Generalized System of Preferences

HANDBOOK ON THE SCHEME OF THE UNITED STATES OF AMERICA

Including features of the African Growth and Opportunities Act (AGOA) Programme

UNITED NATIONS

UNCTAD/ITCD/TSB/Misc.58/Rev.1

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(INT/97/A06)
UNCTAD Technical Cooperation Project on Market Access,
Trade Laws and Preferences

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Note

The descriptions and classification of countries and territories in this study and the arrangement of material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic system or degree of development.

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Acknowledgements

The present handbook is based on the United States GSP Handbook (UNCTAD/ITCD/TSB/Misc.58) prepared by Ms. J. VanGrasstek, Washington Trade Reports, Washington, DC. It has been revised and prepared by Mr. Stefano Inama, UNCTAD Project Manager, and Ms. Takako Ikezuki, UNCTAD consultant.

Preface

This handbook is published under the auspices of the UNCTAD Technical Cooperation Project on Market Access, Trade Laws and Preferences (INT/97/A06). It is a part of a series of publications aimed at helping exporters, producers and government officials to utilize the trade opportunities available under the various GSP schemes.

The series comprises the following publications:

- Handbook on the Scheme of Australia (UNCTAD/ITCD/TSB/Misc.56)
- Handbook on the Scheme of the Bulgaria (UNCTAD/ITCD/TSB/Misc.67)
- Handbook on the Scheme of Canada (UNCTAD/ITCD/TSB/Misc.66)
- Handbook on the Scheme of the Czech Republic (UNCTAD/ITCD/TSB/Misc.63)
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- Handbook on the Scheme of the United States of America (present volume)
- Handbook on the Scheme of Turkey (UNCTAD/ITCD/TSB/Misc.74, forthcoming)
- Handbook on the Scheme of the Russian Federation (UNCTAD/ITCD/TSB/Misc.75, forthcoming)
- List of GSP Beneficiaries (UNCTAD/ITCD/TSB/Misc.62)
- Digest of GSP Beneficiaries (UNCTAD/ITCD/TSB/Misc.62)
- Negotiating Anti-Dumping and Setting Priorities Among Outstanding Issues in the Post-Doha Scenario: A First Examination in the Light of Recent Practice and DSU Jurisprudence (UNCTAD/ITCD/TSB/Misc.72)
- Handbook on Special Provisions for LDCs (UNCTAD/ITCD/TSB/Misc.73, forthcoming)
- AGOA: A Preliminary Assessment (UNCTAD/ITCD/TSB/2003/1, forthcoming)
- Training Module on Anti-Dumping (UNCTAD/ITCD/TSB/2003/2, forthcoming)
- Training Module on Safeguards (UNCTAD/ITCD/TSB/2003/3, forthcoming)
- Training Module on Subsidies and Countervailing Duties (UNCTAD/ITCD/TSB/2003/4, forthcoming)
- Rules of Origin in International Trade (UNCTAD/ITCD/TSB/2003/5, forthcoming)
- Dispute Settlement and Developing Countries (UNCTAD/ITCD/TSB/2003/7, forthcoming)

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Note
Some of these publications are also available on the Internet:
http://www.unctad.org

Abbreviations and acronyms

AGOA	African Growth and Opportunity Act
ASEAN	Association of South-East Asian Nations
ATPA	Andean Trade Preferences Act
BDC	beneficiary developing country
CARICOM	Caribbean Common Market
CBI	Caribbean Basin Initiative
CFR	Code of Federal Regulations
CNL	competitive-need limitations
EAC	Tripartite Commission on East African Cooperation
GATT	General Agreement on Tariffs and Trade
GNP	gross national product
GSP	Generalized System of Preferences
HTSUS	Harmonized Tariff Schedule of the United States
HTS	Same as HTSUS
IBRD	International Bank for Reconstruction and Development
IMF	International Monetary Fund
IPRs	intellectual property rights
LDBDC	least developed beneficiary developing country
MFN	most favoured nation (now known in the United States as NTR)
NAFTA	North American Free Trade Agreement
NTR	normal trade relations (same as MFN)
OMB	Office of Management and Budget
PNTR	permanent normal trade relations
SADC	Southern African Development Community
SETPA	Southeast Europe Trade Preferences Act
SPI	special program indicator
TPRG	Trade Policy Review Group
TPSC	Trade Policy Staff Committee
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
USC	United States Code
USITC	United States International Trade Commission
USTR	United States Trade Representative
WAEMU	West African Economic and Monetary Union
WTO	World Trade Organization

Introduction

The Generalized System of Preferences (GSP) provides preferential duty-free entry to numerous products imported into the United States from over 100 designated beneficiary countries and territories. The United States and 26 other industrialized countries adopted GSP programme in the 1970s, each of which varies according to the beneficiaries, products covered and type of preferences granted. The purpose of this handbook is to spell out the terms of the United States programmes, with special emphasis on how firms and Governments in the beneficiary countries can best use the GSP programme to their fullest advantage. The Trade Act of 2002 reauthorizes the United States GSP programme, which expired in September 2001.[1] The reauthorized programme will be effective through 31 December 2006.

Two major themes underlie the analysis here. The first is that policy makers and exporters should bear in mind the limitations of the GSP. This programme is not designed to be the principal basis for bilateral trade relationships between the United States and the beneficiary countries. Owing to its numerous limitations, it should instead be assessed on the basis of its significance for specific products. There are many products for which the programme is entirely irrelevant (either because they are not eligible for the GSP or are already eligible for duty-free entry on a most-favoured-nation basis),[2] others for which the programme is extremely important (because they are GSP-eligible and would otherwise be subject to relatively high tariffs), and many more still for which the GSP is of modest significance (because they are GSP-eligible but otherwise subject to relatively low tariffs). The first step that firms and Governments should take in optimizing their benefits under the GSP is to determine where products of interest to them fit along this spectrum.

The second theme in this handbook is that, notwithstanding the limitations of the GSP, countries can take steps to make the most of the programme. Countries would do well to determine whether their exporters are taking full advantage of the available opportunities. Moreover, the United States rules offer several means by which interested parties — United States and foreign — can petition for changes to the programme's product coverage. After finding out how the existing product coverage affects products of interest to them, firms and Governments should determine whether there are any steps they should take to preserve or expand their benefits. Chief among these calculations is whether products of interest to the country are affected by the "competitive-need limits" on the amount of benefits that any country could receive for any product. While these limits generally work to the disadvantage of GSP beneficiary countries, there are steps that countries can take to protect their interests. These rules are discussed at length below, together with guidance on how firms and Governments can best deal with them.

In addition to the Unites States GSP programme, the handbook covers the African Growth and Opportunity Act (AGOA—Title I of the Trade and Development Act of 2000), signed into law in May 2000. AGOA strengthens United States relations with sub-Saharan African countries and provides incentives for these countries to achieve political and economic reform and growth through enhanced GSP preferences. The section of AGOA in this handbook provides government officials and exporters in eligible sub-Saharan African countries with a detailed

[1] The Trade Act of 2002 was signed into law by the President of the United States on 6 August 2002.

[2] Note that in current United States usage, the term "normal trade relations" is employed in place of the more traditional designation "most favoured nation" (MFN). Congress mandated this change in 1998.

overview of this new United States trade policy. In addition to examining the information and analysis that follows, readers should consult the information in the appendices.

I. HOW THE UNITED STATES PROGRAMME IS ADMINISTERED

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

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

Office of the United States Trade Representative
USTR Annex
1724 F Street, NW
Washington, DC 20508
Tel.: (202) 395-6971; Fax: (202) 395-9481

The USTR consults with other United States government agencies on all important issues affecting the GSP. The GSP Subcommittee of the Trade Policy Staff Committee is responsible for recommending to the President the actions he should take on petitions that seek changes in the programme's product or country coverage. This subcommittee is chaired by a USTR official and includes members from all government agencies with an interest in international economic relations (e.g. the Departments of State, Commerce, Labor, etc.).

The GSP Subcommittee conducts annual reviews of the GSP programme, in which it considers a wider range of petitions. Any interested party — embassies, government agencies, United States or foreign firms, and so forth — may petition the GSP Subcommittee to request modifications in the list of products or countries eligible for GSP treatment. A beneficiary country can use this annual review to ask that the subcommittee add a product to the GSP, or that it waive the limits that apply to imports of a specific product. Other interested parties variously ask that the subcommittee add a product to the GSP, remove a product from the programme, remove a specific country's eligibility for a specific product, or remove a country altogether from the GSP. The GSP Subcommittee usually decides within several weeks which of these petitions it will accept for review. The petitions that are accepted for review are then subject to a months-long process of hearings, advice from the United States International Trade Commission (USITC)[3], and internal deliberations; the petitions that are not accepted die at this point.

[3] Note that the USITC conducts an investigation that runs parallel to the GSP Subcommittee's consideration of petitions. Most of the information that is presented in petitions and hearings to the GSP Subcommittee will also be presented to the USITC.

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

1947
Havana Charter for the International Trade Organization provides for "preferences … in the interests of economic development," but does not enter into effect.

1964
GSP is proposed at the first United Nations Conference on Trade and Development (UNCTAD I).

1967
President Johnson indicates at the Punta del Este conference of Western Hemisphere leaders that he is prepared to consider preferences for developing countries.

1969
President Nixon declares his support for the GSP and includes it in the proposed Trade Act of 1969 that he sends to Congress for approval.

1971
GATT contracting parties grant a 10-year waiver for the GSP.

1974
Congress approves the GSP as part of the Trade Act of 1974.

1975
The Trade Act of 1974 is signed into law, and countries are designated for the programme.

1976
The GSP enters into effect.

1979
GATT contracting parties approve an Enabling Clause in the Tokyo Round, providing a permanent waiver and exempting the GSP from GATT rules.
A provision in the Trade Agreements Act of 1979 allows for the designation to the GSP of OPEC member countries if they did not participate in the oil embargoes.

1980
Ecuador, Indonesia and Venezuela are designated as GSP beneficiaries.

1983
The Caribbean Basin Economic Recovery Act provides superior preferences for Central American and Caribbean countries.

1984
The Trade and Tariff Act of 1984 renews the GSP through mid-1993.

1985-1987
A general review of the GSP programme leads to numerous changes in product eligibility.

1985
Nicaragua's GSP privileges are terminated for reasons of workers' rights.

1987
Paraguay is suspended from the GSP for reasons of workers' rights.

1988
Chile is suspended from the GSP for reasons of workers' rights.

1989
Taiwan Province of China, Hong Kong (China), Singapore and the Republic of Korea are graduated from the GSP.

1991
Chile and Paraguay are reinstated to the GSP.
The Andean Trade Preferences Act is enacted, providing superior preferences for Bolivia, Colombia, Ecuador and Peru.

1990-1992
Several Eastern European and Baltic States are designated for the GSP.

1993-1995
Following a change in the law, most States of the former Soviet Union are designated for the GSP.

1993
The GSP is renewed several days after it expires.

1994
The GSP is renewed three months after it expires.
Mexico loses GSP benefits upon the North American Free Trade Agreement's entry into force.

1995
Israel is graduated from the GSP.

1996
The GSP is renewed 13 months after it expires.

1997
Many products are made GSP-eligible when imported from least developed countries.
In a dispute over intellectual property protection the United States removes half of Argentina's GSP privileges.
President Clinton proposes the African Growth and Opportunity Act for sub-Saharan African countries.

1998
Aruba, the Cayman Islands, Cyprus, Greenland, Malaysia, Macau and the Netherlands Antilles are graduated from GSP.

1999
President Clinton proposes the Southeast Europe Trade Preferences Act. Gabon and Mongolia are designated for the GSP. Mauritania is reinstated to the GSP as an LDC beneficiary.

2000
President Clinton signs the African Growth and Opportunity Act (AGOA) into law on 18 May 2000.
Thirty-four sub-Saharan African countries are designated as AGOA beneficiaries. Nigeria and Eritrea are designated for the GSP. Belarus is suspended from the GSP.

2001
Swaziland is designated as an AGOA beneficiary. The GSP expires in September.

2002
Côte d'Ivoire is designated as an AGOA beneficiary. The Trade Act of 2002 reauthorizes the GSP scheme in August. The 2002 Act modifies certain rules under AGOA.

II. BENEFITS AND ELIGIBILITY

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

(a) It must be from a designated beneficiary country;
(b) It must be eligible for GSP treatment; and
(c) It must meet the GSP rules of origin.

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

A. Country eligibility

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

Country eligibility has evolved considerably over the past quarter of a century (see figure 1). The original GSP statute excluded Communist countries (other than Yugoslavia) and OPEC members, but both of those restrictions were later relaxed. Ecuador, Indonesia and Venezuela were designated for the GSP in 1980 (being OPEC countries that had not joined in the Arab countries' oil embargo), and most former Soviet republics and satellites won GSP benefits with the end of the Cold War. Other economies have been "graduated" from the GSP upon achieving sufficiently high levels of income and development: the four main Asian newly industrialized economies (i.e. Hong Kong (China), Republic of Korea, Singapore and Taiwan Province of China) were graduated in 1989, and Malaysia was graduated in 1998. Mexico lost GSP when the North American Free Trade Agreement (NAFTA) entered into effect in 1994. Other countries have seen their benefits reduced, suspended or terminated as a result of disputes over workers' rights and other matters, as discussed in a later section.

The United States programme distinguishes between two categories of countries. Forty countries are considered by the United States to be least developed beneficiary countries, as identified in appendix 1. These countries enjoy two advantages not shared by the other beneficiaries: a much wider range of products that are eligible for GSP treatment (as discussed in section III.B), and they are not subject to the competitive-need limitations (as discussed in section IV).

The law provides that a beneficiary country can be graduated completely from the programme if "the President determines that a beneficiary developing country has become a 'high income' country, as defined by the official statistics of the International Bank for Reconstruction and Development". This provision has been used to graduate several Asian newly industrialized economies, among others.

B. Product eligibility

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

In order to determine whether a product is GSP-eligible, one should know how to read the HTSUS. Figure 2 reproduces part of a page from the United States schedule, together with an explanation of its structure and codes. The principal distinction is between countries that receive normal trade relations (NTR) (MFN) treatment, as specified in column 1, and those that are still subject to the high tariff rates in column 2. While the column 2 tariffs applied to many Communist countries during the Cold War, today only three countries remain subject to these rates.[4] Countries that receive MFN treatment pay the tariffs shown in column 1. Some of the countries that receive NTR treatment also benefit from preferential trade agreements or programme tariffs, as shown in the "Special" sub-column of column 1. Products that are eligible for GSP treatment are identified by the letter "A" in this sub-column. This designation is further qualified in the case of products for which some GSP countries are denied duty-free treatment (A*), and products that are eligible for GSP treatment only when imported from least developed countries (A+). Additionally, products that are eligible under AGOA are indicated by the letter "D" (as discussed in section VIII).

Certain articles are prohibited from receiving GSP treatment. These include most textiles,[5] watches, footwear, handbags, luggage, flat goods, work gloves and other leather wearing apparel which were not eligible for GSP on 1 April 1984. In addition, any other article determined to be "import sensitive" cannot be made eligible; in this regard, the GSP law specifically cites steel, glass and electronic articles. Beyond these restrictions, the GSP Subcommittee is generally authorized to designate products for GSP treatment.

[4] Cuba, the Lao People's Democratic Republic and the Democratic People's Republic of Korea. A NTR agreement with the Lao People's Democratic Republic is currently pending.

[5] Although textile and apparel products are generally excluded from the GSP, there are some exceptions to this rule. For example, six categories of textile products are eligible for GSP treatment when the GSP beneficiary has signed an agreement with the United States to provide certification that the items are handmade products of the exporting beneficiary. The tariff categories covered are 5701.10.13, 5702.10.10, 5702.91.20, 5805.00.20, 6304.99.10 and 6304.99.40.

Figure 2
Harmonized Tariff Schedule of the United States (2002)[6]

Heading/ Subheading	Stat. Suffix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
0703		Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled:				
0703.10		Onions and shallots:				
0703.10.20	00	Onion Sets	kg	0.83¢/kg	Free (A*,CA,E,IL, J,JO,MX)	5.5¢/kg
0703.10.30	00	Other: Pearl onions not over 16 mm in diameter	kg	0.96¢/kg	Free (A,CA,E,IL,J, JO,MX)	5.5¢/kg
0703.10.40	00	Other 1/	kg	3.1¢/kg	Free (A,CA,E,IL,J, JO) See 9906.07.11-9906.07.13 (MX)	5.5¢/kg
0703.20. 00	10 20 90	Garlic Fresh whole bulbs Fresh whole peeled cloves Other	kg kg kg	0.43¢/kg	Free (A*,CA,E,IL, J,JO, MX)	3.3¢/kg
0703.90.00	00	Leeks and other alliaceous vegetables	kg	20%	Free (A+,CA,D,E, IL,J,MX) 12% (JO)	50%

How to read the United States tariff schedule

- The numbers and nomenclature (product descriptions) used in the United States tariff schedule are identical to those used by all countries that adhere to the Harmonized Tariff System.
- The eight-digit tariff item number identifies the product. It is at this level of specificity that tariff rates are determined.
- The two-digit statistical suffix further distinguishes products for reporting purposes, but has no effect on the tariff rate.
- The unit of quantity indicates whether the item is counted by weight, volume, number, etc. This helps to determine the tariff when rates are expressed in specific terms (e.g. the cents per kilogram for most products shown above) rather than *ad valorem* terms (e.g. the 20 per cent for HTS item 0703.90.00).
- Column 1 applies to countries that receive normal trade relations (NTR) treatment, otherwise known as MFN treatment. It is subdivided into non-preferential ("General") and preferential ("Special") columns.

[6] The USITC provides Internet access to find out about GSP product eligibility and tariff rates, and for other necessary information. http://dataweb.usitc.gov.

- Letters in the "Special" column indicate whether the product is eligible for duty-free or reduced-duty treatment under various preferential trade agreements or programmes:

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

- Column 2 applies to three countries that do not receive NTR treatment
- HTS item 0703.10.20 would face a tariff of 0.83 cents per kilogram if imported from a country that receives NTR treatment, or 5.5 cents per kilogram from a country that does not. It can be imported duty-free under the GSP, but the asterisk indicates that one or more countries are excluded.
- HTS item 0703.10.40 can be imported duty-free from any GSP beneficiary country.

C. Rules of origin

The rules of origin provide that an article must be shipped directly from the beneficiary country to the United States without passing through the territory of any other country or, if shipped through the territory of another country, the merchandise must not have entered the commerce of that country en route to the United States.[7] In all cases, the invoices must show the United States as the final destination.

[7] Articles trans-shipped between the beneficiary country and the United States are eligible for GSP under certain circumstances. Eligible articles shipped from a beneficiary developing country through a free trade zone in any other beneficiary will qualify for GSP if: (1) the merchandise does not enter into the commerce of the country maintaining the free trade zone; and (2) the eligible articles do not undergo any operations other than sorting, grading or testing, packing, unpacking, changing or packing, decanting or repacking, affixing marks, labels or any other distinguishing signs, or operations necessary to ensure the preservation of the merchandise in its condition as introduced into the free trade zone. Shipments may also be made through free trade zones in non-beneficiaries and still qualify for GSP if: (1) the merchandise remained under the customs authority of the intermediate country; (2) the merchandise does not enter into the commerce of the country maintaining the free zone, except for purchases or sale other than at retail; (3) the eligible articles do not undergo any operations other than loading and unloading, or other operations necessary to ensure the preservation of the merchandise in the condition as introduced into the free trade zone; and (4) for articles trans-shipped through former beneficiaries who are members of regional associations (see below), the processing described in (2) above is permitted. This exception currently applies to goods of ASEAN beneficiaries transshipped through Singapore or Brunei Darussalam. If merchandise is purchased and resold, other than at retail, for export within the free trade zone, two Certificates of Origin are required: one from the original beneficiary noting that the goods are eligible for the United States GSP and containing the name of the consignee in the United States or the free trade zone, and one from the person responsible for the articles in the free trade zone, or any other person having knowledge of the facts, declaring what operations were performed within the zone.

The rules further provide that the sum of the cost or value of materials produced in the beneficiary country plus the direct costs of processing[8] must equal at least 35 per cent of the appraised value of the article at the time of entry into the United States. Imported materials can be counted towards the value-added requirement only if they are "substantially transformed" into new and different constituent materials of which the eligible article is composed. Where articles are imported from GSP-eligible regional associations, member countries of the association will be accorded duty-free entry if they together account for at least 35 per cent of the appraised value of the article, the same for a single country. The Customs Service is charged with determining whether an article meets the GSP rules of origin.

The 35 per cent value-added can be spread across more than one country when imported from GSP-eligible members of certain regional associations. Articles produced in two or more eligible member countries of an association will be accorded duty-free entry if the countries together account for at least 35 per cent of the appraised value of the article, the same requirement as for a single country. The competitive-need limits will be assessed only against the country of origin and not against the entire association. There are currently five associations that may benefit from this provision: the Andean Group, the Association of South-East Asian Nations (ASEAN) excluding Singapore and Brunei Darussalam, the Caribbean Common Market (CARICOM), the Southern Africa Development Community (SADC), and the West African Economic and Monetary Union (WAEMU). The status of countries and territories under this regional-cumulation rule is summarized in appendix 1.

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

It should be noted that the United States programme does not require that GSP imports be accompanied by extensive documentation. It used to be the case that importers had to file a special "Form A" in order to obtain GSP treatment, but that requirement was eliminated several years ago.[9] Today an importer requests GSP treatment simply by placing the prefix "A" before the HTSUS tariff number on the entry documentation. The only additional documentary

[8] The following may be included in the direct costs of processing: all those costs whether directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture or assembly of the merchandise in question, including actual labour costs, fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel; dies, moulds, tooling and depreciation on machinery and equipment, research, development, design, blue-print costs and engineering; and inspection and testing costs. The following may not be included in the direct cost of processing: those items which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing, including profit and general expenses and business overheads (such as administrative salaries, casualty and liability insurance, advertising, and the salesperson's salaries, commissions or expenses).

[9] The letter "A", as used in Form A, is still used in the United States tariff schedules to identify products that are eligible for the GSP.

requirements (other than those mentioned above for transactions within a free zone) pertain to certified handicraft textile products eligible for GSP duty-free treatment. A triangular seal certifying their authenticity and placed on the commercial invoice is required for entry.

III. THE COMPETITIVE-NEED LIMITATIONS

The principal restriction under the United States programme, apart from the non-eligibility of certain categories of products, is the competitive-need limitations (CNLs). The CNLs are intended to prevent the extension of preferential treatment to countries that are already competitive in the production of an item. This section describes the general rules and principles of the CNLs, but readers are also urged to examine appendix 4 (the USTR rules on the GSP in the Code of Federal Regulations). Note also that appendix 8 offers a case study in the operation of the CNLs, examining the experience of ceramic roofing tiles imported from Venezuela.

The CNLs set a ceiling on GSP benefits for each product and country, and are triggered by the trade data that the GSP Subcommittee reviews on an annual basis. With certain exceptions and qualifications, a country will automatically lose its GSP eligibility for a given product (i.e. an eight-digit item in the tariff schedule) the year after the CNLs are exceeded. Since 1985 there have been two CNLs in place: the original, "upper" competitive-need limit and a new, "lower" limit. The "upper" CNL remains the more common, and applies to the great majority of products and countries. It is triggered on a product if during any calendar year United States imports from a country account for half or more of the value of total United States imports of that product[10] or exceed a certain dollar value that is adjusted annually. The figure was originally set at $25 million in 1975, and had risen to $95 million by 2000. It will increase by an additional $5 million in each subsequent year (i.e. it will be $100 million in 2001, $105 million in 2002, etc.). Products that have been found by the GSP Subcommittee to be "sufficiently competitive" when imported from a specified beneficiary are subject to the "lower" CNL. For these products the trigger is 25 per cent or a dollar value set at approximately 40 per cent of the "upper" competitive-need level. GSP modifications resulting from the application of the competitive-need limit take effect on 1 July of the next calendar year.

Products that have exceeded the CNLs can be "graduated" (i.e. permanently removed) from the programme. A product can be graduated on any one of three grounds: (a) in response to petitions submitted in the annual review; (b) in precluding individual beneficiaries from GSP eligibility on newly designated articles; and (c) in denying redesignation to countries eligible for reinstatement of GSP status on specific articles.

There are two principal ways in which a country can maintain its GSP benefits for a product even when it has exceeded the CNLs. One is by obtaining a *de minimis* waiver, which is a temporary (one year) exception available only to products that the United States imports in relatively small quantities. The other option is to obtain a permanent waiver of the CNLs for a specific product. A CNL waiver provides much greater protection than a *de minimis* waiver, and is correspondingly more difficult to obtain. While a *de minimis* request can take the form of a

[10] Certain products can obtain a waiver under section 504(d). The percentage provision is waived for items that were not produced in the United States on 3 January 1985, as provided for in section 504(d) of the GSP law. The list can be modified through petitions submitted in an annual review. For those products on this list, a 504(d) waiver will automatically be granted when required each year.

relatively brief filing, in which the request for a waiver is backed by a modest amount of supporting data and arguments, a CNL petition requires a very substantial amount of information and is subject to a lengthy and difficult review.

Note that all CNLs are automatically waived for the 40 GSP beneficiaries that are designated as least developed countries (see appendix 1).

A. *De minimis* waivers of the CNLs

The GSP Subcommittee can waive application of the CNLs for any product that is imported at a *de minimis* level. *De minimis* waivers are considered for all beneficiaries that exceeded the percentage CNL for a product, but only when United States imports from *all* countries (including GSP beneficiaries and all others) were below a certain dollar limit. Like the dollar-value CNL, the *de minimis* level is adjusted each year. The GSP Subcommittee accepts public comments that either support or oppose the granting of waivers. The subcommittee is more likely to grant a waiver when it receives one or more detailed comments in support of a waiver (e.g. from an embassy or a foreign exporter), and does not receive any comments opposing a waiver (e.g. from a United States producer).

It should be stressed that these waivers are temporary, and are granted only on a year-by-year basis. They are entirely at the discretion of the GSP Subcommittee.

The schedule for the *de minimis* waivers and redesignations is summarized in figure 3.

Figure 3
Typical annual schedule for d*e minimis d*ecisions

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

Note: The last two dates in the schedule coincide with the deadlines for the consideration of petitions in annual reviews, as discussed in the next section (see figure 4).

B. Permanent waivers of the CNLs

As amended in 1984, the GSP law also allows interested parties to petition for a CNL waiver for a product. This means submitting a request to the GSP Subcommittee in the annual review of the GSP, to the effect that a country be permitted to export unlimited amounts of a product duty-free to the United States. If granted, both the percentage and the dollar limit are waived.

CNL-waiver petitions are considered by the GSP Subcommittee in annual reviews. The timing of these reviews is summarized in figure 4. In addition to considering CNL-waiver petitions, the reviews cover "country practices" petitions (as discussed in section VII). The results of annual reviews are announced and implemented at the same time as the *de minimis* waivers discussed in the preceding section.

Petitions for the waiver of CNLs must conform to the GSP Model Petition prepared by the USTR. The model format is reproduced in appendix 7 of this report. Given the complexity of the process and the details that are required for such petitions, many interested parties have found that it is useful to secure the services of Washington-based consultants or lawyers who are experienced in the preparation of CNL-waiver petitions.

Figure 4
Typical annual schedule for GSP petitions

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

There are no absolute rules dictating the outcome of the GSP Subcommittee's deliberations. In deciding whether to grant a CNL waiver, the President (as advised by the subcommittee) must find that a waiver "is in the national economic interest of the United States". The law further specifies that he "shall give great weight to" whether the country is providing reasonable and equitable access to its market for United States goods and services, and the extent to which it is providing reasonable and effective protection to United States intellectual property rights. The law imposes limits on the value of CNL waivers that can be granted globally or to a specific country. While the law guides and limits what the GSP Subcommittee can do, its members have in fact committee have fairly wide discretion. Experience shows that, in general, a petitioner is more likely to be successful if it can offer a well-reasoned and factual argument that granting the petition for a CNL waiver will work to the benefit of both the developing country exporter and its consumers in the United States, without causing harm to United States producers. Conversely,

it can be very difficult to obtain a CNL waiver if the initiative is actively opposed by a domestic United States producer. The process outlined in figure 4 gives those producers multiple opportunities to express any objections they might have.

C. Redesignation

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

IV. ELEMENTS OF RECIPROCITY IN THE UNITED STATES PROGRAMME

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

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

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

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

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

(a) The right of association;
(b) The right to organize and bargain collectively;
(c) A prohibition on any form of forced or compulsory labour;
(d) A minimum age for the employment of children; and
(e) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The workers' rights issue has been the single most frequently raised issue in annual reviews of the GSP. It accounted for 121 out of the 192 "country practices" petitions that were filed with the USTR during 1985–1999.[11] The investigations that followed these petitions led to commitments from some countries to improve their observance of labour rights, while others lost their GSP benefits either through temporary suspension (Burma, Central African Republic, Chile, Maldives, Mauritania, Paraguay, Sudan and Syrian Arab Republic) or permanent termination (Liberia and Nicaragua). One special case is Romania, where benefits were "permanently" terminated in 1987 but were then redesignated in 1994.

Violations of intellectual property rights (IPRs) are the second most common source of complaint in country-practices petitions. For example, in 1997 Argentina lost half of its GSP benefits in an IPR dispute with the United States. The decision was not made as part of a GSP annual review, but was instead a consequence of the "Special 301" IPR law. This statute requires that the USTR conduct annual reviews of trading partners' IPR regimes, and can lead to the imposition of sanctions such as penalty tariffs. In this instance, the USTR determined that the

[11] Author's calculations based on data provided by the USTR.

new Argentine patent law was not consistent with the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights (the Trips Agreement) and decided to impose sanctions via the GSP law.

V. DURATION AND STABILITY OF THE UNITED STATES PROGRAMME

The Trade Act of 1974 authorized the programme for a 10-year period. The 1984 renewal act provided for reauthorization of the programme until 4 July 1993, and ever since that date the survival of the GSP has been tenuous. The programme lapsed for a period of several days in 1993, until Congress approved a 14-month renewal (applied retroactively to the date of expiration). The programme then expired once again, on 30 September 1994, with Congress retroactively renewing it that December. This renewal expired on 31 July 1995. Congress renewed the GSP on 20 August 1996, only to let it expire once more on 31 May 1997. The August 1997 renewal lasted through 31 May 1999. A recent renewal was enacted in December 1999 and lasted through the end of September 2001. The Trade Act of 2002 reauthorized the GSP until December 2006.

The principal reason for these brief GSP reauthorizations is that the programme is no longer cost-free from a budgetary standpoint. The United States adopted new budget rules in 1990 that required a "pay-as-you-go" (PAYgo) approach to any measures that affect the budget.[12] Under the PAYgo rules, any bill that provides for an increase in government expenditures or (as is the case with tariff cuts) a decrease in government revenues must include offsetting measures. The PAYgo principle thus required that the NAFTA and the Uruguay Round implementing bills include new taxes, fees, spending cuts or other measures in order to offset the effect of the forgone tariffs, and these same rules also apply to the GSP. These provisions created a new political complication for the GSP. For every year that the GSP is renewed, legislators must approve hundreds of millions of dollars in spending cuts or tax increases. Proposals to liberalize imports from developing countries are already quite unpopular in many circles, and they do not become more politically attractive to legislators when they are associated with new taxes or spending cuts.

VI. HOW COUNTRIES CAN MAKE THE MOST OF THE GSP

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

A. Ensure that GSP-eligible products take advantage of the programme

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

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

[12] The PAYgo principle dates back to the Gramm–Rudman–Hollings budget rules of 1985, but it was not applied to trade agreements and related programmes (each of which affect tariffs and hence government revenue) until 1990.

(ii) Ascertain whether the United States imports of that product are actually entering under the GSP. This can be done by examining the most recent trade data reported in the database of the USITC, accessible on the Internet at http://dataweb.usitc.gov/.
(iii) If the data show that significant shares of the country's exports of a GSP-eligible product are not entering under the GSP, the firm or Government should determine why the duty-free privileges are not being claimed.

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

B. Seek CNL waivers when appropriate

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

(i) Always submit comments in support of *de minimis* waivers for any products that are included in the USTR's annual "warning list".
(ii) All of the products identified in the warning list should also be considered candidates for CNL-waiver petitions later that same year.
(iii) Products that are eligible for redesignation to the GSP should also be considered candidates for CNL-waiver petitions, especially those for which current imports are near (but below) either the dollar value or the percentage CNL.
(iv) Examine all available information, including recent trade data (as reported on the aforementioned USITC website) and any known plans for the expansion of production and exports, to determine whether CNL waivers should be sought for any other GSP-eligible products.

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

C. Defend against petitions to restrict or remove products

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

D. Consider seeking the designation of new products

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

(i) The product is subject to duty on an NTR basis, and the tariff is high enough to matter (e.g. at least one per cent).
(ii) The item has not yet been designated for the GSP.
(iii) The country is (among the GSP beneficiaries) one of the principal suppliers of this product to the United States, and/or has plans to expand its production and exportation of this item.
(iv) The item is not among those goods that are ineligible for the GSP by statute (i.e. the law specifically provides that certain goods such as textiles, steel products and oil cannot be designated for the GSP).

As in the case of CNL-waiver petitions, countries should be aware that the GSP Subcommittee requires substantial information in support of such a request. In addition to examining closely the GSP Model Petition (see appendix 7), firms and Governments should consider the option of retaining the services of Washington-based consultants or law firms that are experienced in the preparation of such petitions.

VII. AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA)

The African Growth and Opportunity Act (AGOA)[13] is the most recent United States initiative authorizing a new trade and investment policy towards Africa. It represents a meaningful opportunity for eligible sub-Saharan African countries, which could result in a substantial improvement of conditions for preferential access to United States markets.

Under Title I-B of the Act, beneficiary countries in sub-Saharan Africa that will be designated by the President as eligible for the AGOA benefits will be granted what could be called a "super GSP".

While the current "normal" GSP programme of the United States expired in September 2001 and contains several limitations in terms of product coverage, AGOA amends the GSP programme by providing duty-free treatment for a wider range of products. This would include, upon fulfilment of specific origin and visa requirements, certain textile and apparel articles that were heretofore considered import-sensitive and thus statutorily excluded from the programme.

The Trade Act of 2002 contains amendments to apparel and textile provisions under AGOA. It modifies certain provisions under AGOA by including knit-to-shape, increasing the cap on apparel imports, granting LDC status to Botswana and Namibia, and revising the technical definition of merino wool. Furthermore, it clarifies the origin of yarns under the Special Rule for

[13] AGOA, which is part of the Trade and Development Act of 2000, was signed into law by the President of the United States on 18 May 2000. The AGOA implementation regulation was published on 2 October 2000.

designated LDCs and makes eligible for preferences "hybrid" apparel articles (i.e. cutting that occurs both in United States and in AGOA countries does not render fabric ineligible).

The "AGOA-enhanced" GSP benefits will be in place for a period of eight years, until 30 September 2008, providing additional security for investors and traders in qualifying African countries. This element of security is further strengthened by the decision by the Office of the United States Trade Representative responsible for GSP matters not to carry out the usual annual reviews of product coverage for AGOA products.

Since the Act provides for a series of preconditions and requires positive actions on the part of the 48 potential beneficiary sub-Saharan African countries, the actual utilization of the trade benefits will depend on the capacity at institutional level to satisfy those preconditions and undertake the requested actions. The larger sub-Saharan African countries may thus be better equipped to qualify as AGOA beneficiaries than other least developed countries in the region.

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

A. Country eligibility

First of all, any AGOA beneficiary country must be eligible under the normal GSP programme. As additional eligibility requirements, under AGOA, as an eligible beneficiary the President is authorized to designate a sub-Saharan African country if the country has made or is making progress in all of the following respects:

(a) The country must have established, or be in the process of establishing:
    (i) A market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy;
    (ii) The rule of law, political pluralism and the right to due process, a fair trial and equal protection under the law;
    (iii) The elimination of barriers to United States trade and investment, including by:
    (iv) The provision of national treatment;
    (v) The protection of intellectual property rights; and
    (vi) The resolution of bilateral trade and investment disputes;
    (vii) Economic policies to reduce poverty, increase the availability of health care and educational opportunities;
    (viii) A system to combat corruption and bribery;
    (ix) Protection of internationally recognized worker rights;

(b) The country must not engage in activities that undermine United States national security or foreign policy interests;

(c) The country must not engage in gross violations of internationally recognized human rights;

(d) The country must have implemented its commitments to eliminate the worst form of child labour (ILO Convention No. 182).

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

The President has designated 36 countries out of 48 to be eligible for AGOA benefits (see appendix I).

B. Product eligibility

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

AGOA adds 1,835 products to the regular GSP products (approximately 4,650). All AGOA-designated countries are granted duty-free treatment on all products currently eligible under the GSP programme, including those on which, so far, only least developed beneficiary countries have been enjoying GSP treatment. AGOA-designated products, which were previously statutorily excluded by the GSP programme even for the LDCs, include watches, electronic articles, steel articles, footwear, handbags, luggage, flat goods, work gloves and leather wearing apparel, and semi-manufactured and manufactured glass products. This implies that the special GSP LDCs' preferences have been somewhat diluted since other designated non-LDC sub-Saharan African countries can now benefit from similar preferential product coverage.

Furthermore, the AGOA eliminates the GSP competitive-need limitations.[14]

C. Rules of origin

An AGOA article must meet the basic United States GSP origin and related rules[15] to receive duty-free treatment (as discussed in section III.C). In the context of AGOA, application of the basic GSP origin rules is subject to the following two additional rules:

(a) The cost or value of materials produced in the customs territory of the United States may be counted towards the 35 per cent requirement up to a maximum amount not to exceed 15 per cent of the article's appraised value.
(b) The cost or value of the materials used that are produced in one or more beneficiary sub-Saharan African countries shall be counted towards the 35 per cent requirement (cumulation among AGOA-designated countries).

D. Provisions on textile/apparel articles

1. Country eligibility

AGOA provides preferential tariff treatment for imports of certain textile and apparel products from designated sub-Saharan African countries, provided that these countries (a) have adopted an effective visa system and related procedures to prevent illegal transshipment and the use of counterfeit documents; and (b) have implemented and follow, or are making substantial progress

[14] Competitive-need limitations are intended to prevent the extension of preferential treatment to countries that are already competitive in the production of an item.
[15] Section 503(a)(2) of the Trade Act of 1974.

towards implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products. As of August 2002, 18 sub-Saharan African countries are eligible to receive AGOA textile and apparel benefits: Botswana, Cameroon, Cape Verde, Ethiopia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Senegal, South Africa, Swaziland, Uganda, the United Republic of Tanzania and Zambia. These countries were designated by the USTR after demonstrating that they had an effective visa system in place to verify that apparel and textile goods are in fact produced in a beneficiary sub-Saharan African country in accordance with the required rules of origin. The United States Government has provided countries with guidance on the elements of an effective visa system. USTR will publish a *Federal Register* notice when it designates a country(ies) as eligible for AGOA apparel/textile benefits.[16]

In particular, in order to be declared eligible for textile/apparel provisions, sub-Saharan African countries are required to:[17]

(a) Adopt an effective visa system, domestic law and enforcement procedure in order to prevent illegal trans-shipment and the use of counterfeit documents relating to the importation of the eligible apparel products into the United States;
(b) Enact legislation or issue regulations in order to permit the United States Customs Service to investigate thoroughly allegations of trans-shipment;
(c) Agree to report on the total exports and imports of covered articles in the country;
(d) Cooperate with the United States in order to prevent circumvention;
(e) Agree to require all producers and exporters of covered articles in the country to maintain complete records of the production and the export of covered articles, including materials used in the production, for at least two years after the production or export;
(f) Agree to provide documentation to the United States customs establishing the country of origin of covered articles. This includes the production record, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter. These records should be retained for five years.

Visa requirements under the AGOA

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

A shipment shall be visaed by stamping an original circular visa in blue ink only on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original of the invoice with the original visa stamp shall be required in order to obtain preferential tariff treatment. Duplicates of the invoice and/or visa may not be used for this purpose. Each visa stamp shall include (a) the visa number, including the preferential groupings

[16] The information concerning country eligibility is available at www.ustr.gov.
[17] Section 113 (a)(1) of the Act.
[18] See *Visa Requirements under the AGOA*, vol. 66, Federal Register 7837; 25 January 2001.

the apparels qualify for, a country code, and a numerical serial number identifying the shipment; (b) the date of visa issuance; (c) the authorized signature of an authorized official of the beneficiary countries; and (d) the quantity of goods being shipped.

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

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

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

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

AGOA provides duty-free and quota-free access for selected textile and apparel articles if they are imported from designated sub-Saharan African countries under the textile/apparel provision. The 35 per cent value-added requirement for AGOA GSP treatment is not required for the textile/apparel provision. Apparel products eligible for benefits under the AGOA must fall within one of 10 specific preferential groupings and meet the related requirements. The Trade Act of 2002 modifies certain rules by making knit-to-shape articles eligible for duty-free and quota-free treatment in the preferential groupings.

Before each preferential group is examined in detail, it is important to note that groupings 4 and 5 are subject to the quantitative limitations called "cap"[19] given the fact that beneficiary countries are allowed to use regional or foreign fabrics or yarns. More details about "cap" are given below.

The granting of preferential treatment depends on the origin of the fabric and yarn used. This is the rule of origin under AGOA for textile/apparel articles.

Grouping 1

Apparel articles sewn or assembled in one or more beneficiary sub-Saharan African countries (SSAs) from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States[20]: DUTY-FREE and QUOTA-FREE TREATMENT.

[19] The word "cap" is utilized by the USTR as a tariff quota.

[20] Includes fabrics not formed from yarns, if such fabrics are classifiable under HTSUS heading 5602 or 5603 and are wholly formed and cut in the United States. The article is entered under subheading HTSUS 9802.00.80.

Grouping 2

Apparel articles sewn or assembled and further processed[21] in one or more beneficiary SSAs from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States[22]: DUTY-FREE and QUOTA-FREE TREATMENT.

Grouping 3

Apparel articles sewn or assembled in one or more beneficiary SSAs with United States thread from fabrics wholly formed in the United States and cut in one or more SSAs from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both:[23] DUTY-FREE and QUOTA-FREE TREATMENT.

Grouping 4

Apparel articles wholly assembled in one or more beneficiary SSAs from fabric wholly formed in one or more beneficiary SSAs from yarns originating either in the United States or one or more beneficiary SSAs,[24] or from components knit-to-shape in one or more beneficiary SSAs from yarns originating either in the United States or one or more beneficiary SSA, or apparel articles wholly formed on seamless knitting machines in a beneficiary SSA country from yarns originating either in the United States or one or more beneficiary SSAs: DUTY-FREE and QUOTA-FREE TREATMENT WITHIN CAP.

Grouping 5

Under the Special Rule for Lesser Developed Countries[25], duty-free access within cap is granted to apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary SSAs, regardless of the country of the origin of the fabric or yarn used: DUTY-FREE and QUOTA-FREE TREATMENT through 30 September 2004 WITHIN CAP.

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[21] Further processing includes embroidery, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, beaching, garment-dyeing, screen printing, or similar processes.

[22] Includes fabrics not formed from yarns, if such fabrics are classifiable under HTSUS heading 5602 or 5603 and are wholly formed and cut in the United States.

[23] Includes fabrics not formed from yarns, if such fabrics are classifiable under HTSUS heading 5602 or 5603 and are wholly formed in the United States.

[24] Includes fabrics not formed from yarns, if such fabrics are classifiable under HTSUS heading 5602 or 5603 and are wholly formed in one or more beneficiary sub-Saharan African countries.

[25] For the purposes of the Special Rule for Apparel under AGOA, lesser developed sub-Saharan African countries are defined as those with a per capita gross national product of less than $1,500 a year in 1998, as measured by the World Bank. On the basis of the data contained in the World Bank's 1999/2000 World Development Report, all sub-Saharan countries except Botswana, Equatorial Guinea, Gabon, Mauritius, Namibia, Seychelles and South Africa fall below this per capita threshold and have thus been declared eligible to use third-country fabric (non-United States and non-African) in their duty-free apparel exports to the United States through 30 September 2004. AGOA amendments specially grant Botswana and Namibia lesser developed AGOA status for the Special Rule.

Grouping 6

Cashmere sweaters: Sweaters in chief weight of cashmere, knit-to-shape in one or more beneficiary SSAs:[26] DUTY-FREE and QUOTA-FREE TREATMENT.

Grouping 7

Merino wool sweaters: Wool sweaters containing 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary SSAs: DUTY-FREE and QUOTA-FREE TREATMENT.

Grouping 8

Apparel articles wholly assembled from fabric or yarn not available in commercial quantities (i.e. "in short supply") in the United States: DUTY-FREE and QUOTA-FREE TREATMENT:

(a) Apparel articles that are both cut and assembled in or more beneficiary SSAs, from fabric or yarn that is not formed in the United States or a beneficiary SSA country, are subject to duty-free/quota-free treatment to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under NAFTA Annex 401.[27] The AGOA provision applies to apparel articles that would be originating goods, and thus would be entitled to preferential duty treatment, under the NAFTA tariff shift and related rules on the basis of the fact that the fabrics or yarns used to produce them were determined to be in short supply in terms of the NAFTA.

(b) At the request of any interested party,[28] the President is authorized to proclaim duty-free/quota-free treatment for apparel articles that are both cut and assembled in one or more beneficiary SSA countries, from fabric or yarn that is not formed in the United States or a beneficiary SSA country, if he has determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed such treatment.[29]

Grouping 9

Handloomed, handmade and folklore articles: products covered under this category will be determined through United States consultations with the beneficiary countries and must also be

[26] The article is classified under subheading HTSUS 6110.10.

[27] NAFTA Annex 401 is available on the NAFTA secretariat's website, http://www.nafta-sec-alena.org/.

[28] Sec.112 (b)(3)(c)(v) of the Act defines an interested party as "any producer of a like or directly competitive article, a certified union or recognized union or group or workers which is representative of an industry engaged in the manufacture, production, or sale in the United States of a like or directly competitive article, a trade or business association representing producers or sellers of like or directly competitive articles, producers engaged in the production of essential inputs for like or directly competitive articles".

[29] Prior to making such a proclamation, the President must obtain advice from the appropriate advisory committees and the United States International Trade Commission, and must provide a report to, and consult with, the House Ways and Means and the Senate Finance Committee. The President delegated to the Committee for the Implementation of the Textile Agreements (CITA) authority to determine whether yarns or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner. The update short-supply information is available at http://otexa.ita.doc.gov/default.htm.

certified by the competent authority of the beneficiary countries as handloomed, handmade or folklore articles: DUTY-FREE and QUOTA-FREE TREATMENT.

In addition to original preferential groupings with some amendments above, the textile/apparel provision is further amended by adding the following new paragraph:

Group 10

Apparel articles sewn or assembled in one or more beneficiary SSAs with United States thread from components cut in the United States and one or more beneficiary SSAs from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more beneficiary SSAs from yarns wholly formed in the United States, or both:[30] DUTY-FREE and QUOTA-FREE TREATMENT.

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

Groupings 4 and 5 face the cap limitation and surge mechanism as explained below.

Apparel imports under Groupings 4 and 5 are subject to a cap that will be filled on a "first-come, first-served" basis. The preferential treatment under African regional fabrics/yarns (Grouping 4) is extended through 30 September 2008, while the preferential treatment under the Special Rule (Grouping 5) is extended through 30 September 2004.

Furthermore, in any year, when the cap is filled, products may still be imported; however, normal trade tariffs will be assessed at the time of entry. It is important to note that the benefits for apparel and textile provision are significant for certain countries.[31] This fact could mean that those countries, which have traditionally exported apparels to the United States, might account for a large portion of the cap.

The original AGOA, which is part of the Trade and Development Act of 2000, sets out the cap schedule from 1 October 2000 to 30 September 2008 is as follows:

Schedule	Percentage of cap
1 October 2000 – 30 September 2001	1.50%
1 October 2001 – 30 September 2002	1.78%
1 October 2002 – 30 September 2003	2.06%
1 October 2003 – 30 September 2004	2.34%
1 October 2004 – 30 September 2005	2.62%
1 October 2005 – 30 September 2006	2.90%
1 October 2006 – 30 September 2007	3.18%
1 October 2007 – 30 September 2008	3.50%

However, the applicable percentage under the AGOA amendment (Trade Act of 2002) for apparels made from African regional fabric and yarn shall be increased by 2.17 per cent for the

[30] Includes fabrics not formed from yarns, if such fabrics are classifiable under HTSUS heading 5602 or 5603.

[31] The country-by-country examinations for tariff treatment of principal United States imports from sub-Saharan Africa were carried out in the study by Craig VanGrasstek, "The African Growth and Opportunity Act: A Preliminary Assessment", prepared for UNCTAD, June 2002.

one-year period beginning on 1 October 2002, rising ultimately by equal increments in each year period, in the period starting on 1 October 2007, to a maximum of 3.5 per cent of total annual apparel shipments to the United States, except that such increase shall not apply to apparel from beneficiary countries under the Special Rule.

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

Summary of rules of origin and preferential groups

Preferential groups (description summarized)	Yarn	Thread	Fabric	Components knit-to-shape	Cutting	Sewn	Assembled	Treatment
1. Apparel assembled from US formed and cut fabric from US yarns or components knit-to-shape	US		US	US	US	SSA	SSA	Duty-quota-free
2. Apparel assembled and further processed from US formed and cut fabric from US yarn or components knit-to-shape	US		US	US	US	SSA	SSA	Duty-quota -free
3. Apparel assembled with US thread from US formed fabric and SSA cut fabric or components knit-to-shape from US yarns	US	US	US	US	SSA	SSA	SSA	Duty-quota -free
4. Apparel articles from regional fabric or yarns	US or SSA		SSA	SSA			SSA Assembled on seamless knitting machine in SSA	Duty-quota -free within cap
5. Apparel assembled or knit-to-shape in a lesser developed country using foreign fabric	Foreign country		Foreign country				Lesser Developed SSA	Duty-quota -free within cap
6. Cashmere sweaters: knit-to-shape			SSA					Duty-quota -free
7. Merino wool sweaters, knit-to-shape			SSA					Duty-quota -free
8. Apparel cut and sewn or assembled from fabric or yarns identified in the NAFTA "short supply" or not available in commercial quantities in the United States	Foreign country		Foreign country		SSA	SSA	SSA	Duty-quota- free
9. Handloomed, handmade and folklore articles								Duty-quota- free
New pref. Grouping/Grouping 10 Apparel articles assembled in SSA from US and SSA components	US	US	US	US and SSA	SSA and US	SSA	SSA	Duty-quota -free

4. Other special rules on the provision of textile/apparel articles

An article is eligible for preferential treatment even if it contains findings or trimmings of foreign origin, if the value of such findings or trimmings[32] does not exceed 25 per cent of the cost of the components of the assembled article. Examples of findings and trimmings include sewing thread, hooks and eyes, snaps, buttons, "bow buds", decorative lace trims, elastic strips and zippers. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and used in the production of brassieres.

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

Certain interlinings[33] are eligible for duty-free treatment as findings and trimmings. The interlinings permitted include only a chest type plate, a "hymo" piece, or "sleeve header" made of woven or weft-inserted warp knit construction, and made of coarse animal hair or man-made filaments. An article is eligible for preferential treatment even if the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. The President shall terminate this arrangement if he determines that such interlinings are produced in the United States in commercial quantities.

Under the AGOA *de minimis* rule,[34] an article is eligible for preferential treatment because it contains fibres or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all such fibres and yarns is not more than 7 per cent of the total weight of the article.

5. Customs procedures and enforcement

Any importer claiming preferential treatment under the treatment of certain textiles and apparel shall comply with customs procedure and requirements similar to the relevant procedures and requirements under Chapter Five of NAFTA.[35]

AGOA also provides for trans-shipment penalties for exporters.[36] If the President determines, on the basis of sufficient evidence, that an exporter has engaged in unlawful trans-shipment, he shall deny for a period of five years all AGOA benefits to such exporter or any successor entity. The President delegated the authority to make these determinations to the Committee for the Implementation of Textile Agreements (CITA).

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[32] AGOA Sec.112(d)(1)(A).
[33] AGOA Sec.112(d)(1)(B).
[34] AGOA Sec. 112(d)(2).
[35] Chapter Five of NAFTA is available at http://www.mac.doc.gov/nafta/ch05.htm.
[36] Section 113(b) (4) of the Act states that "Trans-shipment has occurred when preferential treatment for a textile or apparel article under this Act has been claimed on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components".

6. Monitoring and report to Congress

The President shall monitor, review and report to Congress annually (not later than 31 March of each year). The second annual report[37] is available at www.ustr.gov.

[37] The President of the United States, "2002 Comprehensive Report of the President of the United States on United States Trade and Investment policy toward Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act", prepared by the USTR, May 2002.

Appendix 1
Status of independent countries and non-independent countries and territories under the GSP

Appendix 1
Status of independent countries and non-independent countries and territories under the GSP

	Regional Origin	Least-Developed	Other Programs
Albania	—	No	—
Angola	—	Yes	—
Anguilla*	—	No	—
Antigua and Barbuda	CARICOM	No	CBI
Argentina	—	No	—
Armenia	—	No	—
Bahrain	—	No	—
Bangladesh	—	Yes	—
Barbados	CARICOM	No	CBI
Belize	CARICOM	No	CBI
Benin	WAEMU	Yes	AGOA
Bhutan	—	Yes	—
Bolivia	Andean	No	ATPA
Bosnia-Hercegovina	—	No	—
Botswana	SADC	No	AGOA
Brazil	—	No	—
British Indian Ocean Territory*	—	No	—
Bulgaria	—	No	—
Burkina Faso	WAEMU	Yes	—
Burundi	—	Yes	—
Cambodia	ASEAN	Yes	—
Cameroon	—	No	AGOA
Cape Verde	—	Yes	AGOA
Central African Rep.	—	Yes	AGOA
Chad	—	Yes	AGOA
Chile	—	No	—
Christmas Island* (Australia)	—	No	—
Cocos (Keeling) Islands*	—	No	—
Colombia	Andean	No	ATPA
Comoros	—	Yes	—
Congo (Brazzaville)	—	No	AGOA
Congo (Kinshasa)	—	Yes	—
Cook Islands*	—	No	—
Costa Rica	—	No	CBI
Cote d'lvoire	WAEMU	No	AGOA
Croatia	—	No	—
Czech Republic	—	No	—
Djibouti	—	Yes	AGOA
Dominica	CARICOM	No	CBI
Dominican Republic	—	No	CBI

	Regional Origin	Least-Developed	Other Programs
Ecuador	Andean	No	ATPA
Egypt	—	No	—
El Salvador	—	No	CBI
Equatorial Guinea	—	Yes	—
Eritrea	—	No	AGOA
Estonia	—	No	—
Ethiopia	—	Yes	AGOA
Falkland Islands (Islas Malvinas)*	—	No	—
Fiji	—	No	—
Gabon	—	No	AGOA
Gambia	—	Yes	
Georgia	—	No	—
Ghana	—	No	AGOA
Gibraltar*	—	No	—
Grenada	CARICOM	No	CBI
Guatemala	—	No	CBI
Guinea	—	Yes	AGOA
Guinea Bissau	WAEMU	Yes	AGOA
Guyana	CARICOM	No	CBI
Haiti	—	Yes	CBI
Heard Island and McDonald Islands*	—	No	—
Honduras	—	No	CBI
Hungary	—	No	—
India	—	No	—
Indonesia	ASEAN	No	—
Jamaica	CARICOM	No	CBI
Jordan	—	No	—
Kazakhstan	—	No	—
Kenya	—	No	AGOA
Kiribati	—	Yes	—
Kyrgyzstan	—	No	—
Latvia	—	No	—
Lebanon	—	No	—
Lesotho	—	Yes	AGOA
Lithuania	—	No	—
Macedonia (former Yugoslav Republic of)	—	No	—
Madagascar	—	Yes	AGOA
Malawi	—	Yes	AGOA
Mali	WAEMU	Yes	AGOA
Mauritania	—	Yes	AGOA
Mauritius	SADC	No	AGOA

	Regional Origin	Least-Developed	Other Programs
Moldova	—	No	—
Mongolia	—	No	—
Montserrat*	CARICOM	No	CBI
Morocco	—	No	—
Mozambique	—	Yes	AGOA
Namibia	—	No	AGOA
Nepal	—	Yes	—
Nieu*	—	No	—
Niger	WAEMU	Yes	AGOA
Nigeria	—	No	AGOA
Norfolk Island*	—	No	—
Oman	—	No	—
Pakistan	—	No	—
Panama	—	No	CBI
Papua New Guinea	—	No	—
Paraguay	—	No	—
Peru	Andean	No	ATPA
Philippines	ASEAN	No	—
Pitcairn Islands*	—	No	—
Poland	—	No	—
Romania	—	No	—
Russia	—	No	—
Rwanda	—	Yes	AGOA
Saint Helena*	—	No	—
Saint Kitts and Nevis	CARICOM	No	CBI
Saint Lucia	CARICOM	No	CBI
Saint Vincent and the Grenadines	CARICOM	No	CBI
Samoa		Yes	
Sao Tome and Principe	—	Yes	AGOA
Senegal	WAEMU	No	AGOA
Seychelles	—	No	AGOA
Sierra Leone	—	Yes	AGOA
Slovakia	—	No	—
Solomon Islands	—	No	—
Somalia	—	Yes	—
South Africa	—	No	AGOA
Sri Lanka	—	No	—
Suriname	—	No	—
Swaziland	—	No	AGOA
Tanzania	SADC	Yes	AGOA
Thailand	ASEAN	No	—
Togo	WAEMU	Yes	
Tonga	—	No	—

	Regional Origin	Least-Developed	Other Programs
Tokelau*	—	No	—
Trinidad and Tobago	CARICOM	No	CBI
Tunisia	—	No	—
Turkey	—	No	—
Turks and Caicos Islands*	—	No	—
Tuvalu	—	Yes	—
Uganda	—	Yes	AGOA
Uruguay	—	No	—
Uzbekistan	—	No	—
Vanuatu	—	Yes	—
Venezuela	Andean	No	—
Virgin Islands, British*	—	No	CBI
Wallis and Futuna*	—	No	—
West Bank and Gaza Strip*	—	No	—
Western Sahara*	—	No	—
Yemen	—	Yes	—
Zambia	—	Yes	AGOA
Zimbabwe	—	No	—

NOTES:

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

Andean: Member countries of the Cartagena Agreement (Andean Group), treated as one country for purposes of the rules of origin.

ASEAN: Member countries of the Association of South East Asian Nations (except Brunei Darussalam, the Lao PDR, and Singapore), treated as one country for purposes of the rules of origin.

CARICOM: Member countries of the Caribbean Common Market, treated as one country for purposes of the rules of origin.

SADC: Member countries of the Southern Africa Development Community, treated as one country for purposes of the rules of origin.

WAEMU: Member countries of the West African Economic and Monetary Union, treated as one country for purposes of the rules of origin.

Appendix 2
Authorizing legislation for the GSP in the United States Code

Appendix 2
Authorizing legislation for the GSP in the United States Code

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

Sec. 2461. Authority to extend preferences

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

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;
(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;
(3) the anticipated impact of such action on United States producers of like or directly competitive products; and
(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

Sec. 2462. Designation of beneficiary developing countries

(a) Authority to designate countries

(1) Beneficiary developing countries

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

(2) Least-developed beneficiary developing countries

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

(b) Countries ineligible for designation

(1) Specific countries

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

(A) Australia.
(B) Canada.
(C) European Union member states.
(D) Iceland.
(E) Japan.
(F) Monaco.
(G) New Zealand.
(H) Norway.
(I) Switzerland.

(2) Other bases for ineligibility

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

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

(i) the products of such country receive nondiscriminatory treatment,
(ii) such country is a WTO Member (as such term is defined in section 3501(10) of this title) and a member of the International Monetary Fund, and
(iii) such country is not dominated or controlled by international communism.

(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is:
(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and
(ii) to cause serious disruption of the world economy.

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

(D) (i) Such country:
(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,
(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or
(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless clause (ii) applies.

(ii) This clause applies if the President determines that:
(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),
(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or
(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

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

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

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

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

(c) Factors affecting country designation

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

(1) an expression by such country of its desire to be so designated;
(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the resident deems appropriate;
(3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;
(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;
(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;
(6) the extent to which such country has taken action to:
  (A) reduce trade distorting investment practices and policies (including export performance requirements); and
  (B) reduce or eliminate barriers to trade in services; and
(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

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

(1) In general

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

(2) Changed circumstances

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

(3) Advice to Congress

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

(e) Mandatory graduation of beneficiary developing countries

If the President determines that a beneficiary developing country has become a “high income” country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall

terminate the designation of such country as a beneficiary developing country for purposes of this subchapter, effective on January 1 of the second year following the year in which such determination is made.

(f) Congressional notification

(1) Notification of designation

(A) In general

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

(B) Designation as least-developed beneficiary developing country

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

(2) Notification of termination

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

Sec. 2463. Designation of eligible articles

(a) Eligible articles

(1) Designation

(A) In general

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

(B) Least-developed beneficiary developing countries

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

(C) Three-year rule

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

(2) Rule of origin

(A) General rule

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

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

(B) Exclusions

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

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

(3) Regulations

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

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

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

(1) Import-sensitive articles

The President may not designate any article as an eligible article under subsection (a) of this section if such article is within one of the following categories of import-sensitive articles:

(A) Textile and apparel articles which were not eligible articles for purposes of this subchapter on January 1, 1994, as this subchapter was in effect on such date.
(B) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions.
(C) Import-sensitive electronic articles.
(D) Import-sensitive steel articles.
(E) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this subchapter on January 1, 1995, as this subchapter was in effect on such date.
(F) Import-sensitive semi-manufactured and manufactured glass products.
(G) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) Articles against which other actions taken

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

(3) Agricultural products

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

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

(1) In general

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

(2) Competitive need limitation

(A) Basis for withdrawal of duty-free treatment

(i) In general

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

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

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

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

(ii) Annual adjustment of applicable amount

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

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

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

(B) “Country” defined

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

(C) Redesignations

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

(D) Least-developed beneficiary developing countries

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

(E) Articles not produced in the United States excluded

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

(F) De minimis waivers

(i) In general

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

(ii) Applicable amount

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

(I) for calendar year 1996, $13,000,000, and
(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $500,000.

(d) Waiver of competitive need limitation

(1) In general

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

(A) receives the advice of the International Trade Commission under section 1332 of this title on whether any industry in the United States is likely to be adversely affected by such waiver,
(B) determines, based on the considerations described in sections 2461 and 2462(c) of this title and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and
(C) publishes the determination described in subparagraph (B) in the Federal Register.

(2) Considerations by the President

In making any determination under paragraph (1), the President shall give great weight to:
(A) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and
(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

(3) Other bases for waiver

The President may waive the application of subsection (c)(2) of this section if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) of this section was made with respect to a beneficiary developing country, the President determines that:
(A) there has been a historical preferential trade relationship between the United States and such country,
(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

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

and the President publishes that determination in the Federal Register.

(4) Limitations on waivers

(A) In general

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

(B) Other waiver limits

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

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

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

(C) Calculation of limitations

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

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

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

(5) Effective period of waiver

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

(e) International Trade Commission advice

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

(f) Special rule concerning Puerto Rico

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

Appendix 3
United States Customs Service rules on the GSP in the Code of Federal Regulations

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TITLE 19 — CUSTOMS DUTIES
PART 10 — ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

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

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

Sec. 10.173 Evidence of country of origin.

(a) Shipments covered by a formal entry

(1) Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country.

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

GSP DECLARATION

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

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

Date_____
Address_____
Signature_____
Title_____

(ii) Retention of records and submission of declaration. The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(2) Merchandise wholly the growth, product, or manufacture of a beneficiary developing country.

In a case involving merchandise covered by a formal entry which is wholly the growth, product, or manufacture of a single beneficiary developing country, a statement to that effect shall be included on the commercial invoice provided to Customs.

(b) Shipments covered by an informal entry.

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

(c) Verification of documentation.

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

Sec. 10.174 Evidence of direct shipment.

(a) Documents constituting evidence of direct shipment.

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

(b) Waiver of evidence of direct shipment.

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

Sec. 10.175 Imported directly defined.

Eligible articles shall be imported directly from a beneficiary developing country to qualify for treatment under the Generalized System of Preferences. For purposes of Secs. 10.171 through 10.178 the words "imported directly" mean:

(a) Direct shipment from the beneficiary country to the United States without passing through the territory of any other country; or
(b) If the shipment is from a beneficiary developing country to the United States through the territory of any other country, the merchandise in the shipment does not enter into the commerce of any other country while en route to the United States, and the invoice, bills of lading, and other shipping documents show the United States as the final destination; or
(c) If shipped from the beneficiary developing country to the United States through a free trade zone in a beneficiary developing country, the merchandise shall not enter into the commerce of the country maintaining the free trade zone, and
    (1) The eligible articles must not undergo any operation other than:

(i) Sorting, grading, or testing,
(ii) Packing, unpacking, changes of packing, decanting or repacking into other containers,
(iii) Affixing marks, labels, or other like distinguishing signs on articles or their packing, if incidental to operations allowed under this section, or
(iv) Operations necessary to ensure the preservation of merchandise in its condition as introduced into the free trade zone.

(2) Merchandise may be purchased and resold, other than at retail, for export within the free trade zone.

(3) For the purposes of this section, a free trade zone is a predetermined area or region declared and secured by or under governmental authority, where certain operations may be performed with respect to articles, without such articles having entered into the commerce of the country maintaining the free trade zone; or

(d) If the shipment is from any beneficiary developing country to the U.S through the territory of any other country and the invoices and other documents do not show the U.S as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition; or

(e) (1) Shipment to the United States from a beneficiary developing country which is a member of an association of countries treated as one country under section 502(a)(3), Trade Act of 1974, as amended (19 United StatesC. 2462(a)(3)), through the territory of a former beneficiary developing country whose designation as a member of the same association for GSP purposes was terminated by the President pursuant to section 504, Trade Act of 1974, as amended (19 United StatesC. 2464), provided the articles in the shipment did not enter into the commerce of the former beneficiary developing country except for purposes of performing one or more of the operations specified in paragraph (c)(1) of this section and except for purposes of purchase or resale, other than at retail, for export.

(2) The designation of the following countries as members of an association of countries for GSP purposes has been terminated by the President pursuant to section 504 of the Trade Act of 1974 (19 United StatesC. 2464):

The Bahamas
Brunei Darussalam
Singapore

Sec. 10.176 Country of origin criteria.

(a) Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries.

Merchandise which is (1) the growth, product, manufacture, or assembly of (i) a beneficiary developing country or (ii) any two or more countries which are members of the same association of countries and (2) imported directly from such beneficiary developing country or member countries, may quality for duty-free entry under the Generalized System of Preferences ("GSP"). However, duty free entry under GSP may be accorded only if: (i) The sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), Trade Act of 1974, as amended (19 United StatesC. 2462(a)(3)), plus (ii) the direct costs of processing operations performed in such beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time of its entry into the customs territory of the United States.

(b) [Reserved]

(c) Merchandise grown, produced, or manufactured in a beneficiary developing country.

Merchandise which is wholly the growth, product, or manufacture of a beneficiary developing country, or an association of countries treated as one country under section 502(a)(3) of the Trade Act of 1974 as amended (19 United StatesC. 2462(a)(3)) and Sec. 10.171(b), and manufactured products consisting of materials produced only in such country or countries, shall normally be presumed to meet the requirements set forth in this section.

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

(a) "Produced in the beneficiary developing country" defined.

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

(b) Questionable origin.

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

(c) Determination of cost or value of materials produced in the beneficiary developing country.

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

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

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

(a) Items included in the direct costs of processing operations.

As used in Sec. 10.176, the words "direct costs of processing operations" means those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to:
(1) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;
(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;
(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and
(4) Costs of inspecting and testing the specific merchandise.

(b) Items not included in the direct costs of processing operations.

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

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

Appendix 4
United States Trade Representative rules on the GSP in the Code of Federal Regulations

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United States Trade Representative rules on the GSP in the Code of Federal Regulations

FOREIGN TRADE

TRADE REPRESENTATIVE

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

Sec. 2007.0 Requests for reviews.

(a) An interested party may submit a request (1) that additional articles be designated as eligible for GSP duty-free treatment, provided that the article has not been accepted for reviewwithin the three preceding calendar years; or (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) for a determination of whether a like or directly competitive product was produced in the United States on January 3, 1985 for the purposes of section 504(d)(1) (19 United States 2464(d)(1)); or (4) that the President exercise his waiver authority with respect to a specific article or articles pursuant to section 504(c)(3) (19 United StatesC. 2464(c)(3)); or (5) that product coverage be otherwise modified.
(b) During the annual reviews and general reviews conducted pursuant to the schedule set out in Sec. 2007.3 any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in section 502(b) or 502(c) (19 United StatesC. 2642 (b) and (c)). Such requests must (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) or 502(c) criteria which the requestor believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; (5) supply any other relevant information as requested by the GSP Subcommittee. If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue.
(c) An interested party or any other person may make submissions supporting, opposing or otherwise commenting on a request submitted pursuant to either paragraph (a) or (b) of this section.
(d) For the purposes of the regulations set out under Sec. 2007.0 et seq., an interested party is defined as a party who has significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive article, a commercial importer or retailer of an article which is eligible for the GSP or for which such eligibility is requested, or a foreign government.
(e) All requests and other submissions should be submitted in 20 copies, and should be addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. Requests by foreign governments may be made in the form of diplomatic correspondence provided that such requests comply with the requirements of Sec. 2007.1.
(f) The Trade Policy Staff Committee (TPSC) may at any time, on its own motion, initiate any of the actions described in paragraph (a) or (b) of this section.

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

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

(1) The name of the petitioner, the person, firm or association represented by the petitioner, and a brief description of the interest of the petitioner claiming to be affected by the operation of the GSP;
(2) An identification of the product or products of interest to the petitioner, including a detailed description of products and their uses and the identification of the pertinent item number of the Tariff Schedules of the United States (TSUS). Where the product or products of interest are included withother products in a basket category of the TSUS, provide a detailed description of the product or products of interest;
(3) A description of the action requested, together with a statement of the reasons therefor and any supporting information;
(4) A statement of whether to the best of the Petitioner's knowledge, the reasoning and information has been presented to the TPSC previously either by the petitioner or another party. If the Petitioner has knowledge the request has been made previously, it must include either new information which indicates changed circumstances or a rebuttal of the factors supporting the denial of the previous request. If it is a request for a product addition, the previous request must not have been formally accepted for review within the preceding three calendar year period; and
(5) A statement of the benefits anticipated by the petitioner if the request is granted, along with supporting facts or arguments.

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

(1) The names, number and locations of the firms producing a like or directly competitive product;
(2) Actual production figures;
(3) Production capacity and capacity utilization;
(4) Employment figures, including number, type, wage rate, location, and changes in any of these elements;
(5) Sales figures in terms of quantity, value and price;
(6) Quantity and value of exports, as well as principal export markets;
(7) Profitability of firm on firms producing the like product, if possible show profit data by product line;
(8) Analysis of cost including materials, labor and overhead;
(9) A discussion of the competitive situation of the domestic industry;
(10) Identification of competitors; analysis of the effect imports receiving duty-free treatment under the GSP have on competition and the business of the interest on whose behalf the request is made;
(11) Any relevant information relating to the factors listed in section 501 and 502(c) of Title V of the Trade Act of 1974, as amended (19 United StatesC. 2501, 502(c)) such as identification of tariff and non-tariff barriers to sales in foreign markets;
(12) Any other relevant information including any additional information that may be requested by the GSP Subcommittee.

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

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

(1) Identification of the principal beneficiary country suppliers expected to benefit from proposed modification;
(2) Name and location of firms;
(3) Actual production figures (and estimated increase in GSP status is granted);
(4) Actual production and capacity utilization (and estimated increase if GSP status is granted);
(5) Employment figures, including numbers, type, wage rate, location and changes in any of these elements if GSP treatment is granted;
(6) Sales figures in terms of quantity, value and prices;
(7) Information on total exports including principal markets, the distribution of products, existing tariff preferences in such markets, total quantity, value and trends in exports;
(8) Information on exports to the United States in terms of quantity, value and price, as well as considerations which affect the competitiveness of these exports relative to exports to the United States by other beneficiary countries of a like or directly competitive product. Where possible, petitioners should provide information on the development of the industry in beneficiary countries and trends in their production and promotional activities;

(9) Analysis of cost including materials, labor and overhead;
(10) Profitability of firms producing the product;
(11) Information on unit prices and a statement of other considerations such as variations in quality or use that affect price competition;
(12) If the petition is submitted by a foreign government or a government controlled entity, it should include a statement of the manner in which the requested action would further the economic development of the country submitting the petition;
(13) If appropriate, an assessment of how the article would qualify under the GSP's 35 percent value-added requirements; and
(14) Any other relevant information, including any information that may be requested by the GSP Subcommittee.

Submissions made by persons in support of or opposition to a request made under this part should conform to the requirements for requests contained in Sec. 2007.1(a) (3) and (4), and should supply such other relevant information as is available.

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

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

(2) If a request submitted pursuant to Sec. 2007.0(b) does not conform to the requirements set forth above, or if the request does not provide sufficient information relevant to subsection 502(b) or 502(c) (19 United StatesC. 2642 (b) and (c)) to warrant review, or if it is clear from available information that the request does not fall within the criteria of subsection 502(b) or 502(c), the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the reasons why the request was not accepted.

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

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

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

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

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

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

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

Sec. 2007.3 Timetable for reviews.

(a) Annual review.

Beginning in calendar year 1986, reviews of pending requests shall be conducted at least once each year, according to the following schedule, unless otherwise specified by Federal Register notice:
(1) June 1, deadline for acceptance of petitions for review;
(2) July 15, Federal Register announcement of petitions accepted for review;
(3) September/October — public hearings and submission of written briefs and rebuttal materials;
(4) December/January — opportunity for public comment on USITC public reports;
(5) Results announced on April 1 will be implemented on July 1, the statutory effective date of modifications to the program. If the date specified is on or immediately follows a weekend or holiday, the effective date will be on the second working day following such weekend or holiday.

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

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

(c) General Review.

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

Sec. 2007.4 Publication regarding requests.

(a) Whenever a request is received which conforms to these regulations or which is accepted pursuant to Sec. 2007.2 a statement of the fact that the request has been received, the subject matter of the request (including if appropriate, the TSUS item number or numbers and description of the article or articles covered by the request), and a request for public comment on the petitions received shall be published in the Federal Register.
(b) Upon the completion of a review and publication of any Presidential action modifying the GSP, a summary of the decisions made will be published in the Federal Register including:
(1) A list of actions taken in response to requests; and
(2) A list of requests which are pending.
(c) Whenever, following a review, there is to be no change in the status of an article with respect to the GSP in response to a request filed under Sec. 2007.0(a), the party submitting a request with respect to such articles may request an explanation of factors considered.
(d) Whenever, following a review, there is to be no change in the status of a beneficiary country with respect to the GSP in response to a request filed under Sec. 2007.0(b), the GSP Subcommittee will notify the party submitting the request in writing of the reasons why the requested action was not taken.

Sec. 2007.5 Written briefs and oral testimony.

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

Sec. 2007.6 Information open to public inspection.

With exception of information subject to Sec. 2007.7 any person may, upon request inspect at the Office of the United States Trade Representative:
(a) Any written request, brief, or similar submission of information made pursuant to this part; and
(b) Any stenographic record of any public hearings which may be held pursuant to this part.

Sec. 2007.7 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the disclosure of such information is not required by law.
(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page "Submitted in Confidence" at the top, and shall submit a nonconfidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.
(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

Sec. 2007.8 Other reviews of article eligibilities.

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

(1) Scope of General Reviews.

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

(2) Factors To Be Considered.

In determining whether a beneficiary country should be subjected to the lower competitive need limits with respect to a particular article, the President shall consider the following factors contained in sections 501 and 502(c) of Title V:
(i) The effect such action will have on furthering the economic development of developing countries through expansion of their exports;
(ii) The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;
(iii) The anticipated impact of such action on the United States producers of like or directly competitive products;
(iv) The extent of the beneficiary developing country's competitiveness with respect to eligible articles;
(v) The level of economic development of such country, including its per capita GNP, the living standard of its inhabitants and any other economic factors the President deems appropriate;
(vi) Whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

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

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

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

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

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

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

Appendix 5
Authorizing legislation for AGOA

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Subtitle B--Trade Benefits

SEC. 111. ELIGIBILITY FOR CERTAIN BENEFITS.

(a) IN GENERAL- Title V of the Trade Act of 1974 is amended by inserting after section 506 the following new section:

SEC. 506A. DESIGNATION OF SUB-SAHARAN AFRICAN COUNTRIES FOR CERTAIN BENEFITS.

(a) AUTHORITY TO DESIGNATE-

(1) IN GENERAL- Notwithstanding any other provision of law, the President is authorized to designate a country listed in section 107 of the African Growth and Opportunity Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b)--

(A) if the President determines that the country meets the eligibility requirements set forth in section 104 of that Act, as such requirements are in effect on the date of the enactment of that Act; and

(B) subject to the authority granted to the President under subsections (a), (d), and (e) of section 502, if the country otherwise meets the eligibility criteria set forth in section 502.

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

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

(b) PREFERENTIAL TARIFF TREATMENT FOR CERTAIN ARTICLES-

(1) IN GENERAL- The President may provide duty-free treatment for any article described in section 503(b)(1)(B) through (G) that is the growth, product, or manufacture of a beneficiary sub-Saharan African country described in subsection (a), if, after receiving the advice of the International Trade Commission in accordance with section 503(e), the President determines that such article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.

(2) RULES OF ORIGIN- The duty-free treatment provided under paragraph (1) shall apply to any article described in that paragraph that meets the requirements of section 503(a)(2), except that--

`(A) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 503(a)(2); and

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

(c) BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES, ETC- For purposes of this title, the terms beneficiary sub-Saharan African country' and `beneficiary sub-Saharan African countries' mean a country or countries listed in section 107 of the African Growth and Opportunity Act that the President has determined is eligible under subsection (a) of this section.'.

(b) WAIVER OF COMPETITIVE NEED LIMITATION- Section 503(c)(2)(D) of the Trade Act of 1974 (19 United StatesC. 2463(c)(2)(D)) is amended to read as follows:

`(D) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES AND BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES- Subparagraph (A) shall not apply to any least-developed beneficiary developing country or any beneficiary sub-Saharan African country.'.

SEC. 112. TREATMENT OF CERTAIN TEXTILES AND APPAREL.

(a) PREFERENTIAL TREATMENT- Textile and apparel articles described in subsection (b) that are imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country described in section 506A(c) of the Trade Act of 1974, shall enter the United States free of duty and free of any quantitative limitations in accordance with the provisions set forth in subsection (b), if the country has satisfied the requirements set forth in section 113.

(b) PRODUCTS COVERED- The preferential treatment described in subsection (a) shall apply only to the following textile and apparel products:

(1) APPAREL ARTICLES ASSEMBLED IN BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES- Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in the United States) that are--

(A) entered under subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States; or

(B) entered under chapter 61 or 62 of the Harmonized Tariff Schedule of the United States, if, after such assembly, the articles would have qualified for entry under subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.

(2) APPAREL ARTICLES CUT AND ASSEMBLED IN BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES- Apparel articles cut in one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in the United States) if such articles are assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States.

(3) APPAREL ARTICLES ASSEMBLED FROM REGIONAL AND OTHER FABRIC- Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in one or more beneficiary sub-Saharan African countries), subject to the following:

(A) LIMITATIONS ON BENEFITS-

(i) IN GENERAL- Preferential treatment under this paragraph shall be extended in the 1-year period beginning on October 1, 2000, and in each of the seven succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(ii) APPLICABLE PERCENTAGE- For purposes of this subparagraph, the term `applicable percentage' means 1.5 percent for the 1-year period beginning October 1, 2000, increased in each of the seven succeeding 1-year periods by equal increments, so that for the period beginning October 1, 2007, the applicable percentage does not exceed 3.5 percent.

(B) SPECIAL RULE FOR LESSER DEVELOPED COUNTRIES-

(i) IN GENERAL- Subject to subparagraph (A), preferential treatment shall be extended through September 30, 2004, for apparel articles wholly assembled in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric used to make such articles.

(ii) LESSER DEVELOPED BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY- For purposes of this subparagraph the term `lesser developed beneficiary sub-Saharan African country' means a beneficiary sub-Saharan African country that had a per capita gross national product of less than $1,500 a year in 1998, as measured by the World Bank.

(C) SURGE MECHANISM-

(i) IMPORT MONITORING- The Secretary of Commerce shall monitor imports of articles described in this paragraph on a monthly basis to determine if there has been a surge in imports of such articles. In order to permit public access to preliminary international trade data and to facilitate the early identification of potentially disruptive import surges, the Director of the Office of Management and Budget may grant an exception to the publication dates established for the release of data on United States international trade in covered articles, if the Director notifies Congress of the early release of the data.

(ii) DETERMINATION OF DAMAGE OR THREAT THEREOF- Whenever the Secretary of Commerce determines, based on the data described in clause (i), or pursuant to a written request made by an interested party, that there has been a surge in imports of an article described in this paragraph from a beneficiary sub-Saharan African country, the Secretary shall determine whether such article from such country is being imported in such increased quantities as to cause serious damage, or threat thereof, to the domestic industry producing a like or directly competitive article. If the Secretary's determination is affirmative, the President shall suspend the duty-free treatment provided for such article under this paragraph. If the inquiry is initiated at the request of an interested party, the Secretary shall make the determination within 60 days after the date of the request.

(iii) FACTORS TO CONSIDER- In determining whether a domestic industry has been seriously damaged, or is threatened with serious damage, the Secretary shall examine the effect of the imports on relevant economic indicators such as domestic production, sales, market share, capacity utilization, inventories, employment, profits, exports, prices, and investment.

(iv) PROCEDURE-

(I) INITIATION- The Secretary of Commerce shall initiate an inquiry within 10 days after receiving a written request and supporting information for an inquiry from an interested party. Notice of initiation of an inquiry shall be published in the Federal Register.

(II) PARTICIPATION BY INTERESTED PARTIES- The Secretary of Commerce shall establish procedures to ensure participation in the inquiry by interested parties.

(III) NOTICE OF DETERMINATION- The Secretary shall publish the determination described in clause (ii) in the Federal Register.

(IV) INFORMATION AVAILABLE- If relevant information is not available on the record or any party withholds information that has been requested by the Secretary, the Secretary shall make the determination on the basis of the facts available. When the Secretary relies on information submitted in the inquiry as facts available, the Secretary shall, to the extent practicable, corroborate the information from independent sources that are reasonably available to the Secretary.

(v) INTERESTED PARTY- For purposes of this subparagraph, the term `interested party' means any producer of a like or directly competitive article, a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or sale in the United States of a like or directly competitive article, a trade or business association

representing producers or sellers of like or directly competitive articles, producers engaged in the production of essential inputs for like or directly competitive articles, a certified union or group of workers which is representative of an industry engaged in the manufacture, production, or sale of essential inputs for the like or directly competitive article, or a trade or business association representing companies engaged in the manufacture, production, or sale of such essential inputs.

(4) SWEATERS KNIT-TO-SHAPE FROM CASHMERE OR MERINO WOOL-

(A) CASHMERE- Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary sub-Saharan African countries and classifiable under subheading 6110.10 of the Harmonized Tariff Schedule of the United States.

(B) MERINO WOOL- Sweaters, 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries.

(5) APPAREL ARTICLES WHOLLY ASSEMBLED FROM FABRIC OR YARN NOT AVAILABLE IN COMMERCIAL QUANTITIES IN THE United States-

(A) IN GENERAL- Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the NAFTA.

(B) ADDITIONAL APPAREL ARTICLES- At the request of any interested party and subject to the following requirements, the President is authorized to proclaim the treatment provided under subparagraph (A) for yarns or fabrics not described in subparagraph (A) if--

(i) the President determines that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(ii) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 United StatesC. 2155) and the United States International Trade Commission;

(iii) within 60 calendar days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth--

(I) the action proposed to be proclaimed and the reasons for such action; and

(II) the advice obtained under clause (ii);

(iv) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclauses (I) and (II) of clause (iii), has expired; and

(v) the President has consulted with such committees regarding the proposed action during the period referred to in clause (iii).

(6) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES- A handloomed, handmade, or folklore article of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of such beneficiary country or countries. For purposes of this paragraph, the President, after consultation with the beneficiary sub-Saharan African country or countries concerned, shall determine which, if any, particular textile and apparel goods of the country (or countries) shall be treated as being handloomed, handmade, or folklore articles.

(c) TREATMENT OF QUOTAS ON TEXTILE AND APPAREL IMPORTS FROM KENYA AND MAURITIUS- The President shall eliminate the existing quotas on textile and apparel articles imported into the United States--

(1) from Kenya within 30 days after that country adopts an effective visa system to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents relating to the importation of the articles into the United States; and

(2) from Mauritius within 30 days after that country adopts such a visa system.

The Customs Service shall provide the necessary technical assistance to Kenya and Mauritius in the development and implementation of the visa systems.

(d) SPECIAL RULES-

(1) FINDINGS AND TRIMMINGS-

(A) GENERAL RULE- An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if the value of such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled article. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, `bow buds', decorative lace trim, elastic strips, and zippers, including zipper tapes and labels. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and used in the production of brassieres.

(B) CERTAIN INTERLININGS-

(i) GENERAL RULE- An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(ii) INTERLININGS DESCRIBED- Interlinings eligible for the treatment described in clause (i) include only a chest type plate, a `hymo' piece, or `sleeve header', of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(iii) TERMINATION OF TREATMENT- The treatment described in this subparagraph shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(C) EXCEPTION- In the case of an article described in subsection (b)(2), sewing thread shall not be treated as findings or trimmings under subparagraph (A).

(2) DE MINIMIS RULE- An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains fibers or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all such fibers and yarns is not more than 7 percent of the total weight of the article.

(e) DEFINITIONS- In this section and section 113:

(1) AGREEMENT ON TEXTILES AND CLOTHING- The term `Agreement on Textiles and Clothing' means the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 United StatesC. 3511(d)(4)).

(2) BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY, ETC- The terms `beneficiary sub-Saharan African country' and `beneficiary sub-Saharan African countries' have the same meaning as such terms have under section 506A(c) of the Trade Act of 1974.

(3) NAFTA- The term `NAFTA' means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(f) EFFECTIVE DATE- This section takes effect on October 1, 2000, and shall remain in effect through September 30, 2008.

SEC. 113. PROTECTIONS AGAINST TRANSSHIPMENT.

(a) PREFERENTIAL TREATMENT CONDITIONED ON ENFORCEMENT MEASURES-

(1) IN GENERAL- The preferential treatment under section 112(a) shall not be provided to textile and apparel articles that are imported from a beneficiary sub-Saharan African country unless that country--

(A) has adopted an effective visa system, domestic laws, and enforcement procedures applicable to covered articles to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to the importation of the articles into the United States;

(B) has enacted legislation or promulgated regulations that would permit United States Customs Service verification teams to have the access necessary to investigate thoroughly allegations of transshipment through such country;

(C) agrees to report, on a timely basis, at the request of the United States Customs Service, on the total exports from and imports into that country of covered articles, consistent with the manner in which the records are kept by that country;

(D) will cooperate fully with the United States to address and take action necessary to prevent circumvention as provided in Article 5 of the Agreement on Textiles and Clothing;

(E) agrees to require all producers and exporters of covered articles in that country to maintain complete records of the production and the export of covered articles, including materials used in the production, for at least 2 years after the production or export (as the case may be); and

(F) agrees to report, on a timely basis, at the request of the United States Customs Service, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system.

(2) COUNTRY OF ORIGIN DOCUMENTATION- For purposes of paragraph (1)(F), documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter.

(b) CUSTOMS PROCEDURES AND ENFORCEMENT-

(1) IN GENERAL-

(A) REGULATIONS- Any importer that claims preferential treatment under section 112 shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(B) DETERMINATION-

(i) IN GENERAL- In order to qualify for the preferential treatment under section 112 and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in clause (ii)--

(I) has implemented and follows; or

(II) is making substantial progress toward implementing and following,

procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(ii) COUNTRY DESCRIBED- A country is described in this clause if it is a beneficiary sub-Saharan African country--

(I) from which the article is exported; or

(II) in which materials used in the production of the article originate or in which the article or such materials, undergo production that contributes to a claim that the article is eligible for preferential treatment.

(2) CERTIFICATE OF ORIGIN- The Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (1) shall not be required in the case of an article imported under section 112 if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(3) PENALTIES FOR EXPORTERS- If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment as defined in paragraph (4), then the President shall deny for a period of 5 years all benefits under section 112 to such exporter, any successor of such exporter, and any other entity owned or operated by the principal of the exporter.

(4) TRANSSHIPMENT DESCRIBED- Transshipment within the meaning of this subsection has occurred when preferential treatment for a textile or apparel article under this Act has been claimed on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this paragraph, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under section 112.

(5) MONITORING AND REPORTS TO CONGRESS- The Customs Service shall monitor and the Commissioner of Customs shall submit to Congress, not later than March 31 of each year, a

report on the effectiveness of the visa systems and the implementation of legislation and regulations described in subsection (a) and on measures taken by countries in sub-Saharan Africa which export textiles or apparel to the United States to prevent circumvention as described in Article 5 of the Agreement on Textiles and Clothing.

(c) CUSTOMS SERVICE ENFORCEMENT- The Customs Service shall--

(1) make available technical assistance to the beneficiary sub-Saharan African countries--

(A) in the development and implementation of visa systems, legislation, and regulations described in subsection (a)(1)(A); and

(B) to train their officials in anti-transshipment enforcement;

(2) send production verification teams to at least four beneficiary sub-Saharan African countries each year; and

(3) to the extent feasible, place beneficiary sub-Saharan African countries on the Electronic Visa (ELVIS) program.

(d) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out subsection (c) the sum of $5,894,913.

SEC. 114. TERMINATION.

Title V of the Trade Act of 1974 is amended by inserting after section 506A the following new section:

`SEC. 506B. TERMINATION OF BENEFITS FOR SUB-SAHARAN AFRICAN COUNTRIES.

`In the case of a beneficiary sub-Saharan African country, as defined in section 506A(c), duty-free treatment provided under this title shall remain in effect through September 30, 2008.'.

SEC. 115. CLERICAL AMENDMENTS.

The table of contents for title V of the Trade Act of 1974 is amended by inserting after the item relating to section 506 the following new items:

`Sec. 506A. Designation of sub-Saharan African countries for certain benefits.

`Sec. 506B. Termination of benefits for sub-Saharan African countries.'.

SEC. 116. FREE TRADE AGREEMENTS WITH SUB-SAHARAN AFRICAN COUNTRIES.

(a) DECLARATION OF POLICY- Congress declares that free trade agreements should be negotiated, where feasible, with interested countries in sub-Saharan Africa, in order to serve as the catalyst for increasing trade between the United States and sub-Saharan Africa and increasing private sector investment in sub-Saharan Africa.

(b) PLAN REQUIREMENT-

(1) IN GENERAL- The President, taking into account the provisions of the treaty establishing the African Economic Community and the willingness of the governments of sub-Saharan African countries to engage in negotiations to enter into free trade agreements, shall develop a plan for the purpose of negotiating and entering into one or more trade agreements with interested beneficiary sub-Saharan African countries.

(2) ELEMENTS OF PLAN- The plan shall include the following:

(A) The specific objectives of the United States with respect to negotiations described in paragraph (1) and a suggested timetable for achieving those objectives.

(B) The benefits to both the United States and the relevant sub-Saharan African countries with respect to the applicable free trade agreement or agreements.

(C) A mutually agreed-upon timetable for the negotiations.

(D) The implications for and the role of regional and sub-regional organizations in sub-Saharan Africa with respect to such free trade agreement or agreements.

(E) Subject matter anticipated to be covered by the negotiations and United States laws, programs, and policies, as well as the laws of participating eligible African countries and existing bilateral and multilateral and economic cooperation and trade agreements, that may be affected by the agreement or agreements.

(F) Procedures to ensure the following:

(i) Adequate consultation with the Congress and the private sector during the negotiations.

(ii) Consultation with the Congress regarding all matters relating to implementation of the agreement or agreements.

(iii) Approval by the Congress of the agreement or agreements.

(iv) Adequate consultations with the relevant African governments and African regional and subregional intergovernmental organizations during the negotiation of the agreement or agreements.

(c) REPORTING REQUIREMENT- Not later than 12 months after the date of the enactment of this Act, the President shall prepare and transmit to the Congress a report containing the plan developed pursuant to subsection (b).

SEC. 117. ASSISTANT United States TRADE REPRESENTATIVE FOR AFRICAN AFFAIRS.

It is the sense of the Congress that--

(1) the position of Assistant United States Trade Representative for African Affairs is integral to the United States commitment to increasing United States-sub-Saharan African trade and investment;

(2) the position of Assistant United States Trade Representative for African Affairs should be maintained within the Office of the United States Trade Representative to direct and coordinate interagency activities on United States-Africa trade policy and investment matters and serve as--

(A) a primary point of contact in the executive branch for those persons engaged in trade between the United States and sub-Saharan Africa; and

(B) the chief advisor to the United States Trade Representative on issues of trade and investment with Africa; and

(3) the United States Trade Representative should have adequate funding and staff to carry out the duties of the Assistant United States Trade Representative for African Affairs described in paragraph (2), subject to the availability of appropriations.

Subtitle C--Economic Development Related Issues

SEC. 121. SENSE OF THE CONGRESS REGARDING COMPREHENSIVE DEBT RELIEF FOR THE WORLD'S POOREST COUNTRIES.

(a) FINDINGS- Congress makes the following findings:

(1) The burden of external debt has become a major impediment to economic growth and poverty reduction in many of the world's poorest countries.

(2) Until recently, the United States Government and other official creditors sought to address this problem by rescheduling loans and in some cases providing limited debt reduction.

(3) Despite such efforts, the cumulative debt of many of the world's poorest countries continued to grow beyond their capacity to repay.

(4) In 1997, the Group of Seven, the World Bank, and the International Monetary Fund adopted the Heavily Indebted Poor Countries Initiative (HIPC), a commitment by the international community that all multilateral and bilateral creditors, acting in a coordinated and concerted fashion, would reduce poor country debt to a sustainable level.

(5) The HIPC Initiative is currently undergoing reforms to address concerns raised about country conditionality, the amount of debt forgiven, and the allocation of savings realized through the debt forgiveness program to ensure that the Initiative accomplishes the goals of economic growth and poverty alleviation in the world's poorest countries.

(b) SENSE OF THE CONGRESS- It is the sense of the Congress that--

(1) Congress and the President should work together, without undue delay and in concert with the international community, to make comprehensive debt relief available to the world's poorest countries in a manner that promotes economic growth and poverty alleviation;

(2) this program of bilateral and multilateral debt relief should be designed to strengthen and expand the private sector, encourage increased trade and investment, support the development of free markets, and promote broad-scale economic growth in beneficiary countries;

(3) this program of debt relief should also support the adoption of policies to alleviate poverty and to ensure that benefits are shared widely among the population, such as through initiatives to advance education, improve health, combat AIDS, and promote clean water and environmental protection;

(4) these debt relief agreements should be designed and implemented in a transparent manner and with the broad participation of the citizenry of the debtor country and should ensure that country circumstances are adequately taken into account;

(5) no country should receive the benefits of debt relief if that country does not cooperate with the United States on terrorism or narcotics enforcement, is a gross violator of the human rights of its citizens, or is engaged in conflict or spends excessively on its military; and

(6) in order to prevent adverse impact on a key industry in many developing countries, the International Monetary Fund must mobilize its own resources for providing debt relief to eligible countries without allowing gold to reach the open market, or otherwise adversely affecting the market price of gold.

SEC. 122. EXECUTIVE BRANCH INITIATIVES.

(a) STATEMENT OF THE CONGRESS- The Congress recognizes that the stated policy of the executive branch in 1997, the `Partnership for Growth and Opportunity in Africa' initiative, is a step toward the establishment of a comprehensive trade and development policy for sub-Saharan Africa. It is the sense of the Congress that this Partnership is a companion to the policy goals set forth in this title.

(b) TECHNICAL ASSISTANCE TO PROMOTE ECONOMIC REFORMS AND DEVELOPMENT- In addition to continuing bilateral and multilateral economic and development assistance, the President shall target technical assistance toward--

(1) developing relationships between United States firms and firms in sub-Saharan Africa through a variety of business associations and networks;

(2) providing assistance to the governments of sub-Saharan African countries to--

(A) liberalize trade and promote exports;

(B) bring their legal regimes into compliance with the standards of the World Trade Organization in conjunction with membership in that Organization;

(C) make financial and fiscal reforms; and

(D) promote greater agribusiness linkages;

(3) addressing such critical agricultural policy issues as market liberalization, agricultural export development, and agribusiness investment in processing and transporting agricultural commodities;

(4) increasing the number of reverse trade missions to growth-oriented countries in sub-Saharan Africa;

(5) increasing trade in services; and

(6) encouraging greater sub-Saharan African participation in future negotiations in the World Trade Organization on services and making further commitments in their schedules to the General Agreement on Trade in Services in order to encourage the removal of tariff and nontariff barriers.

SEC. 123. OVERSEAS PRIVATE INVESTMENT CORPORATION INITIATIVES.

(a) INITIATION OF FUNDS- It is the sense of the Congress that the Overseas Private Investment Corporation should exercise the authorities it has to initiate an equity fund or equity funds in support of projects in the countries in sub-Saharan Africa, in addition to the existing equity fund for sub-Saharan Africa created by the Corporation.

(b) STRUCTURE AND TYPES OF FUNDS-

(1) STRUCTURE- Each fund initiated under subsection (a) should be structured as a partnership managed by professional private sector fund managers and monitored on a continuing basis by the Corporation.

(2) CAPITALIZATION- Each fund should be capitalized with a combination of private equity capital, which is not guaranteed by the Corporation, and debt for which the Corporation provides guaranties.

(3) INFRASTRUCTURE FUND- One or more of the funds, with combined assets of up to $500,000,000, should be used in support of infrastructure projects in countries of sub-Saharan Africa.

(4) EMPHASIS- The Corporation shall ensure that the funds are used to provide support in particular to women entrepreneurs and to innovative investments that expand opportunities for women and maximize employment opportunities for poor individuals.

(c) OVERSEAS PRIVATE INVESTMENT CORPORATION-

(1) INVESTMENT ADVISORY COUNCIL- Section 233 of the Foreign Assistance Act of 1961 is amended by adding at the end the following:

`(e) INVESTMENT ADVISORY COUNCIL- The Board shall take prompt measures to increase the loan, guarantee, and insurance programs, and financial commitments, of the Corporation in sub-Saharan Africa,

including through the use of an investment advisory council to assist the Board in developing and implementing policies, programs, and financial instruments with respect to sub-Saharan Africa. In addition, the investment advisory council shall make recommendations to the Board on how the Corporation can facilitate greater support by the United States for trade and investment with and in sub-Saharan Africa. The investment advisory council shall terminate 4 years after the date of the enactment of this subsection.'.

(2) REPORTS TO CONGRESS- Within 6 months after the date of the enactment of this Act, and annually for each of the 4 years thereafter, the Board of Directors of the Overseas Private Investment Corporation shall submit to Congress a report on the steps that the Board has taken to implement section 233(e) of the Foreign Assistance Act of 1961 (as added by paragraph (1)) and any recommendations of the investment advisory council established pursuant to such section.

SEC. 124. EXPORT-IMPORT BANK INITIATIVES.

(a) SENSE OF THE CONGRESS- It is the sense of the Congress that the Board of Directors of the Bank shall continue to take comprehensive measures, consistent with the credit standards otherwise required by law, to promote the expansion of the Bank's financial commitments in sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank.

(b) SUB-SAHARAN AFRICA ADVISORY COMMITTEE- The sub-Saharan Africa Advisory Committee (SAAC) is to be commended for aiding the Bank in advancing the economic partnership between the United States and the nations of sub-Saharan Africa by doubling the number of sub-Saharan African countries in which the Bank is open for traditional financing and by increasing by tenfold the Bank's support for sales to sub-Saharan Africa from fiscal year 1998 to fiscal year 1999. The Board of Directors of the Bank and its staff shall continue to review carefully the sub-Saharan Africa Advisory Committee recommendations on the development and implementation of new and innovative policies and programs designed to promote the Bank's expansion in sub-Saharan Africa.

SEC. 125. EXPANSION OF THE United States AND FOREIGN COMMERCIAL SERVICE IN SUB-SAHARAN AFRICA.

(a) FINDINGS- The Congress makes the following findings:

(1) The United States and Foreign Commercial Service (hereafter in this section referred to as the `Commercial Service') plays an important role in helping United States businesses identify export opportunities and develop reliable sources of information on commercial prospects in foreign countries.

(2) During the 1980s, the presence of the Commercial Service in sub-Saharan Africa consisted of 14 professionals providing services in eight countries. By early 1997, that presence had been reduced by half to seven professionals in only four countries.

(3) Since 1997, the Department of Commerce has slowly begun to increase the presence of the Commercial Service in sub-Saharan Africa, adding five full-time officers to established posts.

(4) Although the Commercial Service Officers in these countries have regional responsibilities, this kind of coverage does not adequately service the needs of United States businesses attempting to do business in sub-Saharan Africa.

(5) The Congress has, on several occasions, encouraged the Commercial Service to focus its resources and efforts in countries or regions in Europe or Asia to promote greater United States export activity in those markets, and similar encouragement should be provided for countries in sub-Saharan Africa as well.

(6) Because market information is not widely available in many sub-Saharan African countries, the presence of additional Commercial Service Officers and resources can play a significant role in assisting United States businesses in markets in those countries.

(b) APPOINTMENTS- Subject to the availability of appropriations, by not later than December 31, 2001, the Secretary of Commerce, acting through the Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service, shall take steps to ensure that--

(1) at least 20 full-time Commercial Service employees are stationed in sub-Saharan Africa; and

(2) full-time Commercial Service employees are stationed in not less than 10 different sub-Saharan African countries.

(c) INITIATIVE FOR SUB-SAHARAN AFRICA- In order to encourage the export of United States goods and services to sub-Saharan African countries, the International Trade Administration shall make a special effort to--

(1) identify United States goods and services which are the best prospects for export by United States companies to sub-Saharan Africa;
(2) identify, where appropriate, tariff and nontariff barriers that are preventing or hindering sales of United States goods and services to, or the operation of United States companies in, sub-Saharan Africa;
(3) hold discussions with appropriate authorities in sub-Saharan Africa on the matters described in paragraphs (1) and (2) with a view to securing increased market access for United States exporters of goods and services;
(4) identify current resource allocations and personnel levels in sub-Saharan Africa for the Commercial Service and consider plans for the deployment of additional resources or personnel to that region; and
(5) make available to the public, through printed and electronic means of communication, the information derived pursuant to paragraphs (1) through (4) for each of the 4 years after the date of the enactment of this Act.

SEC. 126. DONATION OF AIR TRAFFIC CONTROL EQUIPMENT TO ELIGIBLE SUB-SAHARAN AFRICAN COUNTRIES.

It is the sense of the Congress that, to the extent appropriate, the United States Government should make every effort to donate to governments of sub-Saharan African countries determined to be eligible under section 104 air traffic control equipment that is no longer in use, including appropriate related reimbursable technical assistance.

SEC. 127. ADDITIONAL AUTHORITIES AND INCREASED FLEXIBILITY TO PROVIDE ASSISTANCE UNDER THE DEVELOPMENT FUND FOR AFRICA.

(a) USE OF SUSTAINABLE DEVELOPMENT ASSISTANCE TO SUPPORT FURTHER ECONOMIC GROWTH- It is the sense of the Congress that sustained economic growth in sub-Saharan Africa depends in large measure upon the development of a receptive environment for trade and investment, and that to achieve this objective the United States Agency for International Development should continue to support programs which help to create this environment. Investments in human resources, development, and implementation of free market policies, including policies to liberalize agricultural markets and improve food security, and the support for the rule of law and democratic governance should continue to be encouraged and enhanced on a bilateral and regional basis.
(b) DECLARATIONS OF POLICY- The Congress makes the following declarations:
(1) The Development Fund for Africa established under chapter 10 of part I of the Foreign Assistance Act of 1961 (22 United StatesC. 2293 et seq.) has been an effective tool in providing development assistance to sub-Saharan Africa since 1988.
(2) The Development Fund for Africa will complement the other provisions of this title and lay a foundation for increased trade and investment opportunities between the United States and sub-Saharan Africa.
(3) Assistance provided through the Development Fund for Africa will continue to support programs and activities that promote the long term economic development of sub-Saharan Africa, such as programs and activities relating to the following:
(A) Strengthening primary and vocational education systems, especially the acquisition of middle-level technical skills for operating modern private businesses and the introduction of college level business education, including the study of international business, finance, and stock exchanges.
(B) Strengthening health care systems.
(C) Supporting democratization, good governance and civil society and conflict resolution efforts.
(D) Increasing food security by promoting the expansion of agricultural and agriculture-based industrial production and productivity and increasing real incomes for poor individuals.
(E) Promoting an enabling environment for private sector-led growth through sustained economic reform, privatization programs, and market-led economic activities.
(F) Promoting decentralization and local participation in the development process, especially linking the rural production sectors and the industrial and market centers throughout Africa.

(G) Increasing the technical and managerial capacity of sub-Saharan African individuals to manage the economy of sub-Saharan Africa.

(H) Ensuring sustainable economic growth through environmental protection.

(4) The African Development Foundation has a unique congressional mandate to empower the poor to participate fully in development and to increase opportunities for gainful employment, poverty alleviation, and more equitable income distribution in sub-Saharan Africa. The African Development Foundation has worked successfully to enhance the role of women as agents of change, strengthen the informal sector with an emphasis on supporting micro and small sized enterprises, indigenous technologies, and mobilizing local financing. The African Development Foundation should develop and implement strategies for promoting participation in the socioeconomic development process of grassroots and informal sector groups such as nongovernmental organizations, cooperatives, artisans, and traders into the programs and initiatives established under this title.

(c) ADDITIONAL AUTHORITIES-

(1) IN GENERAL- Section 496(h) of the Foreign Assistance Act of 1961 (22 United StatesC. 2293(h)) is amended--

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following:

`(3) DEMOCRATIZATION AND CONFLICT RESOLUTION CAPABILITIES- Assistance under this section may also include program assistance--

`(A) to promote democratization, good governance, and strong civil societies in sub-Saharan Africa; and

`(B) to strengthen conflict resolution capabilities of governmental, intergovernmental, and nongovernmental entities in sub-Saharan Africa.'.

(2) CONFORMING AMENDMENT- Section 496(h)(4) of such Act, as amended by paragraph (1), is further amended by striking `paragraphs (1) and (2)' in the first sentence and inserting `paragraphs (1), (2), and (3)'.

SEC. 128. ASSISTANCE FROM United States PRIVATE SECTOR TO PREVENT AND REDUCE HIV/AIDS IN SUB-SAHARAN AFRICA.

It is the sense of the Congress that United States businesses should be encouraged to provide assistance to sub-Saharan African countries to prevent and reduce the incidence of HIV/AIDS in sub-Saharan Africa. In providing such assistance, United States businesses should be encouraged to consider the establishment of an HIV/AIDS Response Fund in order to provide for coordination among such businesses in the collection and distribution of the assistance to sub-Saharan African countries.

SEC. 129. SENSE OF THE CONGRESS RELATING TO HIV/AIDS CRISIS IN SUB-SAHARAN AFRICA.

(a) FINDINGS- The Congress finds the following:

(1) Sustained economic development in sub-Saharan Africa depends in large measure upon successful trade with and foreign assistance to the countries of sub-Saharan Africa.

(2) The HIV/AIDS crisis has reached epidemic proportions in sub-Saharan Africa, where more than 21,000,000 men, women, and children are infected with HIV.

(3) Eighty-three percent of the estimated 11,700,000 deaths from HIV/AIDS worldwide have been in sub-Saharan Africa.

(4) The HIV/AIDS crisis in sub-Saharan Africa is weakening the structure of families and societies.

(5)(A) The HIV/AIDS crisis threatens the future of the workforce in sub-Saharan Africa.

(B) Studies show that HIV/AIDS in sub-Saharan Africa most severely affects individuals between the ages of 15 and 49--the age group that provides the most support for the economies of sub-Saharan African countries.

(6) Clear evidence demonstrates that HIV/AIDS is destructive to the economies of sub-Saharan African countries.

(7) Sustained economic development is critical to creating the public and private sector resources in sub-Saharan Africa necessary to fight the HIV/AIDS epidemic.

(b) SENSE OF THE CONGRESS- It is the sense of the Congress that--

(1) addressing the HIV/AIDS crisis in sub-Saharan Africa should be a central component of United States foreign policy with respect to sub-Saharan Africa;

(2) significant progress needs to be made in preventing and treating HIV/AIDS in sub-Saharan Africa in order to sustain a mutually beneficial trade relationship between the United States and sub-Saharan African countries; and

(3) the HIV/AIDS crisis in sub-Saharan Africa is a global threat that merits further attention through greatly expanded public, private, and joint public-private efforts, and through appropriate United States legislation.

SEC. 130. STUDY ON IMPROVING AFRICAN AGRICULTURAL PRACTICES.

(a) IN GENERAL- The Secretary of Agriculture, in consultation with American Land Grant Colleges and Universities and not-for-profit international organizations, is authorized to conduct a 2-year study on ways to improve the flow of American farming techniques and practices to African farmers. The study shall include an examination of ways of improving or utilizing--

(1) knowledge of insect and sanitation procedures;

(2) modern farming and soil conservation techniques;

(3) modern farming equipment (including maintaining the equipment);

(4) marketing crop yields to prospective purchasers; and

(5) crop maximization practices.

The Secretary of Agriculture shall submit the study to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than September 30, 2001.

(b) LAND GRANT COLLEGES AND NOT-FOR-PROFIT INSTITUTIONS- In conducting the study under subsection (a), the Secretary of Agriculture is encouraged to consult with American Land Grant Colleges and not-for-profit international organizations that have firsthand knowledge of current African farming practices.

SEC. 131. SENSE OF THE CONGRESS REGARDING EFFORTS TO COMBAT DESERTIFICATION IN AFRICA AND OTHER COUNTRIES.

(a) FINDINGS- The Congress finds that--

(1) desertification affects approximately one-sixth of the world's population and one-quarter of the total land area;

(2) over 1,000,000 hectares of Africa are affected by desertification;

(3) dryland degradation is an underlying cause of recurrent famine in Africa;

(4) the United Nations Environment Programme estimates that desertification costs the world $42,000,000,000 a year, not including incalculable costs in human suffering; and

(5) the United States can strengthen its partnerships throughout Africa and other countries affected by desertification, help alleviate social and economic crises caused by misuse of natural resources, and reduce dependence on foreign aid, by taking a leading role to combat desertification.

(b) SENSE OF THE CONGRESS- It is the sense of the Congress that the United States should expeditiously work with the international community, particularly Africa and other countries affected by desertification, to--

(1) strengthen international cooperation to combat desertification;

(2) promote the development of national and regional strategies to address desertification and increase public awareness of this serious problem and its effects;

(3) develop and implement national action programs that identify the causes of desertification and measures to address it; and

(4) recognize the essential role of local governments and nongovernmental organizations in developing and implementing measures to address desertification.

Appendix 6
Amendments to the GSP programme and the African Growth and Opportunity Act: Excerpt from the Trade Act of 2002

Appendix 6
Trade Act of 2002
Amendments to the African Growth and Opportunity Act and the Generalized System of Preferences
H.R.3009

Trade Act of 2002 (Enrolled as Agreed to or Passed by Both House and Senate)

SEC. 3108. TRADE BENEFITS UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT.

(a) IN GENERAL- Section 112(b) of the African Growth and Opportunity Act (19 United StatesC. 3721(b)) is amended as follows:
(1) Paragraph (1) is amended by amending the matter preceding subparagraph (A) to read as follows:
`(1) APPAREL ARTICLES ASSEMBLED IN ONE OR MORE BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES- Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in the United States) that are--'.

(2) Paragraph (2) is amended to read as follows:
`(2) OTHER APPAREL ARTICLES ASSEMBLED IN ONE OR MORE BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES- Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in the United States).'.

(3) Paragraph (3) is amended--
(A) by amending the matter preceding subparagraph (A) to read as follows:
`(3) APPAREL ARTICLES FROM REGIONAL FABRIC OR YARNS- Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if such fabrics are classified under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in one or more beneficiary sub-Saharan African countries), or from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, subject to the following:'; and

(B) by amending subparagraph (B) to read as follows:
`(B) SPECIAL RULE FOR LESSER DEVELOPED COUNTRIES-
`(i) IN GENERAL- Subject to subparagraph (A), preferential treatment under this paragraph shall be extended through September 30, 2004, for apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric or the yarn used to make such articles.

`(ii) LESSER DEVELOPED BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY- For purposes of clause (i), the term `lesser developed beneficiary sub-Saharan African country' means--
`(I) a beneficiary sub-Saharan African country that had a per capita gross national product of less than $1,500 in 1998, as measured by the International Bank for Reconstruction and Development;
`(II) Botswana; and
`(III) Namibia.'.

(4) Paragraph (4)(B) is amended by striking `18.5' and inserting `21.5'.
(5) Section 112(b) of such Act is further amended by adding at the end the following new paragraph:
`(7) APPAREL ARTICLES ASSEMBLED IN ONE OR MORE BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES FROM United States AND BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY COMPONENTS- Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from components cut in the United States and one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States).'.

(b) INCREASE IN LIMITATION ON CERTAIN BENEFITS- The applicable percentage under clause (ii) of section 112(b)(3)(A) of the African Growth and Opportunity Act (19 United StatesC. 3721(b)(3)(A)) shall be increased--
(1) by 2.17 percent for the 1-year period beginning on October 1, 2002, and
(2) by equal increments in each succeeding 1-year period provided for in such clause, so that for the 1-year period beginning October 1, 2007, the applicable percentage is increased by 3.5 percent,
except that such increase shall not apply with respect to articles eligible under subparagraph (B) of section 112(b)(3) of that Act.

DIVISION D--EXTENSION OF CERTAIN PREFERENTIAL TRADE TREATMENT

TITLE XLI--EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES

SEC. 4101. EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES.

(a) EXTENSION OF DUTY-FREE TREATMENT UNDER SYSTEM- Section 505 of the Trade Act of 1974 (19 United StatesC. 2465(a)) is amended by striking `September 30, 2001' and inserting `December 31, 2006'.

(b) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS-
(1) IN GENERAL- Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to paragraph (2), the entry--
(A) of any article to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on September 30, 2001,
(B) that was made after September 30, 2001, and before the date of the enactment of this Act, and
(C) to which duty-free treatment under title V of that Act did not apply,
shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.
(2) REQUESTS- Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service--
(A) to locate the entry; or
(B) to reconstruct the entry if it cannot be located.
(3) DEFINITION- As used in this subsection, the term `entry' includes a withdrawal from warehouse for consumption.

SEC. 4102. AMENDMENTS TO GENERALIZED SYSTEM OF PREFERENCES.

(a) ELIGIBILITY FOR GENERALIZED SYSTEM OF PREFERENCES- Section 502(b)(2)(F) of the Trade Act of 1974 (19 United StatesC. 2462(b)(2)(F)) is amended by striking the period at the end and inserting `or such country has not taken steps to support the efforts of the United States to combat terrorism.'.

(b) DEFINITION OF INTERNATIONALLY RECOGNIZED WORKER RIGHTS- Section 507(4) of the Trade Act of 1974 (19 United StatesC. 2467(4)) is amended by amending subparagraph (D) to read as follows:
`(D) a minimum age for the employment of children, and a prohibition on the worst forms of child labor, as defined in paragraph (6); and'.

Appendix 7
The GSP model petition

Appendix 7
The GSP model petition

Part l: General Information Required of all Petitioners:

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

Part 2: Supporting Information:

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

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

Provide the following information with respect to the relevant United States industry for the most recent *three* calendar year period:[38]

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

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

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

1. Identification of the principal beneficiary country suppliers expected to benefit from the proposed modification(s);
2. Name and location of firm(s);
3. Actual production figures and estimated increase if GSP eligibility is granted;
4. Actual production and capacity utilization and estimated increase if GSP eligibility is granted;

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

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

Appendix 8
A case study in the operation of the competitive-need limits: Ceramic roofing tiles from Venezuela

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A case study in the operation of the competitive-need limits: Ceramic roofing tiles from Venezuela

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

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

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

Table A.1
United States Imports of Ceramic Roofing Tiles
Imports of Harmonized Tariff Schedule item 6905.10.00 in thousands of current dollars, customs value; figures in parentheses are each country's share of total United States imports

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

Source: Imports from the United States Department of Commerce's National Trade Data Bank; *de minimis* levels from the Office of the United States Trade Representative.
Note: No *de minimis* level is shown for 1995 because the United States opted not to conduct a GSP review that year, and hence no CNL or *de minimis* levels were calculated.

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

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

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

Appendix 9
Frequently asked questions about the GSP

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Frequently asked questions about the GSP
Adapted from the USTR's website

I.1 GSP-Eligible Articles

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

The imported merchandise must meet the following qualifications:

1. It must be included on the list of GSP-eligible articles.
2. It must be from a designated beneficiary country.
3. The beneficiary country must be eligible for GSP treatment for that article.
4. It must meet the value-added requirements.
5. It must be imported directly into the United States from the beneficiary country or association.
6. The exporter/importer must request duty-free treatment under GSP by placing an "**A**" before the HTSUS number that identifies the imported product on the appropriate shipping documents.

Which products are eligible for duty-free treatment?

The GSP comprises two categories of eligible products defined at the 8-digit level of the HTSUS. The original list now includes approximately 4,650 articles that are duty free for all eligible GSP beneficiaries. The second list, added in 1996, made approximately 1,770 articles from the LDBDCs duty free. The LDBDCs are countries which the World Bank has estimated to have incomes (1996 GNP per capita) below $786. See Parts III and IV for the lists of articles eligible for duty-free treatment under GSP. These lists contain most dutiable manufactures and semimanufactures and selected agricultural, fishery, and primary industrial products not otherwise duty free. Articles eligible for GSP treatment are also identified in the current edition of the HTSUS, which is published by the United States International Trade Commission (USITC). The complete 1998 HTSUS can be downloaded from the USITC home page, purchased from the United States Government Printing Office, or inspected at the USTR Reading Room, the field offices of the Department of Commerce, and the United States Embassies or Consulates.)

Can any article be designated as eligible for GSP?

No. Certain articles are prohibited by law (19 United StatesC. 2461) from receiving GSP treatment. These are articles that were not eligible for GSP on January 1, 1995, and include most textiles, watches, footwear, handbags, luggage, flat goods, work gloves, and other leather wearing apparel. In addition, any other articles determined to be import-sensitive cannot be made eligible for GSP. In this regard, the GSP law specifically cites steel, glass, and electronics.

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

All imports of GSP-eligible articles are duty-free.

I.2 GSP Beneficiary Countries

Where are the official lists of the GSP-eligible countries, the LDBDCs, and the articles with country restrictions on eligibility?

Sec. 4(a) of the General Notes at the beginning of the HTSUS contains the official list of the GSP-eligible countries. Sec. 4(c) contains the list of the LDBDCs. Sec. 4(d) contains the list of the imported articles that are not eligible for GSP treatment from the designated GSP countries, for example, where imports from a country have exceeded the competitive-need limitation (CNL). (See Part II.1, 2, and 7.)

How does an importer request GSP treatment?

The request is made by placing the Special Program Indicator (SPI), the letter "**A**" used as a prefix, before the HTSUS tariff number on the shipment entry documentation to indicate that a product is eligible for duty-free treatment under GSP.

If the GSP program expires and is later renewed retroactively, must an importer pay duties in the interim?

If the GSP program expires, importers cannot make claims for duty-free treatment under GSP for merchandise entered or withdrawn for consumption. Duties at the Normal Trade Relations (NTR) rate must be deposited. A claim for duty-free treatment may be made if the merchandise qualifies under another preferential program such as the Andean Trade Preference Act or the Caribbean Basin Economic Recovery Act.

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

Importers who file their entries electronically should use the appropriate SPI ("**A**") as a prefix to the tariff numbers of articles that would qualify for GSP if GSP were in effect at the time of the entry. The United States Customs Service has arranged for the timely processing of refunds of duties deposited on these GSP-eligible entries without requiring further action by the filer. The use of the SPI, in effect, constitutes an importer's request for a refund of duties. For entries made without using the SPI, refunds of duties deposited must generally be requested in writing. (For further information on securing refunds, see 63 *Federal Register* 115, page 32911, June 16, 1999.)

How can the correct HTSUS classification of a product be determined?

The United States Customs Service is responsible for classifying products under the HTSUS. Questions about a specific product HTSUS number should be referred to the Classification and Value Division. Questions about the appropriate classification of a product should be referred to the Office of Regulations and Rulings.

Is the list of eligible articles and countries ever modified?

Yes. The United States Government, through the GSP Subcommittee of the Trade Policy Staff Committee (TPSC), conducts an annual review of petitions to modify the eligibility of articles and countries for duty-free treatment. The GSP Subcommittee comprises representatives of the Executive Branch Agencies that have roles in United States trade policy formulation. (See page v for the list of these agencies.) A list of articles for which modifications have been petitioned and accepted for review is published in the *Federal Register* each summer, usually in mid-July. Public comments are invited, hearings are held, USITC advice is requested and prepared, all of which are reviewed by the GSP Subcommittee as it prepares its recommendations for Presidential decisions. The President's decisions are usually announced in late spring of the following calendar year and take effect on July 1.

How does one petition for a modification in the list of articles or countries?

Each year a *Federal Register* notice invites interested parties to petition the GSP Subcommittee for modifications in the list of products or countries eligible for GSP treatment. (See Part II.8 for a sample petition outline for anyone seeking modifications in the GSP product coverage.) Petitions must conform to the applicable rules and regulations contained in the Code of Federal Regulations (15 CFR Part 2007) in order to be accepted for formal review. Petitions must be submitted to the GSP Subcommittee by the scheduled submission date, usually in late spring, to be considered in that year's annual review. Petitions accepted for review are subject to public hearings and a full review by the GSP Subcommittee. Modifications made as a result of the annual review are implemented by Executive Order or Presidential Proclamation and are then published in the *Federal Register.*

Which factors must be considered when the list of eligible articles or countries is modified?

When the GSP list is modified, the following factors must be considered:

1. The statement of a country requesting GSP eligibility
2. The effect that a modification would have on furthering the economic development of a beneficiary country
3. The anticipated impact on the United States producers of like or directly competitive products
4. The extent of the beneficiary developing country's competitiveness regarding eligible products
5. The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences on imports of products from such countries

All decisions to modify the list of GSP-eligible articles are made in light of the extent to which beneficiaries accomplish the following:

• Offer reasonable and equitable market access for United States goods and services

• Protect United States intellectual property rights adequately and effectively

• Reduce trade-distorting investment policies/practices (including export performance requirements)

• Eliminate trade-distorting export practices

• Ensure internationally recognized worker rights, which include the following:

- Right of association

- Right to organize and bargain collectively

- Prohibition of any form of forced or compulsory labor

- Minimum age for child employment

- Acceptable work conditions regarding, for example, minimum wages, work hours, and occupational safety and health standards

What is the three-year rule?

Many products not currently eligible for GSP may have been eligible previously or considered for eligibility since 1976. An article may not be considered for designation as GSP-eligible if it has been the subject of a formal review and denied eligibility during the previous three calendar years. The petition history of a product may indicate its current potential for obtaining GSP eligibility. The public version of petitions is on file at the Office of the USTR in Room 101. Interested parties may call (202) 395-6186 for an appointment to examine the files.

Who makes the determinations regarding GSP product and country eligibility?

The GSP Subcommittee of the Trade Policy Staff Committee, chaired by the Office of the United States Trade Representative, reviews GSP issues. All Executive Branch Agencies directly involved in trade participate in the interagency review of GSP eligibility modifications. The GSP Executive Director conducts the day-to-day operations and, together with the GSP Subcommittee, prepares recommendations for GSP eligibility modifications for the United States Trade Representative (USTR). After reviewing the proposed modifications, the United States Trade Representative decides which recommendations will be submitted to the President, whose final decisions are published in the *Federal Register*, usually in late spring.

I.3 Handicraft Textiles

What is the certified handicraft textile arrangement?

Six categories of textile products are eligible for GSP treatment when the GSP beneficiary has signed an agreement with the United States Government certifying that the items are handmade products of the exporting beneficiary. To date, such agreements have been signed with Botswana, Colombia, Egypt, Guatemala, Jordan, Macao, Malta, Morocco, Nepal, Pakistan (suspended June 30, 1996), Peru, Romania, Thailand, Tunisia, and Uruguay. GSP benefits for duty-free treatment of handicraft textile exports are available to other beneficiary governments that are prepared to initiate the required exchange of letters. The six covered tariff categories are 5701.10.13, 5702.10.10, 5702.91.20, 5805.00.20, 6304.99.10, and 6304.99.40.

Is any special paperwork necessary for a GSP shipment?

For certified handicraft textile products eligible for GSP duty-free treatment, a triangular seal certifying the products' authenticity as handcrafted articles must be included with the commercial invoice to be accepted for entry. As noted, only products produced in those beneficiary developing countries that have completed an official exchange of letters with the United States Government can receive GSP treatment.

Do other countries maintain GSP programs?

Yes. In addition to the United States, twenty-six other industrialized nations maintain GSP programs. The beneficiaries, products, and type of preferences granted vary for each donor country.

I.4 Competitive-Need Limitations and Requests for Waivers

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

articles?

No. A country may not be eligible for GSP treatment on certain imports for the following reasons:

• The GSP imports of an article from a beneficiary country exceed the competitive-need limitation.

• The country has been graduated from the program.

• The value added in the beneficiary country is insufficient to meet the GSP rule-of- origin requirement.

• The country fails to supply complete documentation or does not meet other United States Customs requirements.

What are competitive-need limitations?

Competitive-need limitations impose ceilings on GSP benefits for each product and country. A country will automatically lose its GSP eligibility for a product (which is defined by its HTSUS eight-digit tariff category) if the CNLs are exceeded. A beneficiary country loses GSP eligibility for a product if, during the previous calendar year, United States imports of a GSP article from that country

(1) account for 50 percent or more of the value of total United States imports of that product, or

(2) exceed a certain dollar value.

Legislation reauthorizing GSP in 1996 set the dollar limit at $75 million for 1996 with an annual increase of $5 million for each subsequent calendar year. GSP modifications that result from imports that exceed CNLs in one year take effect on July 1 of the next calendar year.

Are the competitive-need limitations ever waived?

Yes. The President may waive competitive-need limitations under the circumstances listed in Table 3.

How are competitive-need limitations waived?

An interested party may petition USTR in an annual review for a CNL waiver for a product when it is imported from a specific beneficiary. In deciding whether to grant a CNL waiver, the

President is required to place “great weight” on the extent to which the beneficiary is providing reasonable and equitable access to its market for United States goods and services, and the extent to which the beneficiary is providing reasonable and effective protection to United States intellectual property rights.

Table 3. Types of Competitive-Need Limitation Waivers

Types of Waivers	50% Limit Waivable	Value Limit Waivable
Petitioned Request	Yes	Yes
503(c)(E) No United States production	Yes	No
503(c)(D) LDBDC	No Limits	No Limits
De Minimis	Yes	No

Are any limits placed on the President's CNL waiver authority?

Yes. In general, the President may not grant a waiver for a GSP-eligible article if imports of it from all beneficiary countries equal or exceed 30 percent of the total value of the GSP duty-free imports in a calendar year. Furthermore, the President cannot grant a waiver for the import of a GSP-eligible product that exceeds 15 percent of total GSP imports if the originating beneficiary has either a per capita gross national product (GNP) in excess of $5,000 or generates imports of GSP products that account for 10 percent or more of total GSP duty-free imports.

How long do CNL waivers remain in effect?

If the petitioned waiver is granted, both the percentage limit and the dollar limit are waived and remain in effect until the President determines that such a waiver is no longer warranted because of changed circumstances.

What is a 503(c)(E) waiver?

Section 503(c)(E) of the GSP law provides for a waiver of the CNL percentage for certain GSP-eligible articles that were not produced in the United States on January 1, 1995. Articles that were determined not to be produced in the United States are listed in Part II.5. Interested persons may petition USTR to modify the list in an annual review. For those articles on this list, a 503(c)(E) waiver will automatically be granted each year when required.

What is a* de minimis *waiver?

The President may grant a waiver from the percentage provision when total United States imports from all countries of a product are small or *de minimis.* Like the dollar value CNL, the *de minimis* level is adjusted annually. In 1996 the level was set at $13 million with an annual increment of $500,000. Each year, a *de minimis* waiver will automatically be considered for imports of a GSP-eligible product from a beneficiary that exceeded the 50 percent CNL, provided total imports from all countries for the preceding year were below the dollar limit. Although such waivers cannot be requested by petition, public comments are accepted, nonetheless, early each year. Granting such waivers is a discretionary decision of the President.

Does a special CNL exist for Least Developed Beneficiary Developing Countries?

Section 503(c)(D) of the GSP law automatically waived all CNLs for the GSP beneficiaries designated as LDBDCs. (See Part II.2 for the current list of LDBDCs.)

What happens if imports reach or exceed the CNLs during the year?

Nothing. GSP eligibility for articles from countries that reach or exceed the CNLs will continue for the rest of the year and for part of the following year. In the meantime, the GSP Subcommittee conducts a review of import statistics to determine which articles have exceeded the CNLs for the previous calendar year. Articles that exceeded the CNLs lose eligibility for GSP treatment no later than July 1 of the following year unless a waiver is granted.

Does the GSP Subcommittee publish a warning list of articles that may exceed the CNLs?

Yes. USTR publishes a warning list based on statistics of GSP articles imported during the first 10 months of the past calendar year. The list generally appears early in the following year in the *Federal Register.*

Can an interested party monitor the imports of an article?

Yes. Several sources maintain a monthly compilation of all imports. The Foreign Trade Reference Room at the Department of Commerce can be contacted by telephone at (202) 482-2185 or by Internet at http://www.ita.doc.gov/industry/otea/trade-detail/about.html. The Office of Trade Data at the Census Bureau can be contacted by telephone at (301) 457-3041, by fax at (301) 457-4615, or by Internet at http://www.census.gov/foreign-trade/www. The statistics should be requested by the 8-digit HTSUS tariff number.

The early warning list of the 10-month import statistics is available for review each February in the USTR public reading room.

Can a country ever have an article redesignated as GSP-eligible after the article has been removed from GSP eligibility?

Yes. Redesignation of GSP eligibility for an article can be considered if United States imports of the article from the affected country fall below the CNL in a subsequent year. Interested parties may also petition for a CNL waiver to restore eligibility for a product.

I.5 Graduation from GSP

What is graduation?

There are two types of graduation: The first type refers to the removal of GSP eligibility for one or more articles of a beneficiary country, for example, when its imports of an article or articles exceed the CNL. The second type refers to the mandatory removal of a beneficiary country's entire GSP eligibility, which occurs when a country's per capita GNP exceeds the threshold level of income set for high-income countries by the World Bank or the discretionary removal when a country is deemed no longer to be a developing country.

How is mandatory country graduation implemented?

Country graduation is required when the President determines that a beneficiary is a high- income country as defined by the official statistics of the International Bank for Reconstruction and Development (IBRD) or the World Bank. In its *1998 World Development Indicators*, the World Bank set the threshold level of per capita GNP for high-income countries at $9,636 on the basis of 1996 GNP statistics. The per capita GNP for upper middle-income countries ranged from $3,116 to $9,635; incomes for lower middle-income countries ranged from $786 to $3,115; low-income countries had incomes of less than $786 a year.

When the President determines that a beneficiary has exceeded the middle-income level, its GSP benefits will be terminated on January 1 of the second year following the President's determination.

How is product graduation implemented?

Product graduation decisions are made by the President in the four following contexts:

1. When interested parties submit petitions to remove GSP eligibility for an article and are accepted for the annual GSP Product Review, the President may grant the petition.
2. When articles are newly designated, eligibility for individual beneficiaries may be precluded.
3. When countries are eligible for redesignation of GSP status for a specific article, redesignation may be withheld.
4. When an individual beneficiary country fails to provide access to its market or fails to protect internationally recognized worker rights or intellectual property rights, the country may be deprived of GSP eligibility for selected articles.

I.6 Rule-of-Origin Requirements

What are the rule-of-origin requirements for qualifying products as GSP-eligible for a beneficiary country?

The sum of the cost or value of materials produced in the beneficiary country plus the direct processing costs must equal at least 35 percent of the appraised value of the product at the time of entry into the United States.

Can imported materials be counted toward the 35 percent value-added requirement?

Yes, but only if the materials are "substantially transformed" into new and different constituent materials of which the eligible article is composed. If an imported article has been produced in part in several countries that are members of an association of countries contributing to the regional economic integration of its members, the articles will be accorded duty-free entry if the value of their collective production of the article accounts for at least 35 percent of the appraised value of the article. The level of value added is the same as would be required for a product imported from a single country. The United States Customs Service is charged with determining whether an article meets the GSP rule-of-origin requirements.

How can an exporter in a developing country know the value at which the United States Customs authorities will appraise an article?

In most cases, United States Customs will appraise the merchandise at the transaction value, that is, the price actually paid or payable for the merchandise when sold for export to the United States. This value would include the following elements:

1. The packing costs incurred by the buyer
2. The selling commission incurred by the buyer
3. The value of any assistance provided to the producer free of charge by the buyer
4. The royalty or license fee that the buyer is required to pay as a condition of the sale
5. The proceeds accruing to the seller of any subsequent resale, disposal, or use of the imported merchandise

In general, shipping and other costs related to transporting the GSP articles from the port of export to the United States are included neither in the value of the article nor in the value-added calculation.

What costs may be included in the direct costs of processing?

The direct costs of processing include all costs, whether directly incurred in or those that can be reasonably allocated to the growth, production, manufacture, or assembly of the merchandise in question. These include the following:

• Actual labor, fringe benefits, and on-the-job training costs

• Engineering, supervisory, quality control, and similar personnel costs

• Dies, molds, and tooling costs, as well as depreciation on machinery and equipment

• Research, development, design, blueprints and engineering, and inspection and testing costs

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

The costs that may not be included in the direct costs of processing are those that are not directly attributable to the merchandise being considered or are not "costs" of manufacturing. These costs include profit and general expenses and business overhead such as administrative salaries, casualty and liability insurance, advertising, and sales representative's salaries, commissions, or expenses.

Does the United States GSP contain any special provisions for beneficiary developing countries that are members of regional associations?

Yes. A regional association contributing to the comprehensive regional economic integration of its members may be granted GSP cumulation benefits. A GSP cumulation benefit occurs when United States imports from association members are counted as if they were imported from one country for purposes of rule-of-origin requirements. A GSP cumulation benefit also occurs when an imported article that was produced in two or more eligible member countries of an association is accorded duty-free entry. The benefit is granted when the countries together account for at least 35 percent of the appraised value of the article, which is the same requirement for a single country.

The CNLs will be assessed only against the country of origin and not against the entire association. Currently, qualified members of the following six associations can benefit from this provision:

- The Andean Group

- The Association of Southeast Asian Nations (ASEAN), excluding Brunei, Darussalam, Malaysia, and Singapore
- Member countries of the Caribbean Common Market (CARICOM)
- The West African Economic and Monetary Union (WAEMU)
- The Southern African Development Community (SADC)
- The Tripartite Commission on East African Cooperation (EAC)

The President has delegated responsibility to the United States Trade Representative for determining which members of SADC and EAC qualify for the cumulation benefit. The United States Trade Representative has determined that Botswana, Mauritius, and Tanzania are the qualifying members of SADC that are entitled to the cumulation benefit under GSP. (See Part II.3.)

I.7 "Imported Directly" Requirement

What is meant by the requirement that the article must be "imported directly"?

The article must be shipped directly from the beneficiary country to the United States without passing through the territory of any other country. Or, if shipped through the territory of any other country, the merchandise must not have entered the commerce of that country while

en route to the United States. In all cases, the invoices, bills of lading, and other documents

connected with the shipment must show that the United States is the final destination of the imported article. (See 19 CFR 10.175(e) for the United States Customs Service definition of "imported directly.")

Is entrepot trade (articles transshipped between the beneficiary country and the United States) permitted?

Entrepot trade is eligible for GSP under certain circumstances. Eligible articles shipped from a beneficiary developing country through a free-trade zone in any other beneficiary country will qualify for GSP as follows:

1. The eligible articles do not enter into the commerce of the country maintaining the free-trade zone.
2. The eligible articles do not undergo any operations other than sorting, grading, or testing; packing, unpacking, changing or packing; decanting or repacking; affixing marks, labels, or other distinguishing signs; or operations necessary to ensure that the articles are preserved in the condition they were in when they entered the free-trade zone. (See19 CFR 10.175.)

Are shipments also permitted to be made through free-trade zones in nonbeneficiary countries and still qualify for GSP?

Yes. The procedure is as follows:

1. The eligible articles must remain under the control of the customs authority of the intermediate country while in transit through the free-trade zone.
2. The eligible articles do not enter into the commerce of the country maintaining the free-trade zone, except for sale at other than retail.
3. The eligible articles do not undergo any operations other than loading and unloading or other operations necessary to ensure that articles are preserved in the condition they were in when they entered into the free-trade zone.
4. For articles transshipped through former beneficiary countries that are members of regional associations (see Part II.3), the operations such as sorting, grading, or testing; packing, unpacking, changing or packing; decanting or repacking; affixing marks, labels, or other distinguishing signs; or operations necessary to ensure that the articles are preserved in the condition they were in when they entered the free-trade zone are permitted. (This exception currently applies to the products of the ASEAN beneficiaries that are transshipped through Brunei, Darussalam, Malaysia, and Singapore.)

Are shipments permitted through a "non-independent territory" of any other country?

Shipments from a beneficiary developing country to the United States may be made through the non-independent territory of another country, provided that

(1) the article does not enter into the commerce of the territory while en route, and

(2) the invoice, bills of lading, and other shipping documents show that the United States is the final destination.

May the merchandise be purchased and resold, other than at retail, for export within the free-trade zone?

Yes, as noted previously. However, for such transactions, two Certificates of Origin are required. One is required from the original beneficiary acknowledging that the merchandise is eligible for the United States duty-free treatment under GSP and contains the name of the consignee in the United States or in the free-trade zone. A second Certificate of Origin is required from the person responsible for the articles in the free-trade zone or from any other person having knowledge of the facts and declaring the operations that were performed within the free-trade zone.