-year rule in subsection (a).

Further, the USTR General Counsel's position is that USTR has the right to waive the 3-year rule, which is its own procedural rule, since the rule did not vest a right in a party, nor did it confer a substantive benefit. Thus, TPSC could have waived the 3-year rule. We believe there is merit in the General Counsel's argument that TPSC could waive the 3-year rule since it is merely a procedural rule designed to reduce the possibility that articles would be subjected to repeated and overburdening review. Regulations, whether substantive or procedural, are generally considered to be either statutory (legislative), which have the effect of a statute and therefore bind the agency, or interpretive, which may or may not be binding on the agency. It would appear that 15 C.F.R. 2007.0(a)(1) is not a statutory regulation and therefore is not presumed to be binding.

Completeness of Petitions Accepted for Review

The GSP Subcommittee has on occasion accepted for review product-addition petitions that did not fully meet all the regulatory information requirements, if it believed the petition may have had merit and the petitioner had made a good faith effort to obtain the information. This acceptance helps BDCs that often do not have the resources to adequately prepare petitions. A subcommittee member told us the subcommittee felt that the BDC should at least have the benefit of a full review if it makes a good faith effort. This action is allowed under the GSP regulations and is consistent with the program's objectives of assisting BDCs. The GSP Director stressed that the subcommittee looked at trade data from all BDCs, not just the BDC petitioning. He said that the purpose of the review is to look at all available information; there is no presumption that an item will get GSP coverage.

Domestic producers, on the other hand, said that they had to protect their interests in regard to all relevant petitions, which was costly and time-consuming; they particularly resented having to do so in response to petitions that were not well developed. In addition, domestic producers complained that acceptance of incomplete petitions effectively shifted the burden of proof from the petitioner to those opposing the petition. Incomplete petitions are difficult to oppose because there may be few other sources of information on the BDC petitioner or other potential BDC

suppliers.[8] GSP product-addition petitions require detailed information such as (1) actual production figures and capacity utilization, and their estimated increase with GSP; (2) total exports, including principal markets, total quantity and value, and trends in exports; and (3) exports to the United States in terms of quantity, value, and price, and considerations that affect the competitiveness of these exports relative to exports by other beneficiary countries.

Presidential Discretion and Differential Treatment of BDCs Under Graduation Policy

Another major issue in the administration of the GSP Program was differential treatment of BDCs under the graduation policy. Specific questions raised by the requesters of this report were whether it is appropriate to restrict preferences for some BDCs under a generalized[9] system, whether such differential treatment is legal under the U.S.' GATT obligations, and whether the President has statutory authority and discretion to make such differential decisions. The U.S. GSP Program is normally administered to extend the opportunity for benefits equally to all BDCs (consistent with the most-favored-nation principle of GATT). However, the program does provide for terminating duty-free entry for a particular product from individual BDCs when they are considered to be sufficiently competitive without the GSP benefit. This "permanent product graduation" is a major element of GSP graduation policy. Such decisions are made at the discretion of the President, based on recommendations of the GSP Subcommittee. It is our opinion that the GSP statute gives the President authority to make such decisions for differential treatment.

Criteria for Differential Treatment

"Differential treatment" refers to the exclusion of a particular beneficiary country for a particular product under GSP, at the discretion of the President. Such product graduation can take place as the result of (1) granting a petition requesting such a product graduation during an annual review, (2) excluding an individual BDC from GSP eligibility on products added to GSP coverage, and (3) denying a redesignation or waiver to BDCs eligible for reinstatement of GSP status on specific articles subject to a competitive need limit exclusion.

GSP's graduation policy considers:

[8]Petitioners are required to provide information on shipments from other beneficiary countries because a new product in the program may be shipped by any beneficiary country.

[9]"Generalized" means that the GSP coverage of a product applies to all BDCs, not just the petitioning country, unless a specific exception is made. (See discussion that follows.)

(1)the BDC's developmental level;

(2)the BDC's competitive position in the product concerned;

(3)the BDC's practices relating to trade, investment, and worker rights; and

(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.

GSP Exemption From GATT MFN Principles

According to USTR officials, differential treatment of BDCs under GSP graduation policy is grounded in the international trade rules in GATT. As discussed in chapter 1 (see pp. 20-22), GSP itself is an exception to the GATT's MFN treatment in providing temporary preferential tariff treatment for developing countries. Specifically, it was left to each donor country to define "developing country" for purposes of GSP eligibility. This discretion is viewed as the basis for permitting nongeneralized application of the GSP status. The idea that developing countries are to graduate from programs of preferential treatment as their economies develop is contained in the enabling clause specifically incorporating GSP into GATT in 1979. Thus, the enabling clause serves as the legal basis permitting differential treatment, both in allowing preferential GSP treatment for BDCs in the first place and also in limiting the extent of preferences granted.

USTR's General Counsel also stated that other GSP programs, such as those of the EU and Japan, similarly differentiate among developing countries with respect to particular products. UNCTAD and GATT officials agreed that GSP programs can differentiate among BDCs. They said that GSP is outside the GATT legal system and, as such, is a unilateral "gift" that the donor countries can structure as they wish.

Legal Basis for Differential Treatment in the GSP Statute

It is the position of the USTR General Counsel that there is a statutory basis for the President's discretionary decisions differentiating between GSP-eligible products and countries in 19 U.S.C. sections 2461 and 2464(a)(1). Section 2461 states that the President "may" extend GSP coverage to "any eligible article" from a BDC. In taking any such action, the President is required to consider, among other things, the extent of the BDC's competitiveness with respect to eligible articles (19 U.S.C. 2461(4)).

Section 2464(a)(1) authorizes the President to limit an individual BDC's GSP preference, stating that "[T]he President may withdraw, suspend, or limit the application" of GSP duty-free treatment "with respect to any article or with respect to any country." According to the USTR General Counsel, because the phrase uses the singular "country," this provision authorizes the President to limit any one country's participation in the GSP Program without limiting others.

Further evidence of the President's discretion to limit an individual country's benefits is found in the legislative history of section 2461(4). The House Ways and Means Committee report, House Report 98-1090, states that Congress was authorizing the President to differentiate among countries as to their eligibility for GSP benefits with respect to particular articles based upon a country's competitiveness. A country could be found competitive with respect to a certain article either on the basis of statutory criteria (the "competitive need limit" in section 2464(c)) or as an exercise of the President's authority under section 2461.

We believe that the GSP statute does provide the basis for differentiating among countries as well as making product designations on a differential basis.

ITC Economic Impact Advice

The GSP law requires ITC advice on the probable economic impact of the designation of a product as an eligible article to receive GSP duty-free treatment and whether the grant of a waiver of the competitive need limits would be likely to adversely affect any industry in the United States. ITC's impartial advice is to balance the more partisan analyses of GSP agencies, petitioners, and U.S. producers. Based on a review of the ITC reports to USTR, a review of 45 case study records, and interviews with GSP and ITC officials, this advice is valuable to the interagency decision-making process as an impartial analysis of the likely economic effects on U.S. producers and consumers. However, some U.S. industry officials were concerned that the value of ITC advice might be limited by outdated information used in ITC analyses. U.S. industry officials also objected to USTR's requirement that the economic impact advice be classified as confidential.

ITC Role in GSP Review Process

The ITC role in the GSP Program is twofold: first, to provide USTR the best available information for each product being considered for GSP designation and, second, to provide its judgment of the likely economic

impact on U.S. interests if GSP status is granted to the product under consideration. The Trade Act of 1974 requires that USTR obtain ITC advice on the probable economic effect of granting GSP eligibility before it changes the list of GSP-eligible articles. ITC is to consider the effect on U.S. industries producing like or directly competitive articles and on U.S. consumers. According to ITC and USTR officials, ITC does not make recommendations to USTR on whether a product petition should be granted or denied. ITC's judgment as to the probable economic effect of GSP designation is considered along with other factors in USTR's decision-making process.

According to an ITC official, ITC plays a limited role in the first stage decisions on whether to accept petitions for review. An ITC technical person advises the GSP Subcommittee on tariff classification or nomenclature issues to help ensure that products are correctly classified at the appropriate 8-digit tariff line. ITC also provides USTR with preliminary import data for the previous 3 years.

During the second stage of full review of product petitions, USTR officially requests ITC advice on the list of products accepted for review. ITC generally has about 3 months to hold public hearings, complete its analysis, and report back to USTR by November, according to an ITC official.

ITC reports to USTR on GSP products have a standard digest of information for each product, including (1) product description, (2) U.S. market profile,[10] (3) imports from GSP countries and share of U.S. consumption, (4) competitiveness profiles of GSP suppliers, (5) summaries of statements submitted by interested parties in support of or opposition to the petition, and (6) summary of probable economic effects. The sixth information block, providing ITC bottom-line advice on economic effect, is classified by USTR and is not made public; it is deleted from the public version of the ITC report. In it, ITC gives its judgment on (1) the effect on U.S. imports, including the extent to which GSP imports will likely substitute for other non-GSP countries' imports or displace U.S. products; (2) the probable effect on U.S. industry; and (3) the probable effect on U.S. consumers.

Value of ITC Advice as Impartial Benchmark

Most of the current and former GSP Subcommittee members we spoke to felt that the ITC economic impact advice was very valuable to the decision-making process. Although the advice was clearly considered to

[10]The profile of the U.S. industry and market includes aggregate data on U.S. producers, employment, shipments, exports, imports, consumption, import market share, and capacity utilization.

be only one factor in deciding a petition, several former subcommittee members said that it was valued as an impartial benchmark against which other more partisan analyses of economic impact could be assessed.

An ITC official stated that the ITC standards for economic analysis under GSP are as stringent as for other tariff reduction advice, although ITC operates under a very short time frame in the GSP review cycle. While GSP law gives ITC 6 months to render its advice, in practice ITC does so within 90 days.

ITC officials, GSP Subcommittee members, and former GSP directors confirmed that there is often conflicting advice coming from ITC and the GSP Subcommittee agencies. An ITC official said that this reflects the constitutent pressures on the agencies and that each agency—Agriculture, Commerce, etc.—protects its constituents. This is part of the balancing act of the GSP process. Some agency officials, however, felt that the discrepancy between ITC and agency advice was due to the greater depth and breadth of agency expertise in individual commodities.

ITC officials indicated that one reason for the divergence in analyses was that ITC looked at the potential impact of GSP imports on the overall U.S. industry. For instance, in agricultural products ITC did not consider the impact on any agricultural price support system. USDA, however, is concerned about this impact. An ITC official noted that USDA also does not want to give any competitive advantage to a foreign country. Even if the overall industry is not harmed, a particular company or region may be, and therefore USDA will oppose almost all petitions to grant GSP product status. Another ITC official said that when a conflict in analysis occurs, ITC has no vote, and the GSP agencies generally defer to the lead agency for that petition.

Limitations on the Usefulness of ITC Advice

Domestic producers expressed concern that ITC used outdated information in GSP investigations. Because ITC has used full-year data, there was a 10-month gap for current-year data when it gave USTR its report in November. By the time the petition was decided some 4 or 5 months later, another full year of data had become available, sometimes changing the picture significantly. Some U.S. industry representatives felt that this time lag undercut the usefulness of ITC advice.

ITC has recently addressed this concern. It changed its practice of providing only full-year data in its GSP report for the 1993 annual review. It also included trade data for the first 9 months of the year.

However, ITC and other GSP agency officials said that there will always be a time lag, due to the nature of the GSP review cycle. ITC officials also stated that trends in data are more important than monthly levels. They noted that TPSC can request updated data at any time and that industry sources are generally efficient in providing such updated data to USTR. The GSP agency officials reiterated that the ITC advice, although important, is only one factor in the decision-making process.

Classification of the ITC economic impact assessment as confidential was also cited as a problem. This information is classified at USTR's direction. We found that it was generally thought that ITC's GSP advice was classified in order to preclude disclosure of business-confidential information. Several domestic industry representatives and a trade attorney disagreed with such a policy. They said that revealing the bottom-line conclusion—whether or not a product was import sensitive under GSP—would not threaten business-proprietary information such as profit margins or productivity of industry members: these need not be disclosed. They said this policy undercuts the transparency of the program. Several GSP Subcommittee members said that public disclosure of this information would jeopardize the validity of ITC investigations. They said that companies provide ITC with sensitive business information critical to the ITC analysis only because the companies know that it will be kept strictly confidential. Without this assurance, the quality and accuracy of future information disclosures would be undermined.

ITC and GSP officials subsequently told us that concern for business-proprietary information was not the reason USTR classified the ITC economic impact advice as confidential. GSP officials said that there were several reasons for this policy. They said that the ITC probable economic effect advice under GSP is given pursuant to the same statutory basis as for trade negotiations. Confidentiality is necessary for such negotiations and historically has also been extended to GSP advice. The officials said another reason is that releasing ITC's advice could unduly highlight this advice as being more significant than it is in the GSP review process. ITC advice has been valued for its impartiality but has been treated as only one factor in the GSP Subcommittee's review. A final reason given is concern that revealing ITC's advice could have a chilling effect on the impartiality of the ITC analysis, which is now shielded from outside pressures.

Conclusions

The GSP Program has a generally well-structured administrative process for consideration of product petitions, including a highly transparent procedure for accepting public comments from all interested parties and holding public hearings on accepted petitions. However, this transparency largely stops once the interagency decision-making process begins. Decision-making criteria are not defined in the statute, and judgments are made on a case-by-case basis for each product and BDC, based on informal guidelines the GSP Subcommittee has developed. Although USTR is obligated to respond to written requests by petitioners to explain petition decisions, many parties were apparently unaware of this right.

The waiver of the 3-year rule during the 1991 Central and East European special review undermined the credibility of the program with the affected domestic industries. They strongly supported adding the 3-year rule, and a provision disallowing waivers, to the GSP law during program reauthorization. We found merit in USTR's position that the current regulations allow USTR to waive the 3-year rule or to self-initiate cases, which can have the same effect as a waiver. This situation presents a policy dilemma in which a choice must be made between fairness to the domestic producers and the administration's desire to preserve this option.

The GSP Subcommittee's acceptance of petitions that do not contain information required in the regulations can place U.S. producers at a disadvantage because in many instances there are few independent sources of information on the BDC petitioner or other potential BDC suppliers. Domestic producers believe that acceptance of petitions that did not fully meet all the regulatory information requirements effectively shifted the burden of proof from the petitioner to those opposing the petition.

Recommendations

In order to provide greater transparency to the GSP decision-making process and the GSP petition process, we recommend that the U.S. Trade Representative

(1)make public the guidelines the GSP Subcommittee uses in analyzing product petitions, with the stipulation that the guidelines provide a framework for, but do not limit the extent of, the Subcommittee's analysis;

(2)indicate clearly in Federal Register notices of final decisions on GSP petitions that petitioners can write to request a written explanation of any decision; and

(3)modify GSP regulations to specify a mandatory core of information required for acceptance of product petitions.

Matter for Congressional Consideration

If Congress considers whether or not to incorporate the 3-year rule, and a provision disallowing its waiver, in the GSP statute, it should recognize that the TPSC regulatory authority to self-initiate cases can have the same effect. Congress may wish to consider stipulating whether or not self-initiation of cases should be allowed where it would have the effect of waiving the 3-year rule.

Agency Comments and Our Evaluation

USTR did not agree with our recommendation that it make public the guidelines the GSP Subcommittee uses in analyzing product petitions. It agreed to indicate clearly in the Federal Register notices of final decisions on GSP petitions that petitioners can write to request a written explanation of any decision. Finally, in response to our draft recommendation that USTR accept only product petitions that include all required information, USTR responded that it was proposing to modify GSP regulations to specify a mandatory core of information that all petitions must contain to be accepted for review. We believe that this proposal, together with certain other proposals that enhance transparency of program decisions, could potentially address the concerns underlying our initial recommendation. As a result, we have revised our recommendation to support this course of action.

Making Public the Guidelines Used in Analyzing Product Petitions

USTR said that the administration's GSP reauthorization proposal would clarify the type of information required in product petitions and would affirmatively require TPSC to consider import and production data from all principal beneficiaries in accepting petitions. However, USTR disagreed with our recommendation that it make public the guidelines used in analyzing product petitions. Instead, USTR reiterated its view that the indexes currently listed in the GSP regulations are all potentially relevant to determining import sensitivity. It maintained that no one group of indexes or "guidelines" would be applicable or appropriate in every case; thus, such a list of guidelines, unless it were quite broad and long, could be misleading. USTR said that the personal communication that occurs

between the GSP Subcommittee, petitioners, and repondents is the best way in which such interested parties can obtain a better understanding of the various factors considered material in their case.

We continue to believe that greater public knowledge and understanding of the guidelines used by the GSP Subcommittee in analyzing product petitions would contribute to better prepared and potentially more realistic petitions. It would also assist domestic producers in more effectively preparing evidence to oppose petitions. The administration's response to our recommendation focuses to a greater degree on the information provided by petitioners. Our focus was on greater explication of the analytical framework used by the GSP Subcommittee, e.g., that its evaluation of a product is based on such factors as (a) the import-to-consumption ratio and (b) the extent to which GSP duty-free imports of a product could be expected to displace imports from non-GSP countries rather than U.S. production. These are factors that guide analysis; they are not information provided by petitioners. We believe that greater understanding and transparency of the analysis used in the decision-making process will be even more important in the future if the administration's proposal to review product-addition petitions only every 3 years is implemented. In response to the administration's concern, we modified our draft recommendation to clearly indicate that any discussion of factors used in the guidelines should not be considered as limiting the analysis.

Information Required for Acceptance of Product Petitions

In its GSP renewal proposal, the administration has proposed specifying a mandatory core of information that all petitions must contain in order to be accepted for review. In addition, it has proposed affirmatively requiring TPSC to accept product-addition petitions only when there is "substantial information" demonstrating compliance with statutory criteria for product eligibility (whether provided by the petition or by TPSC agencies). TPSC would be required to provide this information, after its decision, upon request to any interested party.

We believe that this proposal could potentially address the concerns underlying our draft recommendation by clarifying the information that is actually required and by requiring TPSC to be sure there is substantial information demonstrating product eligibility. Further, by subsequently providing this information to interested parties, potentially including agency-held information that previously would not have been released, this provision could increase program transparency. It may also alleviate

domestic producers' concerns that the burden of proof disproportionately falls upon them when incomplete petitions are accepted. We have, therefore, revised our recommendation to support this course of action.

Controversy Over the GSP Program's Country Practice Provisions

The Trade and Tariff Act of 1984 reauthorized the GSP Program but added stricter eligibility criteria for BDCs. These criteria stipulated that a BDC provide (1) adequate and effective protection of IPR and (2) internationally recognized worker rights. These so-called "country practice" criteria have remained very contentious. Developing countries have resented what they see as inappropriate conditions ("conditionality") attached to a trade assistance program that had traditionally required no reciprocal action by BDCs. Advocates of these provisions, in turn, have maintained that the GSP Program's objective of aiding economic development will not be adequately achieved without parallel development of adequate IPR and worker rights standards.

We also found concern about how these country practice provisions have been implemented. In our estimation, adding country practice cases onto the existing GSP annual review process for product cases has not worked well because these two types of cases are fundamentally different. Treating them the same has led to administrative problems in the rigid annual review cycle. There have also been concerns about the program's policies for accepting country practice petitions for review.

Much of the controversy over the way in which country practice provisions have been administered is rooted in the differing expectations held by GSP officials, IPR advocates, and worker rights advocates. GSP Subcommittee members generally believe that the country practice provisions have been pursued and have provided leverage to get BDCs to initiate changes, to the best degree possible, given other trade and foreign policy concerns. However, IPR and worker rights advocates said they want country practice cases more vigorously pursued and sanctions more frequently exercised. Worker rights advocates are particularly concerned, especially since IPR advocates can pursue more powerful provisions in U.S. trade law. The GSP worker rights provision, however, is the linchpin for most worker rights provisions in other U.S. trade laws. These laws depend on GSP sanctions to trigger their own actions.

IPR and worker rights advocates and GSP officials recommended changes to GSP administrative processes as part of the GSP Program's reauthorization. All recommended disengaging country practice cases from the annual review process used for product petition cases. IPR and worker rights advocates also proposed strengthening their respective provisions.

However, many U.S. government officials and trade experts indicated that the GSP Program can provide only a modest degree of leverage in

encouraging BDC governments to change their practices. Further, the prospect during GSP renewal of additional country practice provisions being proposed, particularly for environmental protection purposes where there are no international standards, was generally held to be a mistake by those we interviewed who currently participate in the GSP Program. It was frequently pointed out that adding new provisions would reduce the leverage of existing provisions and put too high a price on GSP benefits for many BDCs. In addition, the successful conclusion of the Uruguay Round of GATT and its resulting tariff reductions would, if enacted, reduce the value of the tariff elimination provided by GSP. This tariff elimination would decrease GSP leverage, making it that much more difficult to add new requirements to country practice provisions.

Country Practice Provisions in GSP Law

The GSP statute provides for a number of country practice provisions, which address issues such as market access, expropriation, and international terrorism, as well as IPR and worker rights.[1] We have focused on the latter two provisions, which were the most contentious and the subject of the greatest number of petitions. Of the 113 country practice petitions filed in the annual reviews from 1985 through 1993, all but 14 (12 percent) were IPR or worker rights petitions. Of these cases, 11 were conducted in the General Review[2] completed in 1987, all of which were worker rights cases.

The IPR provision in the GSP statute, which lists factors determinative of whether to designate a country as a BDC, states that the President "shall take into account . . . 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."

This IPR provision envisions that a BDC provides an adequate IPR regime and enforces it, but leaves application of the provision to the President's discretion. The GSP statute does not define what constitutes "adequate and effective" IPR protection. The GSP Director said that USTR has interpreted this provision based on a well-developed intellectual property policy that relies on U.S. as well as international standards. He said USTR uses as

[1]The IPR and worker rights provisions were enacted in the GSP renewal act, which was title V of the Trade and Tariff Act of 1984.

[2]Country practice criteria were included among the criteria that the President was required to take into account in all discretionary decisions made as part of the General Review. See chapter 1 for a discussion of product reviews under the General Review.

guidelines the international standards that have already been set in international agreements on IPR and by the World Intellectual Property Organization (WIPO), which is a part of the U.N. structure. The Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement reached in the Uruguay Round of the GATT has now set a single international standard that the United States accepts as a minimum IPR standard, but not in all cases as an adequate standard. Application of the IPR provision in the GSP Program is also based on the level of development of a BDC. While less developed BDCs may be given more leeway on the minimum standard, the more advanced BDCs may be expected to go beyond these minimum international standards to meet the higher U.S. standard.

There is also an IPR provision that provides that BDCs are ineligible for GSP designation under certain circumstances if such country "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," or has taken certain steps that would have this effect.

The worker rights provision in the GSP statute states that the President, in determining whether a developing country should benefit from GSP, "shall take into account . . . 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." The statute defines internationally recognized worker rights as including

(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.

The worker rights criterion is one of "taking steps" to meet international standards, rather than being in full compliance with those standards. The international standards have been set by the International Labor

Organization (ILO), which is part of the U.N. structure. Again, the President has great discretion in the application of the provision.

Continuing Controversy Over Inclusion of Country Practice Provisions in GSP Program

The country practice provisions added to the GSP Program during program reauthorization in 1984 have been very contentious. The U.S. GSP Program is the only one to have such added "conditionalities"; developing countries have strongly opposed these provisions and regard them as penalties. The U.S. and foreign officials, trade experts, business representatives, trade association representatives, and academics we interviewed were divided on the inclusion of country practice provisions in the GSP Program; there were strong advocates of both points of view. In addition, we found more resistance to the worker rights provision than to the IPR provision's being included in GSP.

Views Opposing Country Practice Provisions

An UNCTAD official said that the application of country practice provisions was a misuse of reciprocity and pointed out that the United States was the only GSP donor with such conditionalities. He feared that the United States would be led to continue to add such provisions, because they are not technically illegal with respect to GATT. Another UNCTAD official noted that, by their nature, country practice provisions are too volatile because of the political nature of such leverage. He felt that such problems could better be handled through other U.S. laws, such as Section 301 of the 1974 Trade Act (see p. 113).

In September 1992, 13 BDCs sent a joint letter to USTR conveying their views on the importance of renewing the GSP Program.[3] Regarding country practice issues, they noted that they have a strong commitment to the reform of their economies into strong market economies and to participation in the multilateral trade negotiations to address outstanding issues. They saw country practice conditions in GSP as "(a) [r]edundant because the issues they address are being dealt with at the Uruguay Round; and (b) [c]ounter-productive because most developing countries are resolving these matters on their own initiative despite domestic opposition. Our Governments are in need of incentives, not penalties."

U.S. embassy officials in the six case study countries we visited had conflicting views on the worker rights and IPR provisions in the GSP legislation. Some felt that such conditionalities should not be attached to a

[3]The signatories were Argentina, Brazil, Ecuador, India, Malaysia, Mauritius, Paraguay, Peru, the Philippines, Sri Lanka, Thailand, Uruguay, and Venezuela.

trade measure or that better means exist to pressure BDCs to improve IPR and worker rights practices (e.g., treaty negotiations or Special 301 provisions (see p. 111)). Also, these officials generally agreed that the program should not hold BDCs to a U.S. standard. However, at the same time, many of these embassy officials also acknowledged that GSP's country practice provisions had helped to raise the level of consciousness in their host countries about the importance of IPR and worker rights and had oftentimes resulted in some degree of improvements.

There was a general feeling among many trade experts we interviewed, including some U.S. government officials, that the GSP country practice petitions went against the spirit of GATT, at a minimum, and were possibly in conflict with GATT.[4] Others felt that while IPR and worker rights were important issues, they should be handled in another forum, not in GSP, which they felt should remain a trade assistance program as originally intended. Many pointed to the TRIPs negotiations in the Uruguay Round as negating the need for an IPR provision under GSP. To a significant degree, we also found a greater acceptance of IPR as a trade issue, in contrast to worker rights, which was not generally accepted as a trade issue by those we interviewed.

Many of the officials and trade experts we talked to particularly questioned including the worker rights provision in the GSP Program. One trade expert commented that she had never understood how suspending GSP would help workers in that BDC. An academic expert on GSP said that BDCs see U.S. country practice provisions as interference in their internal affairs, with the U.S. dictating appropriate domestic policies.

One reason why IPR has been accorded greater acceptance in trade policy circles than worker rights was offered by the GSP Director. He noted that trade policy historically is an arm of commercial policy. He pointed out that IPR advocates can point directly to dollars lost from piracy abroad, but that worker rights advocates have a more difficult time showing direct damage to U.S. commercial and trade interests from abuses of foreign workers' rights. In addition, many U.S. commercial interests benefit from GSP duty-free benefits. Thus, he said it appears to many that the United States is being asked to take economic action that might harm its commercial/trade interests, as well as its bilateral political relationship, for benefits that are unclear at best. He noted that worker rights groups argue that the greater protection of worker rights abroad helps protect U.S. jobs,

[4]As discussed in chapter 1 (see pp. 20-22), since the GSP Program is outside GATT, country practice provisions are not technically counter to GATT, according to a GATT official.

but said that this connection was again hard to demonstrate. It may be true that U.S. workers are being undercut by lower wages in developing countries, but it seemed clear that that would remain the case, by virtue of their lower level of development, even if bargaining rights, for example, were improved. This does not necessarily imply that it is not in the U.S. interest to promote those rights, only that a direct commercial benefit is difficult to demonstrate.

Views Supporting IPR

IPR advocates responded to UNCTAD and BDC charges that the GSP IPR provision is a conditionality that is not trade related, stressing that IPR is a trade issue. They said that a fundamental problem they face in the developing world is that many BDCs do not accept that intellectual property is really property. The same government that would never consider expropriating a shoe factory will, however, allow pirating of computer software, videos, or pharmaceuticals.

Intellectual property industries are very dependent on copyright, patent, or trademark protection. Their industries are based on innovation and have in common that all research and development costs are incurred up front, before a product is placed on the market, and the ensuing products can easily, quickly, and cheaply be copied or stolen by pirates. For example, the high level of research and development cost and risk faced by the pharmaceutical industry was highlighted in a February 1993 Office of Technology Assessment report, Pharmaceutical R&D: Costs, Risks and Rewards.[5] This study found that the average cost to develop a new drug in the 1980s was roughly $194 million after taxes, in 1990 dollars. It also found that the research and development process took 12 years on average.

Representatives of the International Intellectual Property Alliance,[6] Motion Picture Association of America, and Pharmaceutical Research and Manufacturers of America all said that another critical factor is that respect for innovation and intellectual property is a key ingredient for development, the objective of the GSP Program. Economies that do not respect and protect IPR inhibit the development of domestic intellectual

[5]Pharmaceutical R&D: Costs, Risks and Rewards, U.S. Congress, Office of Technology Assessment, OTA-H-522 (Washington, D.C.: U.S. Government Printing Office, Feb. 1993).

[6]IIPA is an umbrella organization representing the U.S. copyright industry and consists of the American Film Marketing Association, the Association of American Publishers, the Business Software Alliance, the Computer and Business Equipment Manufacturers Association, the Information Technology Association of America, the Motion Picture Association of America, the National Music Publishers' Association, and the Recording Industry Association of America.

property industries or investment by foreign intellectual property industries. The PRMA representative gave the example of India, which he stated officially sanctions pharmaceutical piracy. He believed that lack of IPR protection was one reason that India had fallen behind other Asian countries. A 1990 study conducted for PRMA, "Benefits and Costs of Intellectual Property Protection in Developing Countries," National Economic Research Associates, Inc., found a causal linkage between the presence of efficient property rights, including intellectual property rights, and economic modernization.

IIPA, in turn, pointed out that intellectual property industries are large export earners for the United States, with over $36 billion in foreign sales in 1991. IIPA has estimated U.S. trade losses due to piracy of copyrighted works in 1992 at around $15 billion to $17 billion. This figure does not include losses to patent industries, including pharmaceuticals and high-technology firms, which could be substantial.

Views Supporting Worker Rights

Worker rights advocates also contended that worker rights are a trade issue. They believe that worker rights provisions are critical to the GSP Program in order to assure that economic development and increased exports do not come at the expense of abused workers. An AFL-CIO official said that the worker rights provision is needed because producers of goods imported into the United States under preferential terms should not enjoy benefits at the expense of exploited workers. A representative of the International Labor Rights Education and Research Fund (ILRERF) explained that its goal is to inject into U.S. trade policy a means to encourage broad-based development worldwide. Free trade is healthy only if it is not based on competition that degrades workers in the countries trying to obtain trade benefits. He said that a mechanism is needed to distribute the benefits of trade, which in this case means improved circumstances for workers through worker rights and good working conditions. The ILRERF official added that poor labor conditions or artificially low wages overseas also encourage U.S. companies to relocate to cut production costs, putting pressure on U.S. workers. He said that companies can even obtain negotiated concessions from U.S. workers simply by threatening to relocate to a foreign country.

The position that country practice issues should be handled in multilateral forums has not succeeded in the case of worker rights. The U.S. government tried to get GATT members to consider worker rights issues under the Uruguay Round and could not generate any support, according

to a U.S. government official. This official complained that even the U.S. proposal for a GATT study group was turned down. Advocates of labor issues are left with ILO as their only international forum. However, ILO conventions on international labor standards are voluntary and have no sanctions. The official said that BDCs like to point out that the United States has signed few ILO conventions. He said that ILO has issued over 170 binding labor conventions and that the United States has signed only 11 of them. However, he said that the reason for this situation was not any problem with the standards, but because labor issues in the United States fall largely under the authority of individual states.

Administrative Issues

Country practice petitions are administered together with product petitions in the GSP Program's annual review process. Based on our review of cases in the 1990 and 1991 annual reviews and the views of a variety of interested parties—including U.S. officials, IPR and worker rights advocates, and trade experts—this combined procedure does not appear to have been successful. Country practice cases are fundamentally different from product cases, and a number of administrative problems have resulted from trying to handle these cases simultaneously within the same procedural framework.

When the country practice provisions relating to IPR and worker rights were added to the GSP statute in the 1984 renewal act, they were simply appended to the existing annual review process for product petitions (discussed in ch. 4). The same "annual review cycle" framework and interagency decision-making process has been used by the GSP Subcommittee in administering these petitions. The same filing and decision-making time frames have also been used. When cases could not be resolved in the 1-year cycle, the subcommittee simply "pended," or held over, cases to the next review cycle, sometimes for 2 or 3 years.

There were important administrative differences, however, between the country practice cases and product cases we reviewed. The most important difference was that resolution of a product case was an internal U.S. government decision. Whether a product received GSP duty-free benefits was based upon the information provided to the GSP Subcommittee and its recommendation on import sensitivity or competitiveness of the product (which must subsequently be ratified by TPSC, TPRG, and the President). Further, the impact of the petition was generally limited: whether BDCs would be able to ship frozen peas or alarm clocks duty free or not was usually of immediate concern only to those

domestic and foreign industries. Country practice cases were fundamentally different in that they involved changes in the internal practices of another sovereign nation and triggered government-to-government negotiations or representations. While the GSP Subcommittee made its ultimate recommendation based on the information it received, the bilateral negotiations or representations that had been initiated by the filing of the petition were the real focus of the cases.

Our review of cases and interviews with GSP officials indicated that in IPR cases, USTR's IPR office generally takes the lead. The IPR negotiator works together with the State Department country desk officer and embassy officials in the BDC to pursue resolution of the petition issue. As needed, they get technical assistance from the U.S. Patent and Trademark Office. Often, they negotiate directly with counterparts in the BDC government and work together to develop acceptable standards in a new copyright or patent law. The U.S. IPR advocacy group will likely be closely involved in this process. USTR's IPR negotiators will work with the GSP Subcommittee on how to use the GSP process and what options are available to them.

In worker rights cases, until recently USTR has had no real role in resolving the issue giving rise to the petition. The main U.S. government actors have been (1) the State Department, through its embassy in-country, its country desk officer, and its Labor Advisory Office; and (2) the Labor Department's International Labor Affairs Bureau. High-level representations are made by the U.S. Ambassador and senior government officials to counterparts in the country and to the BDC's Ambassador in Washington. Worker rights advocacy groups were not generally involved in these representations. The worker rights review, unlike the IPR review, would not be limited to the petition issue only, but would be enlarged to scrutinize the overall labor regime of the BDC in light of the five internationally recognized worker rights criteria stated in the GSP law (see pp. 99-100).

According to the GSP Director, the process used for worker rights cases has changed over the past year, and these cases have a higher priority now. As documented in our review of selected cases in the 1990 and 1991 annual reviews, the GSP Subcommittee did not previously get involved in working to resolve the substance of country practice cases. The Director said that this situation has changed, and the GSP Subcommittee is now taking the lead on worker rights cases due to the greater expertise developed over the years and the precedents set by cases reviewed to

date. The subcommittee now also has greater interaction with worker rights advocates on cases.

The particular problems that have resulted from administering country practice cases in a review process designed for product petition cases include (1) the rigidity of the annual review cycle and (2) the program's policies for accepting petitions for review.

Rigid Annual Review Cycle

The June 1 deadline for submission of all GSP petitions for consideration during the annual review cycle is considered by IPR and worker rights groups as too rigid for country practice cases. Since these cases involve international standards of behavior, rather than trade flows, events can precipitate crises at any time during the year. For this reason, IPR and worker rights groups believed that they should be able to file petitions at any time during the year when a crisis occurs and receive expedited review. According to worker rights groups, a particularly harsh, but telling, example of such a crisis for worker rights involved the case of Sudan. On June 30, 1989, a coup d'état overthrew the Sudanese government, and the new government immediately issued a decree to abolish labor unions and forbid strikes. Widespread cases of detention and abuse of trade unionists were reported. However, due to the GSP rules, Africa Watch and the AFL-CIO were not able to file a petition until 11 months later, on June 1, 1990. While Sudan was ultimately suspended from the GSP Program, the decision was not handed down until May 1991, at the conclusion of the 1990 annual review cycle. Sudan, therefore, continued to receive GSP benefits for almost 2 years after the coup.

IPR groups concurred on the need for out-of-cycle filing when a crisis occurs. For instance, situations can arise when a major piracy production and export center is established in a BDC, flooding a region with pirated videos. In such situations, IIPA members want to have a means of quick response before too much damage is done in the marketplace. Waiting on the annual review cycle makes this quick response impossible as far as using GSP leverage.

Another problem with the rigid annual review cycle concerns the need to continually hold over country practice cases to the next review cycle. Because country practice cases involve changes in the internal practices of another sovereign nation, triggering government-to-government negotiations or representations and usually requiring passage of national legislation, they generally take a long time to resolve. Out of 53 country

practice cases[7] accepted for full review before the 1993 annual review, 23 were held over to at least one subsequent annual review. The 41 cases that were completed by the start of the 1993 annual review took an average of 1.3 years to resolve. Of the 24 country practice cases reviewed in the 1993 annual review, 12 have been held over from previous years.

The GSP Subcommittee has recently begun to address some of these concerns. For instance, although it has not accepted petitions out of cycle during the review year, the subcommittee did accept an IPR petition on Cyprus for expedited review in the 1993 annual review. IIPA filed the petition on June 1, 1993, the normal filing date, with the request that the review and actions to be taken be expedited. The review concluded that Cyprus' GSP benefits should be suspended due to failure to adequately protect IPR. However, the suspension was deferred due to Cyprus' intent to implement a new and greatly improved copyright law on January 1, 1994, according to USTR.

Standards for Accepting Petitions for Review

A second general administrative issue concerns the lack of standards in the GSP law or regulations for accepting country practice petitions for review. To deal with this problem, the GSP Subcommittee has adopted internal policy guidelines for how it will consider petition requests. However, cases are complex and the outcome of policies may not always be clear or consistent. The GSP Director acknowledged that this situation has sometimes created confusion among GSP agencies and outside groups. Advocacy groups said that acceptance standards can be subjective and highly political. In particular, worker rights groups said that all petitions that are not legally "frivolous" should be accepted for review. They also said that they especially do not agree with two of the policies used in the decision whether to accept worker rights petitions for review: (1) the classification of a petitioned offense as a human rights rather than a worker rights problem and, therefore, outside the purview of the GSP Program; and (2) the "new information" standard used to deny consideration of petitions in subsequent years on a petition that has been denied, unless substantially new information is brought.

In the annual reviews from 1985 through 1993, 113 country practice cases were filed, as shown in table 5.1. The GSP Subcommittee accepted 65 (58 percent) of these cases for full review, including 12 IPR, 46 worker rights, 3 expropriation, and 4 reinstatement petitions. Of the 61 annual review cases accepted for review that were filed to remove benefits and

[7]These cases included all types of country practice petitions.

the 11 general review cases, 11 (15 percent) resulted in the BDC's GSP benefits being suspended or removed. Four of these 11 BDCs were later reinstated; the 4 granted reinstatement petitions were filed by 3 BDCs that had been suspended for worker rights violations and 1 BDC for expropriation violations.

Table 5.1: Outcome of Petitions Filed Concerning Country Practices, 1985-93

Type of petition	Number of petitions filed	Number of petitions accepted for review	Number of petitions rejected for review	Number of petitions withdrawn	Number of petitions deferred
Worker rights	80	46	32	0	2
IPR	16	12	0	4	0
Expropriation	11	3	4	3	1
Market access	2	0	0	1	1
Reinstatement	4	4	0	0	0
Total	**113**	**65**	**36**	**8**	**4**

Note: This table includes one expropriation case filed in the 1978 annual review.

Source: Data derived from information provided by USTR.

IPR advocates, who filed relatively few cases under GSP, generally felt that the GSP Program had played a beneficial role in securing improved IPR protection in GSP beneficiary countries. A number of BDCs have improved their IPR laws as a result of GSP petitions. IPR advocates were less concerned about acceptance of petitions and more concerned about more "vigorous" use of the IPR provision, resulting in more BDCs being suspended for IPR violations.

Worker rights advocates were far more concerned about acceptance of worker rights petitions and were generally very disappointed with the implementation of the provision under the GSP Program. Although they acknowledged that the provision had led to progress in a number of BDCs, it was apparent that the results had not met their expectations. Their main area of concern was with the standards for acceptance of petitions for review. They said that the GSP Subcommittee needed to articulate clear and specific standards for acceptance or rejection of petitions for full review. They said that all worker rights petitions should be accepted, as long as they were not legally frivolous.

In 1990, 23 labor and human rights groups filed suit against the administration in the U.S. District Court for the District of Columbia.[8] The parties to the lawsuit included almost every group that had filed a worker rights petition under the GSP Program. They charged that the administration had failed to enforce the worker rights provision. They lost their case in district court and their appeal in the U.S. Court of Appeals for the District of Columbia Circuit.[9] However, the lawsuits were dismissed on the technical ground that the parties lacked standing to bring the lawsuits or that the particular court lacked jurisdiction to consider the lawsuit; the substance of the lawsuits was never addressed.

One of the primary concerns labor groups have had about acceptance of petitions has been based on the GSP Program's policy of distinguishing between human rights and worker rights violations. For instance, the murder of a trade union leader is classified as a human rights violation and is not accepted as the basis of a worker rights petition. Labor groups disagreed with this policy, stating that in most cases it is very clear that the reason a labor leader has been murdered was due to worker rights advocacy.

GSP officials pointed out that in developing countries that have serious human rights problems, it is usually not possible to clearly establish the motivating cause for the violation. The GSP Director said that the policy line between human rights and worker rights has been a difficult one in some cases. Generally, the GSP Subcommittee looked for firm evidence that abuses against individuals were in some way related to their work as labor or union activists. This proves difficult in cases of widespread civil unrest or civil war. Moreover, it is difficult in such instances, where the perpetrating party is unclear, and where the government of the country may lack effective legal control over events, to determine the extent to which the government could take or was taking effective steps to prevent such abuses. However, he cited the recent case with Malawi, where a labor leader was imprisoned by the government for sedition, in which the GSP Program did have the clear evidence it needed. The GSP Subcommittee pursued the issue with the Malawi government, and the labor leader was finally released.

Another policy that is controversial is the "new information" standard in the GSP regulations. This regulation states that in order to re-petition on a worker rights case that has been dismissed (whether not accepted for full

[8]Civil Action No. 90-00728.

[9]No. 90-5390.

review or reviewed and found insufficient to establish a GSP violation), substantial new information must be brought. The reasons for the regulation are similar to the reasons behind the 3-year rule for product addition petitions: to prevent repeated petitioning on the same issue that would harass the petitioned party and unduly burden the GSP review process. Country practice petitions can be refiled every year; there can be no 3-year rule because the IPR and worker rights practices of a BDC can change at any time. However, labor groups said that the new information standard undermines their effective use of the worker rights provision. If a BDC is found to be taking steps toward, but is not in compliance with, worker rights standards, this regulatory standard makes it difficult to revisit the situation when labor groups feel progress on those issues stopped as soon as the GSP pressure ended.

Worker rights advocates said that the petition filed against Malaysia in 1988 is a good example of this problem with the new information standard. After the petition, which stated that Malaysia was suppressing unions in its electronics sector, was accepted for review, the Malaysian government announced an end to the ban on electronics unions. Later, a Malaysian government official clarified the announcement to indicate that only in-house unions would be permitted, even though unions in Malaysia are generally organized at the national level. The United States found Malaysia to be taking steps to improve its labor regime, and the case was concluded at the end of the review cycle in spring 1989. However, the U.S. Trade Representative noted in her April 1989 letter to the Malaysian Prime Minister informing him of this decision that much progress was needed. She also cited the fact that the government did not allow full freedom for workers to associate and form labor unions of their own choosing in certain export industries such as the electronics industry. Notwithstanding this admonition, subsequent petitions filed in 1990 and 1991 were rejected for review because of determinations that they failed to provide new information.

During our visit to Kuala Lumpur in November 1992, the embassy official responsible for labor issues said that the embassy's analysis had shown that the 1990 and 1991 petitions did not contain new information. He also confirmed that the embassy did not conduct any follow-up work to determine whether the Malaysian government had taken any corrective actions in the areas identified by the GSP Subcommittee.

The AFL-CIO filed another petition on this issue in June 1993. The decision on whether to accept the petition for review was deferred until

January 1994.[10] USTR stated that additional time was needed to determine if a second review was warranted, or if worker rights progress had continued over the past several years.

The GSP Director said that there had been a change in recent months to interpret the new information regulation more broadly. He said that the GSP Subcommittee has been more willing to accept petitions a second time. For example, the worker rights petition filed against the Dominican Republic in June 1989 resulted in a finding in April 1991 that the Dominican government was taking steps to improve worker rights by drafting a new labor law. Another petition was filed in June 1991, but was rejected because the Dominican government was still in the process of enacting the new labor law. However, 2 years later, in June 1993, a further petition was filed stating that the new law was not being adequately enforced. The GSP Director said that the GSP Subcommittee considered the new information that the Dominican Republic was not enforcing its new labor law and accepted the case for review. He also noted that GSP summary reports at the conclusion of reviews are now more explicit on worker rights cases. If the BDC is taking steps, the GSP Subcommittee notes the action and then goes on to record what additional steps the subcommittee expects. He said that this expectation is the "hook" for a new petition.

Differing Expectations From Implementation of Country Practice Provisions

There is an important difference in perspectives among GSP Subcommittee officials, IPR advocates, and worker rights advocates on the degree to which GSP leverage should be pursued in investigations and negotiations with BDC governments and, ultimately, used in actual sanctions. GSP officials generally said they feel that the country practice provisions have been used as much as possible to encourage improved BDC practices, given other foreign policy and trade concerns. In contrast, IPR and worker rights advocates generally said they want to see more cases accepted for review and more BDCs sanctioned through suspension from the GSP Program. However, the fact that worker rights advocates have reacted more strongly, to the point of filing suit against the administration, also reflects the relative standing of IPR and worker rights provisions in U.S. trade law. While IPR advocates have other, more powerful, trade law options available to them, worker rights provisions in other trade laws are linked to the exercise of GSP sanctions. Thus GSP sanctions are critical to worker rights advocates' pursuit of other legal avenues.

[10]As of September 22, 1994, a decision on whether or not to accept the petition was still being deferred.

U.S. Government Perspectives

The GSP Program Director said that the country practice reviews have been worthwhile and have produced substantive results in many BDCs. Other GSP Subcommittee officials concurred, saying that the country practice provisions of the GSP Program have resulted in important improvements in some BDCs' practices. In IPR cases, new copyright laws were passed in a number of countries, including Singapore, Indonesia, the Dominican Republic, and Malta. GSP leverage was also effectively used when Mexico enacted major IPR improvements in order to receive about $2 billion in competitive need limit waivers in June 1991. More recently, progress has been made in the cable signal piracy petitions filed by MPAA against the Dominican Republic and Honduras, although these cases remain incomplete. A third case filed against Guatemala was withdrawn in summer 1994 after an agreement was reached.

In worker rights cases, the Central African Republic, Paraguay, and Chile were pointed out as BDCs that were suspended from GSP and later improved their practices and were reinstated. More recently, in December 1993, two new worker rights cases filed against Costa Rica and Paraguay were settled, and the AFL-CIO withdrew its petitions after new legislation was enacted. The GSP Director said that progress was also being made in El Salvador and Indonesia. Just as importantly, GSP officials said that these provisions have resulted in raising the consciousness of BDC governments on the importance of IPR and worker rights protections and are having a longer term impact as BDC development levels increase.

Generally speaking, according to government officials, the approach they take in administering country practice provisions is that of using the GSP provisions to encourage improved IPR and worker rights practices by BDCs. While they are willing to use the leverage provided by GSP benefits to push hard for improvements, they do not want to have to actually exercise GSP sanctions to punish BDCs. Once sanctions are imposed, leverage is lost in encouraging future improvements in any of the country practice provisions. And, just as important for the administration, bilateral trade and foreign relations are damaged. It is for this reason, we found, that country practice cases are usually held over until a resolution can be worked out.

Government officials stressed that they have to take a broad view of bilateral relations to balance competing interests. They said that they cannot afford to take a narrowly focused position, as many advocacy groups do, that country practice petitions should be pursued at all costs, no matter what the impact will be on the commercial and bilateral

relationship with a BDC. A myriad of equally important objectives may be held in the balance at any given time. A notable example of such inherent constraints was with the 1988 worker rights petition against Syria, which was held over for 3 additional years while the Middle East hostage situation was going on. Only when that extremely sensitive situation was resolved was Syria suspended from the GSP Program in the summer of 1992.

IPR Advocates' Perspectives and Standing in U.S. Trade Law

The GSP Program is only one of three trade law measures under which IPR issues can be pursued with U.S. trading partners, and the least forceful. The "big gun" is Section 301 of the 1974 Trade Act, followed by the Special 301 provision, and finally the GSP Program. The most egregious IPR cases have been pursued through these first two provisions, rather than through GSP. GSP's main value for IPR advocates is as a first level of response, leaving negotiating room to increase the pressures with the threat or use of Section 301 and/or Special 301. Several IPR representatives told us that they preferred to use GSP when possible because it caused the least damage to bilateral trade relations.

Section 301 of the Trade Act of 1974, as amended, provides a domestic procedure under which affected enterprises or individuals may petition the U.S. Trade Representative to initiate actions to enforce U.S. rights under trade agreements, or to respond to unjustifiable, unreasonable, or discriminatory foreign government practices that burden or restrict U.S. commerce. One of Section 301's main uses has been to obtain more effective protection worldwide for U.S. intellectual property. Actions taken may include (1) suspension of bilateral trade agreement concessions; (2) imposition of duties, fees, or other import restrictions on products and services; and (3) entry into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States. Actions may be instituted against any goods or economic sectors, without regard to whether the goods or economic sectors were the subject of the investigation.

Special 301 focuses exclusively on IPR issues, unlike Section 301 cases. Here, Congress has expressed its clear intent that intellectual property issues warrant unique coverage. Special 301 requires USTR to identify countries that deny adequate and effective protection of intellectual property rights or that deny fair and equitable market access to U.S. persons relying on intellectual property protection. Special 301 can be used to pressure foreign countries to improve their IPR regimes and can

ultimately be used to trigger mandatory expedited Section 301 investigations.

GATT Impact on GSP IPR Provision

The conclusion of the Uruguay Round of GATT, which, if enacted, would bring IPR under the international trading system for the first time, would also have ramifications for the GSP Program. Although the full implications are still being sorted out, it is believed that the GSP IPR provision may now become more important to advocacy groups.

The Agreement on Trade-Related Aspects of Intellectual Property Rights reached in the GATT negotiations would establish improved standards for the protection of a full range of IPR and the enforcement of those standards both internally and at the border. The intellectual property rights covered by the agreement are copyrights, patents, trademarks, industrial designs, trade secrets, integrated circuits (semiconductor chips), and geographical indications. The TRIPs text is covered by the Uruguay Round Dispute Settlement Understanding, thus ensuring application of the improved dispute settlement procedures, including the possibility of imposing trade sanctions (such as increasing tariffs) if another GATT member violates TRIPs obligations.

GSP may become more important in the future if the use of Section 301 and Special 301 is limited. Since most IPR areas would be covered by GATT, the unilateral use of the Section 301 and Special 301 process may be restricted. Petitioners may be required to go through GATT dispute settlement, rather than the United States taking unilateral action, to impose sanctions. According to the GSP Director, the critical policy question for USTR would be when petitioners not willing to go through dispute settlement would want to bring their cases instead to GSP, which is a unilateral program outside GATT commitments. USTR would have to make a difficult policy decision of determining which IPR cases to accept under GSP. It would have to establish whether or not cases involving areas covered by TRIPs should be encouraged to go to dispute settlement instead.

Indeed, IPR industries are beginning to take the position that Section 301 and Special 301 still could be used for TRIPs-covered areas if the sanction employed is in an area not covered by GATT, such as GSP. An IIPA official agreed that the GSP IPR provision would be more important to IPR industries if TRIPs is enacted. He said that as more areas would be bound under GATT's new World Trade Organization and IPR coverage would be brought under GATT, the United States' unilateral use of Section 301 would be limited. Fewer areas outside of GATT would be available for the imposition of

unilateral sanctions. Therefore, GSP is very useful because it is outside GATT. According to this official, GSP would be even more important because developing countries would have a 5-year transition period under the Uruguay Round GATT agreement before they would have to be in full compliance (except for pharmaceuticals and agrichemicals, where they would have 10 years). IIPA is very concerned that a number of BDCs were on the verge of taking action to protect intellectual property under bilateral commitments they had made. IIPA emphatically does not want to see these BDCs backslide and take advantage of the extra 5 years to provide IPR protection. As a result, the IIPA official saw great potential for bilateral engagement even though IPR should soon have GATT coverage.

Worker Rights Advocates' Perspectives and Standing in U.S. Trade Law

Legislation making trade conditional upon governments' observance of worker rights has been attached to the following trade programs or provisions:[11]

(1) the Caribbean Basin Economic Recovery Act in 1983,

(2) the GSP Program in 1984,

(3) the Overseas Private Investment Corporation in 1985,

(4) the Multilateral Investment Guarantee Agency in 1987,

(5) Section 301 in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418),

(6) the Andean Trade Preference Act in 1991, and

(7) Section 599 of the fiscal year 1993 Foreign Operations Appropriations Act in 1992.

However, only the GSP Program has a review and decision process to implement sanctions designed to enforce the worker rights provision. CBERA, the Overseas Private Investment Corporation, the Multilateral Investment Guarantee Agency, and ATPA do not have reviews, and their worker rights provisions are linked to GSP Program determinations. The Section 301 worker rights provision of the Omnibus Trade and Competitiveness Act of 1988 has never been used. Finally, the section 599

[11]NAFTA also incorporated a side agreement on labor issues, which included worker rights. We did not examine these provisions. See North American Free Trade Agreement: Assessment of Major Issues (GAO/GGD-93-137, Sept. 9, 1993).

provisions restricting U.S. foreign assistance programs (primarily for the Agency for International Development) will likely have little impact on worker rights practices in Caribbean Basin countries.[12] The result is that the worker rights provision of the GSP Program is the primary worker rights legislation available to advocacy groups, and action under GSP also triggers actions under most of the worker rights provisions in U.S. trade law. It is for this reason, to a large degree, that worker rights advocates have reacted so strongly to concerns about the implementation of the GSP worker rights provision.

Proposals to Modify Country Practice Provisions

IPR and worker rights advocates, as well as GSP officials, have suggested modifications of the GSP administrative process for country practice provisions to be considered during renewal of the GSP Program. Advocacy groups have also proposed substantive changes to further strengthen their respective provisions.

Proposed Modifications to IPR Provision

IIPA has proposed two major administrative changes that it believes will significantly improve the administration of the GSP IPR provision. Under this proposal, administration of the GSP IPR provision would be disengaged from the current GSP annual review process and instead would track the Special 301 review process. Thus, GSP IPR petitions would be filed simultaneously with Special 301 petitions in February rather than in June as at present and would be considered within the context of Special 301 submissions and on a similar timetable. IIPA believes that since both petitions require review by USTR of the adequacy and effectiveness of a foreign country's IPR protection, combining the two reviews would significantly reduce overlapping reviews and negotiations by USTR. The same underlying facts must be provided by the private sector in both cases.

However, accepting the IIPA proposal would also mean making significant changes in the current administrative process for GSP IPR petitions. Special 301 does not require extensive submissions, and IIPA would like to see such procedural requirements dropped for GSP purposes as well. It would only be at the end of the review process, when USTR made a determination to sanction a country, that petitioners would make submissions and a public hearing would be held to permit all those affected by either the Special 301 or GSP sanctions to be heard. IIPA believes that this revised procedure

[12]See Foreign Assistance: U.S. Support for Caribbean Basin Assembly Industries (GAO/NSIAD-94-31, Dec. 29, 1993).

would streamline the entire process for reviewing a country's IPR practices without diminishing the independent functioning of either trade program.

Although the IPR standard is the same for both GSP and Special 301 petitions and the IPR office at USTR leads both investigations, there are important differences as well. Fundamental differences in GSP and Special 301 petitions are reflected in the disparities in the functions of their hearings. Acceptance of a GSP petition for full review is a serious indication that there is an IPR problem. The GSP Subcommittee's investigation establishes the extent of the problem, and negotiations are then undertaken to try to reach a resolution so that the BDC is not suspended, according to GSP officials. Public hearings are held immediately so that all sides to the issue can establish their positions and present evidence. Then at the conclusion of the annual review process, the President may (1) find that the BDC has met the standards of the law or has taken actions to meet the standard and concludes the review, (2) hold the case over to allow time to take actions, or (3) suspend the BDC from GSP benefits.

In contrast, under Special 301, acceptance by USTR of a petition is tantamount to an indictment. The Special 301 process is designed to work in the following way: Countries are placed on the watch list or the priority watch list as a warning that matters are increasingly serious on IPR issues. When a country is designated a "priority foreign country" under Special 301, triggering a Section 301 investigation, there is no question of the seriousness of the matter and of its potential impact on bilateral relations. No hearings are held upon initiation of a Special 301 investigation because USTR immediately enters into consultations with the foreign government on the IPR issue. All parties are fully informed. Under Special 301, a hearing is only held if requested at the end of the investigation if the dispute cannot be resolved and USTR determines that it will take retaliatory measures. The purpose of the hearing is to allow affected parties to express their views on the impact of the proposed sanctions and the potential level of their losses, especially where another product sector is affected.

Should the IIPA proposal be implemented, the likely result would be that GSP IPR reviews would be directly linked to Special 301. Currently, there is an indirect linkage, since there has been a Special 301 case that sanctioned a country by reducing GSP benefits. As a result of a Special 301 case on pharmaceuticals, India's pharmaceutical exports no longer receive GSP treatment. However, by directly linking the GSP IPR provision to the Special 301 review process, GSP then becomes an instrument of Special 301 law.

Given the impact that the GATT agreement reached in the TRIPs negotiations would have, as discussed previously (see pp. 114-115), such linkage would likely result in further making GSP the de facto preferred first-line sanction for Special 301 cases.

IIPA has also proposed that GSP IPR petitions be permitted to be filed at any time when there are instances of piracy that (1) are unexpected and (2) have potential for causing severe harm to the copyright holder if the holder must wait for the annual filing procedure. This second proposal seems to be consistent with the intent of the IPR provision. In addition, there is certainly adequate precedent provided by past acceptance by the GSP Subcommittee of emergency product petitions. For example, in 1991 a petition on Malaysian vulcanized rubber thread exports was accepted for expedited consideration as an emergency petition. The GSP Program has recently taken steps in this direction: Under the 1993 annual review, USTR has accepted an IPR petition on Cyprus for expedited review, as mentioned previously (see p. 107). However, GSP has not yet accepted petitions outside the designated annual filing date of June 1.

Proposed Modifications to Worker Rights Provision

Both worker rights advocates and GSP officials recommended that the process for consideration of worker rights cases be separated from the annual review process designed for product cases. However, they had differing views on how worker rights cases should be administered once disengaged from the current annual review framework. Worker rights advocates also proposed various modifications they believed would substantively strengthen the worker rights provision.

Petition Process Modifications

Worker rights advocates suggested that worker rights cases be reviewed separately from product cases and that a separate advisory panel of government labor experts should assess worker rights petitions. AFL-CIO and ILRERF officials said that product petition and worker rights investigations should be separated since they are very distinct issues with different scopes and implications. They also supported having a separate panel of labor experts advise USTR. The ILRERF official also believed that the Labor Department's International Labor Affairs Bureau should administer worker rights cases rather than USTR.

Human Rights Watch and ILRERF officials proposed that the petition-driven structure of the GSP review process be changed. They believed that U.S. government officials had the duty under the GSP law to determine compliance with worker rights standards, rather than to do nothing unless a petition was filed. The GSP Subcommittee could start with the State

Department's human rights reports, which include reporting on worker rights. GSP officials disagreed with this proposal, saying that all country practice reviews are petition driven in order not to undermine bilateral relations with a BDC. They said that it is difficult enough to address these sensitive issues bilaterally with a BDC when the petition is filed by a private party. If the government were to self-initiate cases, this action would constitute a very serious step for bilateral relations.

Suggestions to modify the petition process for worker rights cases were also made by GSP officials. They believed that it would be beneficial to disengage the worker rights petition process from the annual review process for product petitions. A GSP official suggested that all worker rights petitions should be examined in a preliminary stage one review that would be extended to 4-6 months to allow time for adequate investigation. He said that often BDC governments are willing to resolve an issue before it becomes more controversial and politically more difficult. He said that in other instances, petitions are filed based on new laws being interpreted as anti-worker rights, but upon investigation, there really is no problem. Such cases could be settled in an extended stage one review, leaving the serious cases for a full stage two review that lasts for 9-12 months.

Substantive Worker Rights Modifications

The worker rights advocacy groups, including the AFL-CIO, ILRERF, and Human Rights Watch, all recommended strengthening the worker rights provision. All argued that it was important to accept petitions out of cycle when mandated by the urgency of events. They stressed the importance of accepting all petitions that are not frivolous, whether or not they are politically controversial.

The worker rights advocacy groups also supported a proposal to use partial sanctions in worker rights cases. They see the current sanction—total suspension of the BDC from GSP—as too blunt an instrument in many cases. It is a sanction so potentially damaging to the relationship between the United States and the BDC that it becomes very difficult to actually use with BDC trading partners. They recommended employing a partial sanction in appropriate cases to target the industry involved in the worker rights abuses and to deny its GSP benefits, rather than having the BDC's benefits totally suspended.

The GSP Director agreed that the flexibility provided by a partial sanction could be helpful in worker rights cases. He also said that USTR believes that the discretion to take partial sanctions is already in the GSP law. At the same time, he cautioned that it may not be possible to use partial

sanctions in many cases. He estimated that half or more of the worker rights problems have been found in the textile and apparel industry, which is not covered under GSP. However, in instances in which the worker rights abuses did occur in an industry covered by GSP, partial sanctions targeting that industry could potentially not only be useful, but also more equitable.

Each worker rights advocacy group also had its own additional list of priority changes to strengthen the worker rights provision. These proposed changes included

(1) enunciating clear and specific criteria for acceptance or rejection of petitions for review;

(2) basing the definition of worker rights and human rights on ILO standards;

(3) reducing the time that cases are held over; and

(4) revising the new information standard in the regulations, as discussed previously.

There is also a proposal to strengthen the language concerning "taking steps" in the current GSP statute to instead require compliance with all five ILO standards (see p. 99). GSP officials disapproved of a full compliance standard for the worker rights provision. They said that no developing country could possibly fully meet all five ILO worker rights standards. They also pointed out that while worker rights advocates say that they only want a standard that IPR advocates already have, the issue is not that simple. While the IPR standard calls for full compliance rather than just taking steps, IPR petitions under GSP are narrowly focused and call for resolution of a single issue, not full compliance with all IPR standards.[13] GSP officials said that worker rights cases, in contrast, are handled differently, with all five ILO standards being scrutinized in a BDC.

Another proposal is to add a sixth criterion to the worker rights provision, requiring BDCs not to discriminate on the basis of sex, race, or religion in the workplace. GSP officials dismissed such an eligibility criterion as too idealistic. They said that, clearly, no BDC can meet this standard.

[13]The GSP Director also pointed out that the IPR provision is discretionary (i.e., the President "shall take into account . . . the extent to which), rather than mandatory.

Limits of GSP Leverage and Implications for Program Renewal

Many U.S. government officials and trade experts indicated that the GSP Program can provide only a modest degree of leverage in encouraging BDC governments to change their practices. They said that this leverage is greater with smaller countries that need GSP benefits more, and more limited with large BDCs, like Thailand or Malaysia, which benefit significantly from but do not depend on GSP. Leverage is also increased where GSP benefits are tied to other trade preference benefits, such as the Caribbean Basin Initiative (CBI).

A former GSP Director pointed out that if articles considered to be critical to BDCs, such as textiles and apparel, were granted wider GSP eligibility, then the United States might gain stronger leverage from the program. A U.S. government official dismissed the idea of granting textiles and apparel GSP status as a political impossibility that would disrupt U.S. industries. However, the basic point remains that leverage is largely a function of the degree of benefits provided.

It should also be noted that a certain amount of leverage is derived not so much from the prospect of losing GSP tariff elimination benefits, but from a desire by BDC governments to avoid international damage to their image and loss of foreign investment. As with human rights issues, other governments do not want the U.S. government to publicly declare that they are condoning piracy or are stifling creativity or innovation through inadequate copyright or patent laws. Moreover, BDC governments do not want a U.S. determination that they are not providing their workers with rights they should have. Governments do not want it pointed out that they are not enforcing their own laws. This sensitivity is, thus, the source of the controversy over these provisions in GSP, as well as the source of some degree of its leverage. But exercising this leverage exacts a price on the bilateral relationship.

Almost everyone we discussed this issue with who currently participates in the GSP Program said that it would be a mistake to enact additional country practice provisions. It was frequently pointed out that adding new provisions would reduce the leverage of existing provisions and put too high a price on GSP benefits for many BDCs. In this regard, the prospect of adding environmental protection provisions to GSP was almost universally deemed a mistake.[14] They said that there are no international standards, like WIPO standards for IPR or ILO standards for worker rights, by which to

[14]Because it was beyond the scope of this review, we did not interview representatives of environmental groups.

measure the adequacy of environmental protection actions, and it was considered inappropriate to hold developing countries to U.S. standards.

Further, the successful conclusion of the Uruguay Round of GATT negotiations would, if enacted, decrease tariffs and, thus, also the value of GSP benefits. Many experts questioned the usefulness of adding country practice provisions when the available leverage in encouraging improved practices is decreasing.

As one former GSP Director said, GSP is at the vulnerable end of U.S. trade policy because of its unilateral, nonreciprocal nature. It is essentially a gift given to developing countries. As such, GSP often serves as a vanguard for addressing special issues in U.S. trade law, since it is a small unilateral program easily altered without much opposition. He said there is no domestic constituency to support GSP, outside of the domestic importers who use it, many of whom are not organized to lobby for it. The former GSP Director said that it is important that GSP not fall subject to the "Christmas tree" effect during renewal, with too many country practice provisions added that will, in the end, reduce GSP's overall effectiveness.

Conclusions

Administration of country practice petitions within the review process designed for product petitions has not worked well. Country practice cases require a separate time frame and review procedures that better fit their different dynamics. The acceptance of emergency petitions for review out of cycle, as well as for expedited review, would improve the timeliness and, potentially, the effectiveness of these provisions. Criteria for accepting emergency petitions would have to be developed. There are no standards in the GSP statute or regulations for acceptance of country practice petitions for full review. The GSP Subcommittee has developed its own internal guidelines, which are used on a case-by-case basis but have not been made public. A public explanation of these guidelines would help petitioners in preparing better petitions and, in turn, would promote more efficient administration of the program. The regulations do have a standard requiring that resubmitted petitions contain new information. However, as currently administered, this standard has prevented further review of worker rights cases in which a BDC's promised progress has stopped after the GSP review was concluded. Although the GSP Director said that the GSP Subcommittee is interpreting the new information standard more broadly in accepting petitions for a second review, this change did not extend to the types of cases raised here. Finally, the current sanction in GSP country practice cases is the total suspension of a

BDC from GSP benefits. A partial sanction, in which a specific BDC industry sector is suspended from GSP rather than the entire BDC, would provide greater flexibility and, in some cases, would be more equitable.

The controversy over the extent to which GSP leverage can and should be used goes to the heart of the policy debate over the compatibility of country practice provisions with the original objectives of the GSP Program. A workable balance needs to be maintained between using GSP as originally envisioned—as a measure to assist BDCs in furthering their economic development by enhancing exports and foreign investments—and its use to pursue other objectives in trade-related or nontrade areas. If greater emphasis is placed on country conditions, then care must be taken to balance the conditions imposed with the leverage created by the benefits provided.

Recommendations

In order to improve the administration of country practice petitions, we recommend that the U.S. Trade Representative

(1) review country practice petitions on a separate and more flexible time frame from product petitions that better fits their different dynamics;

(2) accept emergency petitions for expedited review out of cycle, when warranted by events;

(3) make public the guidelines used in deciding whether or not to accept country practice petitions for full review;

(4) clarify the "new information" standard in the GSP regulations to indicate that failure of a BDC to fulfill the promises of progress that were instrumental in the decision to deny a petition would constitute substantial new information that could be the basis for acceptance of a petition; and

(5) take all steps necessary to expand the range of sanctions that can be taken when BDCs have not met GSP country practice standards to include partial sanctions when appropriate.

Agency Comments and Our Evaluation

USTR, on behalf of the administration, generally agreed with our recommendations that it (a) review country practice petitions on a separate time frame from product petitions, (b) make public the guidelines

used in deciding whether or not to accept country practice petitions for review, and (c) expand the range of sanctions to include partial sanctions. Its GSP reauthorization proposal includes a number of provisions that make modifications along these lines.

USTR did not fully agree with our recommendation concerning the acceptance of emergency petitions for expedited review out of cycle when warranted by events. In response to our recommendation that it revise the "new information" standard to allow acceptance of petitions demonstrating a lack of promised progress, USTR said that its standard already allows for such an action. We have revised our draft recommendation to recommend that USTR clarify GSP regulations to indicate that failure by a BDC to fulfill the promises of progress that were instrumental in the decision to deny a petition would constitute substantial new information that could be the basis for acceptance of a petition.

Acceptance of Emergency Petitions

While noting that nothing in the regulations precludes it from accepting country practice petitions on an emergency basis, USTR said that such situations have been and should continue to be rare events. Its reasons were that (1) it is very difficult to show that a domestic interest is so seriously affected by a country practice that an emergency review is warranted and (2) country practice determinations are the result of careful review of a great volume of information and deliberation that are not consistent with the notion of "emergency" circumstances.

We do not agree with USTR's strong reluctance to accept country practice petitions on an emergency basis. First, there is no requirement in either the IPR or worker rights provisions in the GSP statute that direct and serious harm to U.S. interests be demonstrated. The focus of these provisions is entirely on whether the BDC in question is adequately meeting, or taking steps to meet, certain international standards. Thus, using such a test for acceptance of emergency petitions is not required.

Second, while it may be true that it can be difficult to show direct and serious harm to a domestic interest in worker rights cases, this may not be the case in IPR petitions. If, for instance, a major regional video or software pirating center is set up, the copyright holders may suffer serious losses in that market. Should the U.S. industry provide solid evidence of such piracy, then there would be reason to initiate a review of whether the BDC is providing "adequate and effective" IPR protection, as required by the GSP

statute. At that time, the necessary due deliberation and careful review of information, as well as government-to-government consultations to resolve the issue, could be fully undertaken.

Clarification of "New Information" Standard

USTR did not believe that there is any need to revise the "new information" standard to allow acceptance of petitions demonstrating a lack of promised progress. Its position was essentially that such a revision is unnecessary because, when pertinent, progress in fulfilling past promises is already considered. USTR also pointed out, as discussed in our report, that the GSP Subcommittee has said that it now more clearly explains its rationale and expectations in finding a BDC to be "taking steps," potentially making it easier for petitioners to justify the lack of expected progress as "new information." While acknowledging that there can be disagreement about what constitutes "substantial new information" in any particular case, USTR said that the real issue is one of ascertaining the facts and determining their significance in relation to a previous finding of "taking steps."

In response to USTR's comments, we have revised our recommendation to clarify that the "new information" standard already allows acceptance of petitions demonstrating a lack of promised progress. However, we believe that it would be beneficial for the GSP Program to explicitly point out in its regulations that failure by a BDC to fulfill promises of progress would constitute new information that could be the basis for acceptance of a petition. The concept of making progress to meet international standards is at the heart of GSP country practice provisions; it is especially critical for worker rights, given the "taking steps" language in the statute. Thus, such a clarification is needed precisely because making the judgment as to whether sufficient progress has occurred has been so controversial with worker rights advocates.

Implications for Reauthorization of the GSP Program

The GSP Program is a trade preference program that aims to promote development of less industrialized countries through trade rather than aid. Most GSP benefits go to the relatively small number of more advanced or larger developing countries that can better meet U.S. market demands. These goods are by value predominantly industrial goods, rather than agricultural goods. At the same time, the exclusions built into the program provide U.S. industries with extensive protection against undue harm. In 1992, less than half of the eligible goods received duty-free treatment.

The benefits of the GSP Program may be reduced in value in the near future. The tariff reductions negotiated in the Uruguay Round, if enacted, would reduce the value of GSP benefits by an estimated 40 percent. In addition, several major BDCs have been graduated, substantially reducing the level of imports under the program. However, the Uruguay Round agreement may provide potentially meaningful growth in GSP product coverage of textile and apparel articles. If the Uruguay Round results are enacted and the Multifiber Arrangement is phased out over 10 years, textile and apparel articles legislatively excluded from the program due to their MFA status may be considered for GSP eligibility.

The United States has made GSP benefits conditional on compliance with certain trade-related or nontrade country practice conditions. The IPR and worker rights provisions are the most contentious of the existing eligibility conditions, but provisions targeting new issues such as environmental protection are also being proposed for consideration during program reauthorization. Many government officials and trade experts believed that the ability of the GSP Program to provide leverage to pursue additional objectives, however, is modest and would decrease as its benefits are reduced. Adding new provisions would further reduce the leverage to achieve the objectives of existing provisions. Furthermore, if too many conditions are imposed, beneficiary countries may feel the compliance burden is too great and give up all benefits, thereby eliminating the existing leverage in the program.

A key consideration for Congress in deciding whether to reauthorize GSP is the leverage created by the program and the purposes for which that limited leverage should be used.

Data Showing Generalized System of Preferences Program Benefits for Beneficiary Developing Countries

Appendix I provides detailed data on GSP Program benefits to BDCs in 1992. In table I.1, the top 25 BDCs ranked by GSP-eligible shipments are compared to the top 25 BDCs ranked by GSP duty-free shipments. Table I.2 shows the amount of duty-free shipments by the 105 BDCs that received duty-free shipments in 1992 compared to the amount of their total shipments to the United States.

Table I.3 shifts from a country benefit focus to a product focus. It shows GSP imports by U.S. Harmonized Tariff Schedule (HTS) Chapter in 1992.

Table I.1: Top 25 GSP-Eligible and GSP Duty-Free Shipping Countries, 1992

U.S. dollars in millions

GSP-eligible imports			GSP duty-free imports		
Country	**Value**	**Percent of total**	**Country**	**Value**	**Percent of total**
1. Mexico	$15,567	43.6%	1. Mexico	$4,832	28.9%
2. Malaysia	3,891	10.9	2. Malaysia	2,538	15.2
3. Thailand	3,025	8.5	3. Thailand	1,862	11.1
4. Brazil	2,368	6.6	4. Brazil	1,559	9.3
5. Israel	1,447	4.1	5. Philippines	1,054	6.3
6. Philippines	1,276	3.6	6. Indonesia	643	3.8
7. Indonesia	1,151	3.2	7. India	637	3.8
8. Turkey	818	2.3	8. Israel	492	2.9
9. Dominican Republic	775	2.2	9. Venezuela	304	1.8
10. India	749	2.1	10. Argentina	291	1.7
Subtotal	**31,067**	**87.0**	**Subtotal**	**14,212**	**84.9**
11. Argentina	444	1.2	11. Peru	248	1.5
12. Bahamas	396	1.1	12. Chile	223	1.3
13. Chile	375	1.0	13. Colombia	207	1.2
14. Colombia	351	1.0	14. Macao	179	1.1
15. Venezuela	321	0.9	15. Turkey	164	1.0
16. Peru	287	0.8	16. Hungary	164	1.0
17. Costa Rica	282	0.8	17. Poland	157	0.9
18. Guatemala	193	0.5	18. Pakistan	103	0.6
19. Macao	190	0.5	19. Dominican Republic	100	0.6
20. Hungary	182	0.5	20. Czecho-slovakia	96	0.6
21. Poland	172	0.5	21. Uruguay	86	0.5
22. Czechoslovakia	122	0.3	22. Costa Rica	81	0.5
23. Pakistan	108	0.3	23. Sri Lanka	79	0.5
24. Bulgaria	101	0.3	24. Guatemala	70	0.4
25. Uruguay	93	0.3	25. Ecuador	63	0.4
Subtotal	**34,684**	**97.1**	**Subtotal**	**16,232**	**96.9**
Total All BDCs	**$35,723**	**100.0**		**$16,746**	**100.0**

Source: U.S. Department of Commerce/Bureau of the Census.

Table I.2: Total GSP Duty-Free Shipments to the United States Compared With Total Shipments to the United States for the 105 Countries That Received GSP Duty-Free Treatment in 1992

U.S. dollars

Country	Total GSP duty-free shipments to the United States	Total shipments to the United States	GSP duty-free shipments as a percent of total shipments
	Value	Value	Percent
Mexico	$4,832,314,832	$33,934,561,345	14%
Malaysia	2,537,698,265	8,176,072,431	31
Thailand	1,862,281,448	7,487,188,262	25
Brazil	1,559,083,113	7,587,882,278	21
Philippines	1,053,705,787	4,313,283,500	24
Indonesia	642,968,011	4,426,027,597	15
India	637,085,806	3,753,256,408	17
Israel	492,276,510	3,811,797,393	13
Venezuela	304,236,047	7,563,940,923	4
Argentina	291,336,345	1,225,169,407	24
Peru	247,652,710	686,043,432	36
Chile	223,465,376	1,318,843,934	17
Colombia	207,340,326	2,888,008,694	7
Macao	178,995,819	719,827,311	25
Turkey	164,348,147	1,522,593,214	11
Hungary	163,765,708	347,684,439	47
Poland	157,367,495	367,711,976	43
Pakistan	103,041,113	845,783,227	12
Dominican Republic	100,325,418	2,366,509,019	4
Czechoslovakia	95,504,228	237,137,411	40
Uruguay	85,997,078	263,228,130	33
Costa Rica	81,332,631	1,402,041,555	6
Sri Lanka	79,143,973	784,865,657	10
Guatemala	69,837,548	1,072,697,438	7
Ecuador	62,774,179	1,323,030,996	5
Malta	52,391,342	90,782,654	58
Macedonia	45,185,684	90,273,524	50
Morocco	37,004,051	177,748,760	21
Bolivia	29,222,282	161,586,145	18
Slovenia	27,252,800	98,639,314	28
Paraguay	20,650,884	35,159,731	59
El Salvador	18,747,565	383,244,843	5
Lebanon	16,429,327	26,522,300	62
Bulgaria	15,903,734	133,838,869	12

(continued)

U.S. dollars

Country	Total GSP duty-free shipments to the United States — Value	Total shipments to the United States — Value	GSP duty-free shipments as a percent of total shipments — Percent
Zimbabwe	15,738,114	130,193,636	12
Croatia	15,518,528	42,438,143	37
Honduras	13,261,435	780,637,925	2
Fiji	12,989,774	71,901,906	18
Tunisia	12,804,454	46,522,208	28
Namibia	11,479,308	48,595,027	24
Bangladesh	11,329,822	818,830,399	1
Egypt	10,334,183	431,963,798	2
Haiti	9,618,325	107,169,688	9
Panama	9,592,417	218,231,773	4
Trinidad & Tobago	9,208,144	839,787,519	1
Swaziland	8,825,412	22,929,531	38
Guyana	7,594,076	87,064,345	9
French Polynesia	7,521,309	10,861,993	69
Mozambique	7,420,179	19,369,262	38
Mauritius	7,380,860	136,847,284	5
Zaire	7,295,511	249,665,237	3
Belize	6,962,779	58,509,603	12
Ivory Coast	6,548,666	187,453,560	3
Madagascar	6,156,332	53,503,049	12
Jamaica	5,711,993	593,361,353	1
Kenya	4,980,900	73,334,297	7
Bosnia-Hercegovina	3,267,530	9,604,975	34
Congo	3,047,828	509,765,467	1
Suriname	3,030,851	46,144,398	7
Papua New Guinea	2,922,130	54,827,426	5
Barbados	2,556,317	30,527,660	8
Jordan	2,422,526	18,030,688	13
Senegal	2,395,614	10,189,708	24
Ghana	1,969,461	96,421,181	2
Bahamas	1,690,861	580,699,825	*
Grenada	1,597,851	7,475,850	21
Sierra Leone	1,364,542	60,852,943	2
Estonia	1,330,194	12,587,744	11

(continued)

U.S. dollars

Country	Total GSP duty-free shipments to the United States Value	Total shipments to the United States Value	GSP duty-free shipments as a percent of total shipments Percent
St. Kitts & Nevis	1,275,853	22,856,785	6
Cyprus	1,262,054	10,750,929	12
Cameroon	1,231,015	82,345,960	1
Latvia	1,156,994	9,037,489	13
Nepal	1,109,166	72,570,572	2
Tanzania	1,008,018	10,953,715	9
Cayman Islands	788,143	10,693,308	7
Togo	706,715	6,087,534	12
Malawi	687,818	56,419,272	1
Lithuania	643,598	5,131,596	13
Netherland Antilles	562,976	569,689,499	*
Central African Republic	470,325	657,742	72
Dominica	399,569	4,506,007	9
Botswana	396,736	12,156,701	3
Western Samoa	373,607	747,284	50
Uganda	277,507	12,005,774	2
Mali	240,591	1,569,538	15
Rwanda	221,583	4,804,716	5
British Virgin Islands	161,017	3,235,499	5
Tonga	138,103	4,293,651	3
Guinea	131,826	101,370,045	*
Montserrat	130,264	1,095,145	12
Oman	116,473	185,103,128	*
Tokelau	89,308	1,069,739	8
Solomon Islands	86,950	1,150,313	8
Zambia	49,388	70,519,144	*
Burkina Faso	41,782	235,056	18
St. Lucia	39,108	28,065,431	*
Niue	38,126	44,976	85
Gambia	28,300	1,142,544	2
Gibraltar	19,229	1,862,960	1
Cook Island	17,692	180,760	10
Lesotho	16,018	52,388,389	*
Antigua & Barbuda	15,843	5,413,992	*

(continued)

U.S. dollars

Country	Total GSP duty-free shipments to the United States Value	Total shipments to the United States Value	GSP duty-free shipments as a percent of total shipments Percent
Burundi	7,486	8,430,780	*
Pitcairn Island	5,029	73,154	7
Kiribati	656	515,970	*

Legend:

* = less than 1 percent.

Source: U.S. Department of Commerce/Bureau of the Census.

Table I.3: GSP Imports by U.S. Harmonized Tariff Schedule (HTS) Chapter, 1992

U.S. dollars in thousands

HTS chapter	Total U.S. imports
Section I: Live Animals, Animal Products	
Chapter 1: Live animals	$1,434,447
Chapter 2: Meat and edible meat offal	2,179,650
Chapter 3: Fish and crustaceans, molluscs and other aquatic invertebrates	4,796,593
Chapter 4: Dairy produce; birds' eggs; natural honey; edible products of animal origin, NESI	534,843
Chapter 5: Products of animal origin, NESI	225,922
Section II: Vegetable Products	
Chapter 6: Live trees and other plants; bulbs, roots, and the like; cut flowers and ornamental foliage	599,753
Chapter 7: Edible vegetables and certain roots and tubers	1,145,113
Chapter 8: Edible fruit and nuts; peel of citrus fruit or melons	2,443,141
Chapter 9: Coffee, tea, mate, and spices	2,017,642
Chapter 10: Cereals	514,372
Chapter 11: Products of the milling industry; malt; starches; inulin; wheat gluten	136,136
Chapter 12: Oil seeds and oleaginous fruits; miscellaneous grains, seeds, and fruits; industrial or medicinal plants; straw and fodder	473,744
Chapter 13: Lac; gums, resins, and other vegetable saps and extracts	245,447
Chapter 14: Vegetable plaiting materials; vegetable products NESI	52,715
Section III: Animal or Vegetable Fats and Oils and Their Cleavage Products; Prepared Edible Fats; Animal or Vegetable Waxes	
Chapter 15: Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	1,051,848
Section IV: Prepared Foodstuffs; Beverages, Spirits, and Vinegar; Tobaccos and Manufactured Tobacco Substitutes	
Chapter 16: Preparations of meat, of fish or of crustaceans, molluscs, or other aquatic invertebrates	1,327,034
Chapter 17: Sugars and sugar confectionery	1,147,135
Chapter 18: Cocoa and cocoa preparations	1,063,252
Chapter 19: Preparations of cereals, flour, starch, or milk; bakers' wares	754,562

Total U.S. imports from BDCs		Total U.S. imports of GSP-eligible items from BDCs		Total U.S. imports of GSP duty-free items from BDCs	
Value	Percent of total U.S. imports	Value	Percent of total U.S. imports from BDCs	Value	Percent of total U.S. imports of GSP-eligible items from BDCs
$360,147	25%	$3,506	1%	$3,260	93%
127,771	6	9,356	7	9,180	98
2,263,324	47	131,659	6	102,155	78
54,526	10	6,567	12	4,186	64
47,394	21	6,099	13	2,574	42
321,093	54	221,109	69	77,501	35
869,979	76	448,210	52	85,913	19
2,242,594	92	318,034	14	93,530	29
1,832,353	91	46,419	3	41,587	90
121,741	24	3,511	3	2,106	60
11,829	9	9,281	78	6,994	75
168,831	36	52,246	31	25,571	49
107,471	44	20,597	19	19,110	93
37,142	70	3,963	11	3,893	98
509,355	48	76,267	15	70,379	92
840,967	63	298,527	36	188,645	63
636,773	56	634,782	100	386,925	61
678,789	64	44,529	7	43,323	97
117,897	16	57,552	49	38,215	66

(continued)

U.S. dollars in thousands

HTS chapter	Total U.S. imports
Chapter 20: Preparations of vegetables, fruit, nuts, or other parts of plants	1,960,289
Chapter 21: Miscellaneous edible preparations	556,097
Chapter 22: Beverages, spirits, and vinegar	3,883,147
Chapter 23: Residues and waste from the food industries; prepared animal feed	367,243
Chapter 24: Tobacco and manufactured tobacco substitutes	1,759,928
Section IV: Mineral Products	
Chapter 25: Salt; sulfur; earths and stone; plastering materials, lime, and cement	902,348
Chapter 26: Ores, slag, and ash	1,403,983
Chapter 27: Mineral fuels, mineral oils, and products of their distillation; bituminous substances; mineral waxes	54,014,357
Section VI: Products of the Chemical or Allied Industries	
Chapter 28: Inorganic chemicals; organic or inorganic compounds of precious metals or rare earth metals, of radioactive elements or of isotopes	4,134,122
Chapter 29: Organic chemicals	9,773,624
Chapter 30: Pharmaceutical products	2,809,729
Chapter 31: Fertilizers	977,186
Chapter 32: Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments, and other coloring matter; paints and varnishes; putty and other mastics; inks	1,621,937
Chapter 33: Essential oils and resinoids; perfumery, cosmetic, or toilet preparations	1,227,361
Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modeling pastes, “dental waxes,” and dental preparations with a basis of plaster	421,931
Chapter 35: Albuminoidal substances; modified starches; glues; enzymes	854,402
Chapter 36: Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	217,136
Chapter 37: Photographic or cinematographic goods	2,197,837
Chapter 38: Miscellaneous chemical products	1,619,971
Section VII: Plastics and Articles Thereof; Rubber and Articles Thereof	

Total U.S. imports from BDCs		Total U.S. imports of GSP-eligible items from BDCs		Total U.S. imports of GSP duty-free items from BDCs	
Value	Percent of total U.S. imports	Value	Percent of total U.S. imports from BDCs	Value	Percent of total U.S. imports of GSP-eligible items from BDCs
1,217,175	62	195,890	16	127,622	65
159,094	29	94,731	60	81,171	86
395,319	10	286,497	72	97,733	34
72,414	20	1,092	2	803	74
1,337,001	76	863,025	65	120,044	14
325,000	36	30,772	9	26,970	88
657,540	47	123,640	19	57,733	47
19,148,383	35	1,892	0	1,839	97
605,497	15	118,574	20	98,929	83
1,363,549	14	1,142,636	84	484,643	42
51,414	2	41,130	80	18,612	45
87,348	9	0	0	0	0
131,159	8	32,292	25	13,612	42
134,408	11	67,097	50	41,383	62
82,523	20	80,038	97	72,125	90
55,375	6	36,537	66	33,097	91
12,369	6	10,440	84	3,861	37
87,002	4	80,645	93	65,658	81
159,956	10	77,058	48	64,097	83

(continued)

U.S. dollars in thousands

HTS chapter	Total U.S. imports
Chapter 39: Plastics and articles thereof	7,981,492
Chapter 40: Rubber and articles thereof	5,306,880
Section VIII: Raw Hides and Skins, Leather, Furskins, and Articles Thereof; Saddlery and Harness; Travel Goods, Handbags, and Similar Containers; Articles of Animal Gut (Other Than Silkworm Gut)	
Chapter 41: Raw hides and skins (other than furskins) and leather	766,895
Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags, and similar containers; articles of animal gut (other than silkworm gut)	4,407,082
Chapter 43: Furskins and artificial fur; manufactures thereof	222,620
Section IX: Wood and Articles of Wood; Wood Charcoal; Cork and Articles of Cork; Manufactures of Straw, of Esparto, or of Other Plaiting Materials; Basketware and Wickerwork	
Chapter 44: Wood and articles of wood; wood charcoal	6,354,057
Chapter 45: Cork and articles of cork	95,585
Chapter 46: Manufactures of straw, of esparto, or of other plaiting materials; basketware and wickerwork	234,504
Section X: Pulp of Wood or of Other Fibrous Cellulosic Material; Waste and Scrap of Paper or Paperboard; Paper and Paperboard and Articles Thereof	
Chapter 47: Pulp of wood or of other fibrous cellulosic material; waste and scrap of paper or paperboard	2,128,925
Chapter 48: Paper and paperboard; articles of paper pulp, of paper, or of paperboard	8,051,189
Chapter 49: Printed books, newspapers, pictures, and other products of the printing industry; manuscripts, typescripts, and plans	1,813,154
Section XI: Textiles and Textile Articles	
Chapter 50: Silk	290,681
Chapter 51: Wool, fine or coarse animal hair; horsehair yarn and woven fabric	431,389
Chapter 52: Cotton	1,626,827
Chapter 53: Other vegetable textile fibers; paper yarn and woven fabric of paper yarn	168,756
Chapter 54: Manmade filaments	1,093,414
Chapter 55: Manmade staple fibers	1,065,255
Chapter 56: Wadding, felt, and nonwovens; special yarns, twine, cordage, ropes and cables and articles thereof	417,328

Total U.S. imports from BDCs		Total U.S. imports of GSP-eligible items from BDCs		Total U.S. imports of GSP duty-free items from BDCs	
Value	Percent of total U.S. imports	Value	Percent of total U.S. imports from BDCs	Value	Percent of total U.S. imports of GSP-eligible items from BDCs
772,168	10	753,099	98	546,099	73
1,590,433	30	747,311	47	341,324	46
321,856	42	288,456	90	212,220	74
917,796	21	221,690	24	207,919	94
21,583	10	20,874	97	18,385	88
1,286,199	20	952,401	74	572,466	60
1,443	2	408	28	408	100
76,633	33	75,065	98	65,566	87
249,634	12	0	0	0	0
215,322	3	191,729	89	147,116	77
123,513	7	22,214	18	8,945	40
31,531	11	28,786	91	27,444	95
54,247	13	3,108	6	2,971	96
663,288	41	20,122	3	6,297	31
76,324	45	4,645	6	4,454	96
121,706	11	152	0	147	97
217,826	20	0	0	0	0
111,078	27	16,239	15	16,061	99

(continued)

U.S. dollars in thousands

HTS chapter	Total U.S. imports
Chapter 57: Carpets and other textile floor coverings	709,347
Chapter 58: Special woven fabrics; tufted textile fabrics; lace, tapestries; trimmings; embroidery	296,271
Chapter 59: Impregnated, coated, covered, or laminated textile fabrics; textile articles of a kind suitable for industrial use	374,818
Chapter 60: Knitted or crocheted fabrics	217,069
Chapter 61: Articles of apparel and clothing accessories, knitted or crocheted	10,196,592
Chapter 62: Articles of apparel and clothing accessories, not knitted or crocheted	17,824,646
Chapter 63: Other made-up textile articles; sets; worn clothing and worn textile articles; rags	1,552,638
Section XII: Footwear, Headgear, Umbrellas, Sun Umbrellas, Walking Sticks, Seatsticks, Whips, Riding-Crops, and Parts Thereof; Prepared Feathers and Articles Made Therewith; Artificial Flowers; Articles of Human Hair	
Chapter 64: Footwear, gaiters, and the like; parts of such articles	10,140,717
Chapter 65: Headgear and parts thereof	687,408
Chapter 66: Umbrellas, sun umbrellas, walking sticks, seatsticks, whips, riding-crops, and parts thereof	173,328
Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair	639,266
Section XIII: Articles of Stone, Plaster, Cement, Asbestos, Mica, or Similar Materials; Ceramic Products; Glass and Glassware	
Chapter 68: Articles of stone, plaster, cement, asbestos, mica, or similar materials	1,096,669
Chapter 69: Ceramic products	2,212,147
Chapter 70: Glass and glassware	1,954,627
Section XIV: Natural or Cultured Pearls, Precious or Semiprecious Stones, Precious Metals, Metals Clad With Precious Metal and Articles Thereof; Imitation Jewelry; Coin	
Chapter 71: Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewelry; coin	12,390,123
Section XV: Base Metals and Articles of Base Metal	
Chapter 72: Iron and steel	7,882,442
Chapter 73: Articles of iron or steel	6,057,146
Chapter 74: Copper and articles thereof	2,071,322

Total U.S. imports from BDCs		Total U.S. imports of GSP-eligible items from BDCs		Total U.S. imports of GSP duty-free items from BDCs	
Value	Percent of total U.S. imports	Value	Percent of total U.S. imports from BDCs	Value	Percent of total U.S. imports of GSP-eligible items from BDCs
299,770	42	3,288	1	1,816	55
33,310	11	60	0	56	93
19,057	5	2,394	13	1,630	68
41,505	19	0	0	0	0
4,146,454	41	8,433	0	7,636	91
8,254,538	46	191,566	2	51,414	27
626,572	40	182,282	29	50,842	28
2,825,581	28	274,697	10	89,738	33
199,959	29	28,349	14	18,932	67
12,767	7	12,767	100	11,354	89
86,052	13	86,036	100	80,486	94
184,580	17	146,234	79	136,259	93
453,148	20	293,031	65	218,293	74
383,453	20	214,101	56	189,103	88
5,076,114	41	1,366,485	27	706,177	52
1,212,484	15	214,350	18	95,701	45
813,034	13	525,271	65	343,167	65
569,890	28	474,405	83	266,964	56

(continued)

U.S. dollars in thousands

HTS chapter	Total U.S. imports
Chapter 75: Nickel and articles thereof	856,043
Chapter 76: Aluminum and articles thereof	3,417,124
Chapter 78: Lead and articles thereof	119,336
Chapter 79: Zinc and articles thereof	877,230
Chapter 80: Tin and articles thereof	257,891
Chapter 81: Other base metals; cermets; articles thereof	556,371
Chapter 82: Tools, implements, cutlery, spoons, and forks of base metal; parts thereof of base metal	2,129,829
Chapter 83: Miscellaneous articles of base metal	1,854,582
Section XVI: Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles	
Chapter 84: Nuclear reactors, boilers, machinery, and mechanical appliances; parts thereof	73,589,071
Chapter 85: Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	66,242,779
Section XVII: Vehicles, Aircraft, Vessels, and Associated Transport Equipment	
Chapter 86: Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signaling equipment of all kinds	743,739
Chapter 87: Vehicles other than railway or tramway rolling stock, and parts and accessories thereof	78,078,642
Chapter 88: Aircraft, spacecraft, and parts thereof	7,294,653
Chapter 89: Ships, boats, and floating structures	356,917
Section XVIII: Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Clocks and Watches; Musical Instruments; Parts and Accessories Thereof	
Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	15,440,068
Chapter 91: Clocks and watches and parts thereof	2,219,505
Chapter 92: Musical instruments; parts and accessories of such articles	824,004

Total U.S. imports from BDCs		Total U.S. imports of GSP-eligible items from BDCs		Total U.S. imports of GSP duty-free items from BDCs	
Value	Percent of total U.S. imports	Value	Percent of total U.S. imports from BDCs	Value	Percent of total U.S. imports of GSP-eligible items from BDCs
21,475	3	1,065	5	1,030	97
378,132	11	222,145	59	155,624	70
38,982	33	38,982	100	37,362	96
136,022	16	135,114	99	119,920	89
159,737	62	5,223	3	4,672	89
116,989	21	14,108	12	10,738	76
195,263	9	161,928	83	129,846	80
291,021	16	280,744	96	160,005	57
6,548,765	9	3,713,048	57	1,816,217	49
17,816,784	27	10,942,590	61	3,669,526	34
95,255	13	35,108	37	34,907	99
6,265,273	8	2,091,728	33	717,933	34
342,903	5	184,618	54	5,746	3
9,712	3	6,474	67	3,680	57
1,714,996	11	1,651,643	96	458,689	28
161,626	7	47,201	29	31,308	66
58,488	7	50,577	86	28,660	57

(continued)

U.S. dollars in thousands

HTS chapter	Total U.S. imports
Section XIX: Arms and Ammunition; Parts and Accessories Thereof	
Chapter 93: Arms and ammunition; parts and accessories thereof	562,939
Section XX: Miscellaneous Manufactured Articles	
Chapter 94: Furniture; bedding, mattresses, mattress supports, cushions, and similar stuffed furnishings; lamps and lighting fittings, NESI; illuminated signs, illuminated nameplates, and the like; prefabricated buildings	7,117,835
Chapter 95: Toys, games, and sports requisites; parts and accessories thereof	10,101,730
Chapter 96: Miscellaneous manufactured articles	1,593,303
Total	**$506,012,176**

Total U.S. imports from BDCs		Total U.S. imports of GSP-eligible items from BDCs		Total U.S. imports of GSP duty-free items from BDCs	
Value	Percent of total U.S. imports	Value	Percent of total U.S. imports from BDCs	Value	Percent of total U.S. imports of GSP-eligible items from BDCs
112,154	20	60,133	54	16,757	28
1,698,655	24	1,689,524	99	1,272,174	75
1,176,381	12	1,113,983	95	844,813	76
245,496	15	230,394	94	164,503	71
$107,107,457	**21**	**$35,722,576**	**33**	**$16,746,479**	**47**

Legend

NESI = Not elsewhere specified or included

Source: U.S. Department of Commerce/Bureau of the Census.

Beneficiaries of Product Addition Petitions

We assessed two annual cycles (1989 and 1990) of product addition petitions to determine which BDCs submitted petitions and the extent of benefits received after a petition was granted. In both cycles, the petitioners for products that were granted GSP eligibility were always a top 20 duty-free shipper, and Mexico had the largest number of petitions considered for eligibility from any one country.[1]

Twenty-three items were added as a result of the 1989 annual review (see table 4.1, p. 77). In the first year following product eligibility, GSP countries shipped 21 of these items. The product petitioners had the highest percentage of shipments that received duty-free benefits for 62 percent of these items and for 76 percent of the 17 items shipped by GSP countries the second year after eligibility. On a value basis, the strong position of petitioners was evident, with petitioners receiving GSP benefits on $18.5 million in exports for all newly added products, while all other BDCs had duty-free access on $2 million in the second year. Between the first and second year of eligibility, BDCs overall were able to increase their import market share relative to ineligible countries in 67 percent of cases where BDCs and other countries shipped an item in both years. The range of this increase varied widely for individual items, from a 1-percent increase to a 52-percent increase.

The exporting position of petitioners was not as dominant for the 58 products added after the 1990 annual review, though it was still strong.[2] The petitioner, always a top 20 shipper, was the primary recipient of benefits in 48 percent of the cases where BDCs shipped an item the year after eligibility was granted. Petitioners received duty-free treatment on $122 million in imports, while other BDCs received it on $119 million.

For the 1990 annual review, we were able to track 17 of the 42 items that were shipped by GSP countries in their last year of ineligibility.[3] GSP countries were able to increase their import market share at the expense of ineligible countries for 9 of the 17 items (53 percent) the year after

[1]Beginning in 1991, Mexico was denied consideration of any petitions to grant products GSP eligibility. This event occurred because of concurrent North American Free Trade Agreement (NAFTA) negotiations and a concern that granting Mexico's petitions might be "giving away" potential negotiating points.

[2]While 59 products were actually added, 2 of them were classified under the same U.S. HTS number and so were combined in examining GSP imports after their eligibility.

[3]In recent years, it has been impossible to track many items to assess their import performance in the years before and after GSP eligibility. Many newly eligible products are assigned new 8-digit tariff numbers, primarily to isolate them out of a basket of articles and grant GSP eligibility to just one specific item, instead of an entire basket of goods.

eligibility was granted. This share increase ranged from 1 percent for lead crystal drinking glasses to a 38-percent increase for an isocyanate organic chemical compound. BDC import market share actually decreased in three cases and remained unchanged in five cases.

It should be noted that our analysis showed that GSP eligibility did not ensure increased duty-free export values for BDCs over time. Between the first and second year of eligibility for the 23 items added during the 1989 annual review, the value of shipments for petitioners and other BDCs receiving duty-free benefits decreased for 7 items, increased for 8 items, and remained at zero in 8 cases. For the 17 items tracked before and after eligibility from the 1990 annual review, the value of total import shipments for these items from GSP countries decreased overall after GSP eligibility was granted, going from $217.7 million before eligibility to $199 million afterwards.

Further, it was clear that granting eligibility to a product did not mean that the item would even be shipped at all by the petitioner or other BDCs. For the 23 products added during the 1989 review, 1 was not shipped by any trading partner, and another was not shipped by any GSP country, leaving 21 items shipped by BDCs the first year after eligibility. Three of these 21 items were not shipped by the petitioner. For the 58 items added after the 1990 annual review, 5 were not shipped by any U.S. trading partner, and 11 additional items were not shipped by a GSP-eligible country the year after eligibility, leaving 42 items shipped by a BDC. Petitioners did not ship nine of these items.

Comments From the Office of the U.S. Trade Representative

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

June 29, 1994

Dr. Allan I. Mendelowitz
Managing Director
International Trade, Finance and Competitiveness Issues
U.S. General Accounting Office
Washington, DC 20548

Dear Dr. Mendelowitz:

This letter provides the Administration's comments on the draft report by the General Accounting Office's (GAO) assessing the Generalized System of Preferences (GSP) program, which was received by the Office of the U.S. Trade Representative (USTR) on June 3, 1994.

First, on behalf of the Administration, USTR would like to express its appreciation to GAO for the fine analytical work that went into the preparation of this report. We welcome in particular the enlightening and useful statistical analysis on the use of the GSP program. Second, we have a number of comments of an editorial or technical nature that we would like to share with GAO staff in a more informal way. For example, we have some concerns about the way that the views of USTR officials were characterized in the report, which we do not believe were entirely accurate in every instance. We will be contacting GAO with these comments.

For purposes of our formal comment, the Administration would like to focus on the report's major conclusions. In general, we believe that the report's findings reflect considerable balance and reasonableness. In particular, we agree with many of the objectives behind the specific recommendations in the GAO's assessment. In fact, we have adopted some of them in the Administration's legislative proposal to renew the program. Below, we provide specific comments on each of the recommendations summarized in the report's Executive Summary.

See pp. 94-95.

Comments on Product Petition Recommendations

(1) "Make public the guidelines the GSP subcommittee uses in analyzing product petitions"

The Administration's proposal would clarify the type of information required in product petitions, and would affirmatively require the Trade Policy Staff Committee to consider import and production data from all principal beneficiaries (not just the petitioning country) in accepting petitions.

With respect to specific guidelines that better define "import sensitive," the Administration reiterates its view that the indices currently listed in the GSP regulations as the type of information to be provided by petitioners are all potentially relevant to determining import sensitivity. However, nearly 20 years of practice indicates that no one group of indices or "guidelines" would be applicable or appropriate in every case. Consequently, such a list, unless it were quite broad and long (as it is in the current regulations), could be misleading.

In practice, the relevant considerations in any particular product review are clarified through the close contact that the GSP Subcommittee has with petitioners and respondents. Through communication with Subcommittee members, such interested parties can and do obtain a better understanding of the various factors that are considered material. We believe that this relatively informal approach is superior to some seemingly definitive but arbitrary set of "guidelines."

See p. 94.

(2) "Indicate clearly in the Federal Register notices of final decisions on GSP petitions that petitioners can write to request a written explanation of any decision."

The Administration appreciates that GSP petitioners may not always be aware of their right under GSP regulations to request a written explanation for the denial of a petition (see GSP regulations at 15 CFR 2007.4(c) and (d)). To help rectify this situation, the Administration is prepared to reiterate clearly in the Federal Register the rights of parties under these sections.

(3) "Accept only product petitions that include all required information."

See comment 1.

Under the current regulations, there is no "required" information that petitions must contain, only the requirement that petitioners make a "good faith" effort to obtain a rather long list of data. In practice, obtaining all of this information is practically impossible for most petitioners, a situation that has led to a rather flexible interpretation of what constitutes an informationally "acceptable" petition. This in turn can result in a degree of uncertainty and unpredictability in the GSP review process, as the GAO report discusses.

Consequently, the Administration has proposed specifying a mandatory core of information that all petitions must contain in order to be accepted for formal review. This would include the types of information that petitioners can be reasonably be expected to obtain, such as local production and capacity, and information about local competitiveness.

Comments on Country Practice Petition Recommendations

(1) "Review country practice petitions on a separate and more flexible time frame from product petitions that better fits their different dynamics."

The Administration's renewal proposal reflects its desire to conduct country practice cases on a different time frame than product petitions. Specifically, the proposal envisages a two stage process, where more time is allotted to considering if a petition is acceptable for review, and for developing internal USG objectives in conducting the review. It also allows for the formal solicitation of comments from countries that are the subject of petitions before a decision to accept a petition is taken. In addition, with respect to intellectual property petitions, the Administration has proposed coordinating the receipt and consideration of petitions with the "Special 301" process, in order to make its intellectual property policy more coherent and straightforward.

See pp. 124-125.

(2) "Accept emergency petitions for expedited review out of cycle, when warranted by events."

We note that there is nothing in the current regulations that precludes country practice petitions from being accepted or reviewed on an expedited basis. However, it is true, as the GAO's report notes, that this is something that has been rarely done in practice. There are at least two reasons for this.

First, unlike emergency product reviews, which are conducted almost exclusively when a domestic supplier of a product is directly and seriously affected by GSP imports, it is much more difficult to demonstrate that a domestic interest is so seriously affected by a country practice that an "emergency" review is warranted. For this reason alone, we believe that emergency country practice reviews will justifiably continue to be rare events.

Second, the GSP law requires that the President "take into account" the extent to which adequate and effective intellectual property protection is provided, and whether beneficiary countries are "taking steps" to afford internationally recognized worker rights. These determinations by their nature involve the weighing and consideration of a great volume of information and data. As the GAO report acknowledges, GSP country practice findings are and should be the result of careful review and deliberation. The concept of "emergency" circumstances is not consistent with this notion.

(3) "Make public the guidelines used in deciding whether or not to accept country practice petitions for full review."

The Administration agrees that the current informational standards for the acceptance of country practice petitions are vague, and appear insufficiently transparent to many petitioners and respondents. To help rectify this, the Administration's proposal would clarify the informational standards for the acceptance of petitions.

See p. 125.

(4) "Revise the "new information" standard to allow acceptance of petitions demonstrating a lack of promised progress."

The current standard for re-reviewing country practices petitions is that they contain "substantial new information warranting review." The intent of this provision is to avoid having to perpetually re-review countries that have been recently found to be "taking steps" on the basis of information that has already been considered, or essentially trivial new information. This standard does not preclude consideration of information that countries are not making promised progress, if such progress was instrumental in the finding of "taking steps" in the first place. As noted in the GAO report, the fact that the GSP Subcommittee now more clearly explains its rationale and expectations in finding a country to be "taking steps" makes it easier for the petitioner to justify the lack of expected progress as "new information."

In brief, while we acknowledge that there can be disagreement about what constitutes "substantial new information" in any particular case, we do not think that the issue is one of whether progress in fulfilling past promises can be so considered. It clearly can be. Rather, in any particular case, the issue is one of ascertaining the facts, and determining their significance in relation to a previous finding of "taking steps."

(5) "Expand the range of sanctions that can be taken when beneficiary countries have not met GSP country practice standards in order to include partial sanctions where appropriate."

The Administration believes that the broad authority possessed by the President in granting or limiting GSP benefits already allows him significant flexibility in choosing sanctions on GSP beneficiary countries, whether for worker rights or other areas. However, the specific worker rights language in the GSP law itself could appear to preclude anything other than a total revocation of GSP benefits in the case of countries found to be not "taking steps." Thus, the Administration has proposed some technical changes to the GSP statute to make clearer that the President may consider partial action in worker rights cases.

We hope that you find these comments useful. While we have commented only on the report's explicit recommendations, we consider several of the report's more general findings of particular importance. We are pleased that you have confirmed both the usefulness of the GSP program, and the fact that the GSP process is generally well managed and balanced.

If you or your staff would like further discussion of these or other issues, please do not hesitate to contact us.

Sincerely,

Ellen L. Frost
Counselor to the USTR

The following is GAO's comment on the USTR's letter dated June 29, 1994.

GAO Comment

1. We do not agree with USTR's position that "Under the current regulations, there is no "required" information that petitions must contain, only the requirement that petitioners make a "good faith" effort to obtain a rather long list of data." The GSP regulations at section 2007.1(a) specify a list of required information that petitions must contain, but then provide: "A request submitted pursuant to this Part . . . 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." USTR has taken a very broad interpretation that appears to make the exception the rule.

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