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The Revised Generalized System of Preferences: “Instant Replay” or a Real Change?

D. Robert Webster *

Christopher P. Bussert **

I. INTRODUCTION

Many businesses depend upon the importation of products from foreign sources.¹ Manufacturers in Taiwan, Korea and Hong Kong sell products at significantly lower costs than their American counterparts. To realize maximum economic advantage from imports, a business must consider the duties assessed by the United States Customs Office. Otherwise, a business may import a significant amount of inventory at an apparently advantageous price only to be disappointed when duties are assessed.

Generally, all imports into the United States are subject to duty unless designated as duty-free or given a duty exemption or preference.² A principal duty exemption is the Generalized System of Preferences

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¹ U.S. INT'L TRADE COMM'N, PUB. NO. 841, TOY, GAMES, AND WHEEL GOODS (1983). “[M]ost domestic producers, including all the major firms, import to some extent, ranging from the importation of certain lines or parts to significant investment in foreign production facilities for supplying both the United States and foreign markets.” *Id.* at 87.

² General Headnote 1 of the Revised Tariff Schedules of the United States, 19 U.S.C. § 1202 (1982). The customs territory of the United States includes the fifty states, the District of Columbia, and Puerto Rico. *Id.* But see *id.* at General Headnote 5 (corpses together with their coffins and accompanying flowers, metal or paper currency in current circulation, electricity, securities, and similar evidences of value, and vessels other than yachts or pleasure boats are not considered articles for the purposes of the Tariff Schedules).

("GSP"). The GSP is a unilateral, non-reciprocal program for promoting the economic development of particular less-developed countries ("beneficiary developing country") by providing duty-free treatment under certain criteria for an "eligible article" originating there.³ When the GSP was enacted as part of the Trade and Tariff Act of 1974 ("1974 Trade Act"),⁴ the United States became the twenty-third country to adopt a variation of this unilateral, non-reciprocal program.⁵

Recently, the fate of the GSP was in question because it was scheduled to expire January 3, 1985. Significantly, with the exception of Canada, other countries with GSP programs already had extended them through at least 1990.⁶

Beginning in 1983, Congress held hearings which engendered heated debate on the subject of extension of the GSP.⁷ While considerable support existed for renewal of the GSP, several labor and business organiza-

³ Although the concept of a Generalized System of Preferences ["GSP"] is a relatively new one, some support exists for the idea of preferential treatment granted for products imported from certain favored foreign countries. Graham, *U.S. Generalized System of Preferences for Developing Countries: International Innovation and the Art of the Possible*, 72 AM. J. INT'L L. 513-14 (1978). Great Britain and France extended special treatment to their former colonies while the United States granted similar treatment to products imported from Cuba and the Philippines. *Id.* at 514 n.4. The concept of a GSP was initially introduced by Argentine economist Raul Prebisch at the first United Nations Conference on Trade and Development ("UNCTAD") in 1964. *Id.* at 514 n.5, citing R. Prebisch, *Toward a New Trade Policy for Development*, reprinted in 2 UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, PROC., 1st Sess. 5 (1964). Prebisch felt that a system of preferences was necessary to help lesser developed countries overcome the entry barriers they frequently encountered in export markets. *Id.* at 514. For an extensive discussion of the problems surrounding the enactment and implementation of the original GSP see Berger, *Preferential Trade Treatment for Less Developed Countries: Implications of the Toyko Round*, 20 HARV. INT'L L.J. 540 (1979); Graham, *supra* at 513-34; Note, *The Generalized System of Preferences: Nations More Favored Than Most*, 8 LAW & POL'Y INT'L BUS. 783 (1976). See also Ginman & Murray, *The Generalized System of Preferences: A Review and Appraisal*, in THE NEW INTERNATIONAL ECONOMIC ORDER: CONFRONTATION OR COOPERATION BETWEEN NORTH AND SOUTH (K. Sauvant & H. Hasenpflug eds. 1977); H. JOHNSON, *ECONOMIC POLICIES TOWARD LESS DEVELOPED COUNTRIES* (1967); J. PINCUS, *TRADE, AID, AND DEVELOPMENT: THE RICH AND POOR NATIONS* (1967); S. WEINTRAUB, *TRADE PREFERENCES FOR LESS-DEVELOPED COUNTRIES* (1966).

⁴ Trade Act of 1974, §§ 501-05, 19 U.S.C. §§ 2461-65 (Supp. IV 1974).

⁵ Office of the Special Representative for Trade Negotiations, Executive Officer of the President's Press Release No. 211, at 4 (Nov. 24, 1975).

⁶ H.R. REP. NO. 98-1090, 98th Cong., 2d Sess. 2 (1984), reprinted in 1984 U.S. CODE CONG. & AD. NEWS 5102 [hereinafter cited as H.R. REP. NO. 98-1090]; *Hearings on S. 1718 Before the Senate Subcomm. on Int'l Trade*, 98th Cong., 2d Sess. 114-15 (1984) [hereinafter cited as *Hearings on S. 1718*] (prepared statement of Michael A. Samuels on behalf of the Chamber of Commerce of the United States).

⁷ Murray, *GSP Trade Preferences Face Stiff Opposition in Congress*, 1984 CONG. Q. 1727 (Aug. 27, 1983). See, e.g., *Hearings on S. 1718, supra* note 6, at 21-606; *Hearings Before Senate Subcomm. on Int'l Trade*, 98th Cong., 1st Sess. 1-21 (1983) [hereinafter cited as *Hearings Before Senate Subcomm.*]. See also *infra* notes 65-117 and accompanying text.

tions vigorously campaigned to terminate it.⁸ Despite the controversy, on October 9, 1984, Congress enacted an omnibus trade bill entitled The Trade and Tariff Act of 1984 ("1984 Trade Act") extending a somewhat modified GSP for eight and one-half years.⁹

This article will discuss in detail the GSP in the United States. Initially, it will examine the salient features of the original GSP program and subsequently the legislative hearings culminating in the extension of the GSP program. Finally, the article will explore the renewed version of the GSP and discuss its application.

II. SUMMARY OF THE ORIGINAL GSP

A. "Beneficiary Developing Country"

To receive duty-free treatment for products imported into the United States under the original GSP, both the product and the country of origination were required to meet certain statutory requirements.¹⁰ Countries eligible for preferential treatment under the program were those designated by the President as "beneficiary developing countries."¹¹ In determining whether a country should be designated as a beneficiary developing country, the President, pursuant to Section 502(c) of the 1974 Trade Act, was directed to consider: (1) the country's interest in being so designated; (2) the level of economic development in such country; (3) whether other highly industrialized countries provided preferential treatment to such country; and (4) the extent to which such country provided the United States fair access to its home market.¹²

When the GSP was originally implemented in 1975, ninety-eight independent countries and thirty-nine dependent countries and territories were listed as eligible for preferential treatment.¹³ Other countries were listed as being ineligible for GSP benefits because they were considered to be "developed."¹⁴ Since 1976, several countries have been added and

⁸ See Murray, *supra* note 7, at 1727. See also *infra* notes 83-97 and accompanying text.

⁹ The Trade and Tariff Act of 1984, 98 Stat. 2948, *modifying* Trade Act of 1974, §§ 501-05, 19 U.S.C. §§ 2461-65 (Supp. IV 1974).

¹⁰ See Trade Act of 1974, §§ 502-03, 19 U.S.C. §§ 2462-63 (Supp. IV 1974).

¹¹ Section 502 of the Trade Act of 1974 provided in part: "The term 'beneficiary developing country' means any country with respect to which there is in effect an Executive Order by the President of the United States designating such country as a beneficiary developing country." *Id.* at § 502, 19 U.S.C. § 2462 (Supp. IV 1974).

¹² *Id.* at § 502(c)(1)-(4), 19 U.S.C. § 2462(c)(1)-(4) (Supp. IV 1974).

¹³ See Exec. Order No. 11,888, 40 Fed. Reg. 55,276, 55,278 (1975).

¹⁴ These countries were Australia, Austria, Canada, Czechoslovakia, the European Economic Community member states, Federal Republic of Germany, Finland, Hungary, Iceland, Japan, Monaco, New Zealand, Norway, Poland, South Africa, Sweden, Switzerland, and the U.S.S.R. Trade Act of 1974, § 502, 19 U.S.C. § 2462 (Supp. IV 1974).

excluded from the beneficiary developing country list for a variety of reasons. For example, a beneficiary developing country could have its status withdrawn if it: (1) was dominated by international communism; (2) was a member of the Organization of Petroleum Exporting Countries ("OPEC") or a similar cartel arrangement whose actions seriously disrupted the world's economy; (3) afforded preferential treatment to the products of a *developed* country other than the United States which was likely to have a significant adverse effect on United States commerce; (4) expropriated or otherwise seized control of property majorly owned by a United States citizen or business; (5) did not take adequate steps to ensure that certain contraband produced, processed or transported locally was prevented from entering the United States; (6) failed to enforce arbitration awards involving United States citizens or businesses; or (7) aided international terrorists.¹⁵

Although a country fell under certain of the above categories, that fact alone did not require withdrawal of beneficiary developing country status if the President determined that a particular country's retention of such status was in the national interest.¹⁶

B. Eligible Articles

The second prerequisite to GSP treatment was that the imported product be an "eligible article" as designated by Executive Order of the President.¹⁷ Initially, some 2,700 articles were eligible to enter the United States free of import duties.¹⁸ By 1982, that number exceeded

¹⁵ Trade Act of 1974, § 502(b)(1)-(7), amended by Pub. L. 96-39, 19 U.S.C. § 2462(b)(1)-(7) (Supp. V 1981). Many of these provisions were added by the Senate Finance Committee in response to the 1974 recession and the OPEC oil embargo. See Graham, *supra* note 2, at 524.

¹⁶ Significantly, the President was authorized to waive the country exclusions based on expropriation of property, failure to assist in controlling the exportation of contraband, refusal to honor arbitration awards and aiding international terrorists. Trade Act of 1974, § 502(b), 19 U.S.C. § 2462(b) (Supp. IV 1974). The President was also authorized to exempt certain OPEC countries from the Section 502(b)(2) exclusion if the country was a party to certain trade agreements with the United States. *Id.* at § 502(d)(1)(2), 19 U.S.C. § 2462(d)(1)(2) (Supp. IV 1979). See e.g., Exec. Order No. 12,204, 45 Fed. Reg. 20,740 (1980) (designating OPEC members Ecuador, Venezuela and Indonesia as beneficiary developing countries). See also Letter from Jimmy Carter to Congress On the Designation of Five New Beneficiary Developing Countries, reprinted in 16 WEEKLY COMP. OF PRES. DOC. 429, 430 (Mar. 3, 1980).

¹⁷ Trade Act of 1974, § 503, 19 U.S.C. § 2463 (Supp. IV 1974). That section provided in part: "The President shall from time to time, publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles . . . After receiving the advice of the Commission . . . the President shall designate those articles he considers appropriate to be eligible articles . . . by Executive Order." *Id.*

¹⁸ Exec. Order No. 11,888, 40 Fed. Reg. 55,276-55,306 (1975). See also Dep't of State Fact Sheet, United States Generalized System of Preferences (Nov. 24, 1975).

3,000.¹⁹

Although the President was allowed broad discretion as to the designation of “eligible articles”, certain articles were classified as “per se” ineligible for GSP treatment because they were considered “import sensitive”: (1) textile and apparel articles, (2) watches, (3) particular electronic articles, (4) particular steel articles, (5) particular footwear articles, and (6) particular glass products.²⁰

Determining whether a product was an “eligible article” under the original GSP was often difficult because of frequent classification changes. New products were added to the list, while articles initially on the list were later removed. Eligible articles imported from certain countries were precluded from receiving GSP treatment even though such countries were “beneficiary developing countries.” Accordingly, importers had to be familiar with the GSP and constantly monitor it for changes.

The Tariff Schedules of the United States were determinative of whether a product was an “eligible article” under the GSP at any one time.²¹ They consisted of eight separate product schedules:

- Schedule 1. Animal and Vegetable Products,
- Schedule 2. Wood and Paper, Printed Material,
- Schedule 3. Textile Fibers and Textile Products,
- Schedule 4. Chemicals and Related Products,
- Schedule 5. Non-metallic and Mineral Products,
- Schedule 6. Metals and Metal Products,
- Schedule 7. Specified Products, Miscellaneous and Non-enumerated Products, and
- Schedule 8. Special Classification Provisions.

Products were classified in the product schedules individually or in groups according to a numerical designation. Each product schedule was organized by columns, and the first column, labeled “GSP”, referred to the Generalized System of Preferences. If the product was an “eligible article”, the letter “A” appeared, meaning the product could be imported duty-free from *any* “beneficiary developing country”.²²

Particular “eligible articles,” however, were not duty-free if sourced from certain “beneficiary developing countries” as was indicated by

¹⁹ H.R. REP. NO. 98-1090, *supra* note 6, at 1; Glick, *The Generalized System of Preferences: Yesterday, Today and Tomorrow*, 30 FED. B. NEWS & J. 284 (1983).

²⁰ Trade Act of 1974, § 503(c)(1), 19 U.S.C. § 2463(c)(1) (Supp. IV 1974).

²¹ See Exec. Order No. 11,888, 40 Fed. Reg. 55,276 (1975). Because of the numerous amendments made in the Tariff Schedules each year they are no longer published in the United States Code, but the most recent version can be obtained from the U.S. Government Printing Office, Washington, D.C.

²² See Revised Tariff Schedules, 19 U.S.C. § 1202 (Supp. IV 1974).

"A*". General Headnote 3(c) of the Tariff Schedules listed the classification number of eligible articles as indicated by "A*", and the "beneficiary developing countries" denied favorable GSP treatment.²³ For example, pet toys made of rubber or plastic were classified under the Tariff Schedules as 773.05 and were accompanied by the symbol "A*". General Headnote 3(c) listed Taiwan beside the item number 773.05, which meant that, although other products from Taiwan were eligible for GSP treatment, pet toys were not eligible.

C. Other Requirements

1. *Direct Importation*

Once a business determined that a product qualified as an "eligible article" and that it was being imported from a "beneficiary developing country", the business had to ensure that certain import procedures were observed. First, an article qualifying as an eligible article would only receive duty-free treatment if it was "imported directly" into the United States from the beneficiary developing country.²⁴ Besides the obvious situation where merchandise was shipped directly from a beneficiary developing country into the United States, merchandise was considered to be "imported directly" for the purposes of the GSP in two other cases. If merchandise was transported from the beneficiary developing country to the United States through a third country without entering the commerce of that country, it was deemed to have been "imported directly", provided that the shipping documentation for the merchandise indicated that the United States was its final destination.²⁵ In addition, merchandise shipped from a beneficiary developing country to the United States through a free trade zone maintained by another beneficiary developing country was "imported directly" if the merchandise did not enter the commerce of that country and it did not undergo any significant alteration in the free trade zone other than minor processing and handling.²⁶

2. *Rules of Origin*

A business also had to ensure that the appropriate beneficiary developing country was the country of origin of the "eligible article". Duty

²³ See *id.*, General Headnote 3(c)(ii).

²⁴ 19 C.F.R. § 10.175 (1983).

²⁵ *Id.* at § 10.175(b).

²⁶ *Id.* at § 10.175(c). By minor processing and handling it was meant: (1) sorting, grading, or testing, (2) packing, unpacking, changes of packing, decanting or repacking into other containers, (3) affixing marks, labels, or other like distinguishing signs on articles or their packing, or (4) operations necessary to insure the preservation of the merchandise in its present condition. *Id.*

could not be avoided by importing an eligible article from a beneficiary developing country when the product was in fact "produced" in a non-beneficiary country.²⁷ Section 503(b) of the 1974 Trade Act provided that an article was deemed to originate in a beneficiary developing country if "the sum of (1) the cost of value of the materials *produced* in that country and (2) the *direct cost* of processing in that country were at least thirty-five percent (35%) of the appraised value of the article as imported into the United States (emphasis added)."²⁸ Although these rules of origin appeared to be straightforward in the abstract, in practice they represented one of the most complex and troublesome areas in trade law, particularly with respect to whether an article was "produced" in a beneficiary developing country and what constituted a "direct cost" of processing.²⁹

In an attempt to clarify these ambiguous areas of the law, United States Customs ("Customs") issued regulations.³⁰ Unfortunately, the regulations in some cases proved to be more convoluted than the 1974 Trade Act.³¹ Customs regulations defined the term "produced" (in a beneficiary developing country) broadly to include articles which were either: (1) wholly the growth, product or manufacture of the beneficiary developing country; or were (2) "substantially transformed" into a new and different article of commerce.³² What constituted a "substantial transformation" was the subject of dispute and commentary which in turn resulted in substantial uncertainty for importers.³³

²⁷ See Cutler, *The United States Generalized System of Preferences: The Problem of Substantial Transformation*, 5 N.C. J. INT'L L. & COM. REG. 393, 395 (1980); Nemmers & Rowland, *The U.S. Generalized System of Preferences: Too Much System, Too Little Preference*, 9 LAW & POL'Y IN INT'L BUS. 855, 872 (1977).

²⁸ Trade Act of 1974, § 503(b)(2), 19 U.S.C. § 2463(b)(2) (Supp. V 1980).

²⁹ See Glick, *supra* note 19, at 287. See also Cutler, *supra* note 27, at 399-401; Sandstrom, *Import Relief, Unfair Trade Practices and the Generalized System of Preferences*, LAW OF THE AMERICAS 359, 371 (1979); Nemmers & Rowland, *supra* note 27, at 869-72.

³⁰ See 19 C.F.R. §§ 10.176-78 (1979).

³¹ For a general discussion of the problems surrounding the rules of origin, see Cutler, *supra* note 27, at 399-421; Nemmers & Rowland, *supra* note 27, at 869-80.

³² 19 C.F.R. § 10.177(2) (1979).

³³ Compare C.S.D. 79-63, 13 CUST. B. & DEC. No. 11, at 26 (weekly ed. 1979) ("Materials which are not wholly the growth, product, or manufacture of a [beneficiary developing country] must be substantially transformed into a new and different article of commerce which is then used to produce the eligible article before their cost or value can be included in the 35% requirement") with C.S.D. 79-312, 13 CUST. B. & DEC. No. 37, at 35 (weekly ed. 1979) (The imported materials must be substantially transformed into a new and different article of commerce prior to being used in the production of the eligible article. The production of the eligible article must then constitute the second substantial transformation so as to be considered a growth, product, manufacture or assembly of the beneficiary developing country under GSP). See 1 P. FELLER, U.S. CUSTOMS AND INTERNATIONAL TRADE GUIDE § 11.07[7], at 11-38 (1984); Cutler, *supra* note 27, at 418.

[T]he GSP related rulings concerning substantial transformation have become increasingly

Direct costs of processing were defined by Customs regulations to include all costs which were specifically related or could be reasonably allocated to the production of an article.³⁴ Examples included labor, depreciation, research and development, inspection and testing. Conversely, "indirect" costs such as overhead along with profits were excluded from the direct costs of processing.³⁵

3. Procedural Requirements

Finally, a business had to comply with certain administrative procedures to verify that eligible articles imported from beneficiary developing countries were in fact entitled to receive GSP treatment. If duty-free treatment was claimed at the time of entry, the importer was required to mark the entry document with the symbol "A" as a prefix to the numerical Tariff Schedules classification for each article for which such treatment was claimed.³⁶

Normally, the importer was required to substantiate its duty-free claim to Customs. This burden was most easily accomplished by filing a "Certificate of Origin" (hereinafter "Certificate") with the appropriate Customs authority.³⁷ A properly completed Certificate contained the following requisites: (1) a declaration by the exporter as to the origin of the articles for which GSP treatment was sought; and (2) certification by the appropriate export official of the beneficiary developing country.³⁸ If the importer failed to obtain a Certificate when the merchandise was due to "enter" the United States, Customs could still permit entry if the importer provided a bond for its production.³⁹ Ordinarily, the importer

complex and as the number has grown the number of apparent contradictions between them has grown as well. We are creating a labyrinth which will simply generate ever more letter rulings. It would be more logical to devise a system that the parties interested in the GSP could understand by themselves.

Id. See also Nemmers & Rowland, *supra* note 27, at 879-80. "While customs is attempting to administer the program in a cooperative spirit, importers . . . know how difficult it can be to establish proof of costs and how dangerous it can be to rely on the foreign exporter's information. . . . The opportunities for uncertainty are many and obvious." *Id.* See also Statement of Customs Representative David Ramsey, in Public Hearings on: U.S. Generalized System of Preferences, Before the Trade Policy Staff Committee, Office of the Special Trade Representative for Trade Negotiations, Washington, D.C. (Sept. 18, 1979).

³⁴ 19 C.F.R. § 10.178(a) (1979). See, e.g., C.S.D. 79-312, 13 CUST. B. & DEC. No. 37, at 35 (weekly ed. 1979); C.S.D. 79-242, 13 CUST. B. & DEC. No. 25, at 92 (weekly ed. 1979). 13 CUST. B. & DEC. No. 11, at 27 (weekly ed. 1979); T.D. 78-399, 12 CUST. B. & DEC. 873 (1978).

³⁵ 19 C.F.R. § 10.178(b) (1979).

³⁶ 1 P. FELLER, *supra* note 33, at 11-38; Nemmers & Rowland, *supra* note 27, at 881-82.

³⁷ 19 C.F.R. § 10.173 (1982). See also Cutler, *supra* note 27, at 395-96; Sandstrom, *supra* note 29, at 371.

³⁸ 1 P. FELLER, *supra* note 33, at 11-38.

³⁹ 19 C.F.R. § 10.173(a)(3) (1982).

was given sixty days to produce the original Certificate or a duplicate thereof.⁴⁰ If the importer was not able to procure a Certificate within the relevant time period, Customs could waive its production if Customs was otherwise satisfied that the merchandise in issue qualified for GSP duty-free treatment.⁴¹

D. Withdrawal of GSP Status

As previously noted the original GSP was frequently modified, particularly with respect to eligible articles and beneficiary developing countries. Several sections of the 1974 Trade Act allowed the President broad discretion to suspend, withdraw or limit duty-free treatment for any article or suspend or withdraw the designation of any country as a beneficiary developing country.⁴² Still other sections required withdrawal of GSP treatment from an eligible article under specific circumstances independent of the President's discretionary power.⁴³ Finally, articles from a particular beneficiary developing country could lose GSP duty-free treatment for one year by virtue of the amounts of that article imported into the United States exceeding certain specified limitations during the preceding year.⁴⁴ Each of the above circumstances is discussed in more detail below.

1. Section 504(a) Limitations

Section 504(a) of the 1974 Trade Act provided that the President could withdraw, suspend, or limit the application of GSP duty-free treatment with respect to any eligible article.⁴⁵ In taking this action, however, the President was required to consider the criteria set forth in Sections 501 and 502(c) of the Trade Act. Probably the most significant of these criteria was the effect a particular imported article had on United States manufacturers of like or directly competitive articles.⁴⁶

The President was aided significantly in making this determination by the Office of the United States Trade Representatives ("OTR").⁴⁷ The OTR was responsible for conducting a yearly review of petitions from

⁴⁰ *Id.*; U.S. Customs Service, Dep't of Treasury, Los Angeles, Cal. Information Bull. No. 76-29 (Dec. 22, 1975).

⁴¹ 1 P. FELLER, *supra* note 33, at 11-39.

⁴² Trade Act of 1974, § 504(a) and (b), 19 U.S.C. § 2464(a) and (b) (Supp. IV 1974).

⁴³ *Id.* at § 504(b), 19 U.S.C. § 2464(b) (Supp. IV 1974). *See also id.* at § 502(b)(1) and (3), 19 U.S.C. § 2462(b)(1) and (3) (Supp. IV 1974).

⁴⁴ *Id.* at § 504(c), 19 U.S.C. § 2464(c) (Supp. IV 1974).

⁴⁵ *Id.* at § 504(a), 19 U.S.C. § 2464(a) (Supp. IV 1979).

⁴⁶ *Id.* at § 501(c), 19 U.S.C. § 2461(c) (Supp. IV 1974).

⁴⁷ Prior to the fall of 1979, the OTR was known as the Office of the Special Trade Representative.

American businesses and other interested parties requesting changes to the list of imported articles receiving duty-free treatment under the GSP.⁴⁸ After its review, the OTR made recommendations to the President of products which should be removed. The disposition of the petitions accepted for review by the OTR was published annually and those changes accepted by the President were implemented by Executive Order.⁴⁹

2. Section 504(b) Limitations

Section 504(b) allowed the President to withdraw or suspend the designation of any country as a beneficiary developing country if that country, subsequent to such designation, engaged in any activity which could have prevented initial designation as a beneficiary developing country.⁵⁰ For instance, a country which subsequently engaged in subversive conduct, as defined in Section 502, could lose its GSP status.

3. Section 504(c) Limitations

One of the most significant limitations on GSP preferential treatment in the 1974 Trade Act was the Section 504(c) "competitive need" limitations. By virtue of that provision, the President was authorized to withdraw preferential treatment from an otherwise "eligible article" imported from a particular "beneficiary developing country" if that country's shipments of the article in any one year exceeded (1) a certain dollar value (57.7 million for 1984), adjusted annually for changes in the gross national product from the base year, 1974 and/or (2) fifty percent of the value of total United States imports of the article.⁵¹ Preferential treatment which was withdrawn from any article pursuant to that section was only for the year following that in which either one or both of the competitive need limitations were exceeded.

It is significant to note that although the competitive need limitations might be exceeded in any one year, the President was not required to withdraw preferential treatment the following year. Section 504(c) set forth three cases where application of the competitive need limitations could be completely or partially waived by the President. First, he could

⁴⁸ Glick, *supra* note 19, at 285-86; Cutler, *supra* note 27, at 397; Nemmers and Rowland, *supra* note 27, at 861-69.

⁴⁹ See, e.g., 46 Fed. Reg. 28,779-28,793 (1981).

⁵⁰ Trade Act of 1974, § 504(b), 19 U.S.C. § 2464(b) (Supp. IV 1974).

⁵¹ *Id.* at § 504(c)(1), 19 U.S.C. § 2464(c)(1) (Supp. IV 1974). The competitive need limitations were designed to reserve a certain portion of GSP benefits for less competitive beneficiary developing countries. They also served in theory to protect United States producers of like or directly competitive articles.

waive the fifty limitation for a particular GSP product if that product or one like it was not produced in the United States on January 3, 1975.⁵² Second, if total United States imports of a particular product were “*de minimis*” (totaled less than one million dollars) for any calendar year the President could exercise his waiver authority.⁵³ Finally, the President could waive both competitive need limitations under the following two conditions: (1) there was a historic trade relationship or a trade agreement in force between the United States and such country; and (2) such country did not impose unreasonable trade barriers to United States exports.⁵⁴

The procedure used in effectuating withdrawal of preferential treatment from articles pursuant to the competitive need process is also worth mention because of how it differed from withdrawal pursuant to other provisions of the 1974 Trade Act. Unlike withdrawal of preferential treatment pursuant to Section 504(a), no petition for removal was required. Instead, preferential treatment was withdrawn without the participation of importers and the OTR “based on the presumption that once [these products] reach[ed] a certain degree of market penetration that they [were] *per se* import sensitive.”⁵⁵ Further, while Section 504(a) focused on a particular *product* and withdrew GSP treatment from such product *permanently* without regard to the number of countries that exported the product, the competitive need process focused on a particular *country* and affected the preferential GSP treatment of an article sourced from that country *only* for the year following the year for which one or both of the competitive need limitations were exceeded.

One problem with the automatic removal of products under the competitive need limitations was that often products were removed without much advance notice to importers.⁵⁶ Thus, in order to avoid the imposition of unexpected duties, importers had to carefully monitor import statistics for products that they imported to determine whether imports of a certain product from a particular beneficiary developing

⁵² *Id.* at § 504(d), 19 U.S.C. § 2464(d) (Supp. IV 1974).

⁵³ *Id.*

⁵⁴ *Id.* at § 504(c), 19 U.S.C. § 2464(c) (Supp. IV 1974).

⁵⁵ Glick, *supra* note 19, at 286.

⁵⁶ *Id.* at 287; Sandstrom, *supra* note 29, at 372. See also Nemmers & Rowland, *supra* note 27, at 899. “The operation of the GSP program is hampered by both the quality of U.S. trade statistics and the outlook and spending priorities of the federal statistics bureaucracy. Importers have difficulty obtaining timely information in usable form in order to plan purchases and set prices, and serious problems are created by insufficient lead time on announcements of competitive need changes. *Id.*; U.S. INT’L TRADE COMM’N, PUB. NO. 820, THE ADMINISTRATION AND OPERATION OF THE CUSTOMS LAWS: CUSTOMS PROCEDURES WITH RESPECT TO THE VERIFICATION OF IMPORT STATISTICS No. 332-83 (1977).

country would exceed one or both of the "competitive need limitations" in any one year.

4. Graduation

During the early years of the GSP program, several of its critics complained that the benefits accorded to beneficiary developing countries were disproportionately spread.⁵⁷ At one point approximately seventy percent of GSP benefits were shared by the "more economically advanced" beneficiary developing countries such as Taiwan, Hong Kong, South Korea, Brazil, and Mexico.⁵⁸ In an attempt to equalize the distribution of GSP benefits, a "graduation" policy was implemented by the President in 1981.⁵⁹ The so-called "graduation" policy allowed the President to withdraw GSP treatment from a beneficiary developing country on a product-specific basis if that country had both (1) demonstrated a certain level of international competitiveness for the product and (2) had attained a certain level of economic development.⁶⁰

Similar to product removals under Section 504(a), the OTR was responsible for reviewing information from relevant United States industry and other interested parties to determine whether a recommendation should be made to the President for "graduation" of a particular product.⁶¹ Implementation of the graduation policy caused a bit of an anomaly with respect to the competitive need provisions noted above since certain beneficiary developing countries could lose GSP benefits on certain products that were "graduated" even though neither of the competitive need limitations were exceeded.

III. RENEWAL OF THE GSP SYSTEM—THE LEGISLATIVE BATTLE

As noted in the introductory paragraphs, the GSP program almost expired January 3, 1985 even though steps were taken in early 1983 to renew it. On February 9, 1983, the OTR announced a series of public hearings on the renewal of the GSP system to be held in April of 1983.⁶²

⁵⁷ H.R. REP. NO. 98-1090, *supra* note 6, at 1-3; Glick, *supra* note 19, at 286; *Hearings on S. 1718, supra* note 6, at 93 (Prepared statement of Stephen Koplan, Legislative Representative of the A.F.L.-C.I.O.) [hereinafter cited as "Statement of the A.F.L.-C.I.O."]. *See also* HOUSE COMM. ON WAYS AND MEANS, 96TH CONG., 2D SESS., PRESIDENT'S REPORT TO THE CONGRESS ON THE FIRST FIVE YEARS' OPERATION OF THE U.S. GENERALIZED SYSTEM OF PREFERENCES, at 3, (Comm. Print 1980).

⁵⁸ H.R. REP. NO. 98-1090, *supra* note 6, at 3-4.

⁵⁹ *See* 46 Fed. Reg. 37,115-16 (1981).

⁶⁰ *Id.* at 37,116. *See also* Glick, *supra* note 19, at 286.

⁶¹ 46 Fed. Reg. at 37,116.

⁶² *See* 48 Fed. Reg. 6,062-64 (1983).

Interested parties were invited to testify or comment on any aspect of the GSP system. The OTR was particularly interested in the role and mechanics of graduation and methods to stimulate growth in "lesser developed" beneficiary developing countries.⁶³

Based on these comments, on July 25, 1983, the Reagan Administration introduced legislation to extend the GSP program with some modifications for ten years.⁶⁴ In late 1983 and early 1984, the Senate Sub-Committee on International Trade of the Senate Finance Committee (hereinafter Senate Sub-Committee on Trade) and the House Sub-Committee on Trade of the Committee on Ways and Means held hearings on the proposed renewal of the GSP and the Administration's proposed changes.⁶⁵ The OTR gave extensive testimony, as did United States industry and foreign and domestic trade associations.

A. Reasons for Renewal

The essential arguments on behalf of renewing the GSP were the following: (1) it afforded significant benefits to lesser developed countries, United States industry and consumers; (2) it served important governmental interests; and (3) did not significantly harm United States business interests.

Proponents claimed that the GSP program successfully accelerated the economic development of beneficiary developing countries by allowing them preferential access to the United States market instead of providing direct monetary aid.⁶⁶ Consequently, beneficiary developing countries competed more effectively with "developed countries,"⁶⁷ gener-

⁶³ *Id.*

⁶⁴ *Hearings on S. 1718, supra* note 6 at 329 and 331 (prepared Statement of United Nations Conference on Trade and Development [hereinafter cited as Statement of UNCTAD]).

⁶⁵ H.R. REP. NO. 98-1090, *supra* note 6, at 6. *See, e.g., Hearings on S. 1718, supra* note 6, at 21-606; *Hearings before Senate Subcomm., supra* note 7, at 1-21.

⁶⁶ *See, e.g., Hearings on S. 1718, supra* note 6, at 126 (prepared statement of Calman J. Cohen, Vice President, Emergency Committee for American Trade) [hereinafter cited as Statement of Emergency Committee for American Trade]; *id.* at 366 (prepared statement of various foreign trade and customhouse brokers associations) [hereinafter cited as Statement of Customhouse Brokers]; *id.* at 419 (prepared statement of the Board of Foreign Trade Republic of China on Taiwan) [hereinafter cited as Statement of the Republic of China on Taiwan]; *id.* at 527 (prepared Statement of the National Foreign Trade Counsel, Inc.); *Hearings before Senate Subcomm., supra* note 7, at 6 (prepared statement of William E. Brock, United States Trade Representative) [hereinafter cited as Statement of the U.S. Trade Representative].

⁶⁷ *Hearings on S. 1718, supra* note 6, at 238 (prepared statement of Myron T. Foveaux on behalf of the Chemical Manufacturers Association) [hereinafter cited as Statement of the Chemical Manufacturers Association]; *id.* at 496 (prepared Statement submitted on behalf of the Andean Group Governments).

ated significant foreign exchange earnings,⁶⁸ met debt service requirements to United States banks⁶⁹ and purchased additional United States exports.⁷⁰ In 1980, for example, beneficiary developing countries accounted for nearly forty percent of United States manufactured exports (up from twenty-nine percent in 1970)—an amount larger than Europe and Japan combined.⁷¹

The GSP program also significantly benefited domestic industry by providing parts and components at greatly reduced prices.⁷² Cheaper imports helped improve the competitive posture of the finished products sold by United States businesses both domestically and abroad.⁷³ Another advantage of the program was that it allowed businesses to fill their inventories with products they were unable to produce economically in substantial commercial quantities in the United States.⁷⁴

Lower overall manufacturing costs achieved by businesses utilizing GSP parts and components benefited consumers by lowering prices and resulted in higher sales volumes for participating industries.⁷⁵ The economic success of GSP dependent industries in turn allowed them to maintain substantially higher levels of domestic employment than would be possible without the GSP program.⁷⁶

The GSP program also served important governmental interests. Preferential treatment afforded beneficiary developing countries under

⁶⁸ *Id.* at 133 and 135 (prepared statement of the Association of American Chambers of Commerce in Latin America) [hereinafter cited as Statement of the Latin American Chambers of Commerce]; Statement of the U.S. Trade Representative, *supra* note 66, at 6. See also H.R. REP. NO. 98-1090, *supra* note 6, at 1.

⁶⁹ *Hearings on H.R. 1718*, *supra* note 6, at 504 (prepared statement of the Embassy of the Argentine Republic) [hereinafter cited as Statement of Argentina].

⁷⁰ Statement of Customhouse Brokers, *supra* note 66, at 368; Statement of the Republic of China on Taiwan, *supra* note 66, at 425-26.

⁷¹ Statement of the Republic of China on Taiwan, *supra* note 66, at 425-26.

⁷² *Hearings on S. 1718*, *supra* note 6, at 48-50 (prepared statement of the American Association of Exporters and Importers) [hereinafter cited as Statement of the American Association of Exporters and Importers]; *id.* at 32-45 (prepared statement of Douglas Thomson, President, The Toy Manufacturers of America, Inc.) [hereinafter cited as Statement of the Toy Manufacturers]; *id.* at 279 (prepared statement of Tonka Corp.) [hereinafter cited as Statement of Tonka Corp.].

⁷³ Statement of the American Association of Exporters and Importers, *supra* note 72, at 49.

The GSP has helped American industry meet intense foreign competition, both at home in the U.S. and on world markets, by providing less-expensive parts and materials from the beneficiary countries for incorporating into U.S. manufactured products. How many of those American products would have succumbed to competition from particular industrialized countries in the absence of GSP-benefitting imports?

Id.

⁷⁴ *Toy, Games, and Wheel Goods*, *supra* note 1; Statement of the Toy Manufacturers, *supra* note 72, at 37.

⁷⁵ Statement of Republic of China on Taiwan, *supra* note 66, at 426-27; Statement of Tonka Corp., *supra* note 72, at 282-84.

⁷⁶ Statement of Tonka Corp., *supra* note 72, at 283.

the GSP program enhanced United States foreign policy objectives by stimulating employment in these countries and providing increased foreign trade revenues.⁷⁷ Such investment in beneficiary developing countries contributed significantly to their economic and political stability. The program also provided an increment of good will to offset otherwise hostile attitudes towards the United States.⁷⁸

Finally, a study conducted by the International Trade Commission during 1978 to 1983 concluded that the GSP program had not resulted in any appreciable harm to American business interests.⁷⁹ Although the value of United States imports receiving GSP duty-free treatment grew from \$3.2 billion in 1976 to \$10.8 billion in 1983, the study showed that imports receiving GSP duty-free treatment constituted only four percent of total United States imports.⁸⁰ Further, only eleven percent of the total United States imports of all products from GSP developing countries qualified for GSP duty-free treatment. Finally, the \$10.8 billion imports entering duty-free under the GSP in 1983 represented only fifteen percent of total United States imports of GSP eligible products from all sources.

Notwithstanding the increase in the annual rate of GSP imports, the penetration level of such imports in 650 different business sectors averaged only one half of one percent during 1978 to 1982.⁸¹ In twelve of these sectors the study indicated that imports of certain products had penetrated significantly. Arguably, however, penetration was due as much to products of developed countries as to those of beneficiary developing countries.⁸²

B. Policies Against Renewal

Although certain factions in Congress provided considerable support for renewal of the GSP program, domestic labor unions,⁸³ agricultural interests,⁸⁴ and leather products⁸⁵ and textile and apparel

⁷⁷ *Id.* at 288-89; *Hearings on S. 1718, supra* note 6, at 349-50 (prepared Statement of the American Chamber of Commerce of Mexico) [hereinafter Statement of the Mexican Chamber of Commerce].

⁷⁸ Statement of the Latin American Chambers of Commerce, *supra* note 68, at 136; Statement of the Mexico Chamber of Commerce, *supra* note 77, at 350.

⁷⁹ U.S. INT'L TRADE COMM'N, PUB. NO. 1379, AN EVALUATION OF U.S. IMPORTS UNDER THE GENERALIZED SYSTEM OF PREFERENCES (1983).

⁸⁰ *Id.*

⁸¹ *Id.* See also *Hearings on S. 1718, supra* note 6, at 4-5 (statement of Alfred E. Eckes, Chairman, United States International Trade Commission) [hereinafter cited as Statement of the International Trade Commission].

⁸² Statement of the Latin American Chambers of Commerce, *supra* note 68, at 138-39.

⁸³ See, e.g., Statement of the AFL-CIO, *supra* note 57, at 91-96.

⁸⁴ See, e.g., *Hearings on S. 1781, supra* note 6, at 65 (prepared statement of the American Farm

associations⁸⁶ vigorously opposed its renewal. Their principal arguments against the GSP were that it (1) failed to provide benefit to the countries which most needed it, (2) had significantly adverse effects on American business interests and (3) procedurally had failed to adequately safeguard United States industries.

Critics of the renewal noted that while the basic purpose underlying the GSP program of "trade rather than aid" was commendable in the abstract, in practice it failed miserably to achieve its goals. In reality, the GSP program "served to some degree to further aggravate the gaps between the haves and have-nots of the world."⁸⁷ Statistics compiled during the first five years of operation of the GSP program conclusively demonstrated that a vast majority of GSP benefits were shared by a select few. In 1983 Taiwan, Hong Kong and South Korea, the three leading beneficiary developing countries accounted for over fifty percent of GSP benefits, while the leading seven beneficiary developing countries received nearly seventy-five percent of the total benefits.⁸⁸ Least developed beneficiary developing countries, on the other hand, received less than one percent of the total GSP benefits.⁸⁹

Several industries argued that the GSP program has an adverse effect on United States industries.⁹⁰ Several products receiving GSP duty-free treatment, particularly those from "more advanced" developing countries, enjoy steadily increasing shares in the United States market, resulting in lay-offs and widespread unemployment in some industries to threatening the very existence of others. For example, unemployment in the leather products industry rose to almost eighteen percent in 1983 allegedly as a direct result of competing products imported from benefi-

Bureau Federation); *id.* at 68-71 (prepared statement of Randy M. Russell, Vice President of Agricultural and Trade Policy, National Council of Farmer Cooperatives.)

⁸⁵ *Id.* at 102-07 (prepared statement of Dean K. Schleicher on behalf of the Leather Products Coalition) [hereinafter cited as Statement of the Leather Products Coalition].

⁸⁶ *See, e.g., id.* at 519-26 (prepared statement of the Headwear Institute of America and The Amalgamated Clothing and Textile Workers Union) [hereinafter cited as Statement of the Headwear Institute and Clothing Working Union].

⁸⁷ Statement of the AFL-CIO, *supra* note 57, at 91.

⁸⁸ *See* H.R. REP. NO. 98-1090, *supra* note 6, at 3-4; *President's Report, supra* note 57, at 30.

⁸⁹ *See* H.R. REP. NO. 98-1090, *supra* note 6, at 3.

⁹⁰ *See, e.g., Hearings on S. 1718, supra* note 6, at 255 (prepared statement of Dia-Compe, Inc.) [hereinafter cited as Statement of Dia-Compe]; *id.* at 315 (prepared statement of Rohm and Haas Co.) [hereinafter cited as Statement of Rohm and Haas]; *id.* at 482 (prepared statement of The Plumbing Manufacturers Institute) [hereinafter cited as Statement of the Plumbing Manufacturers]; *id.* at 532 (prepared statement of The American Pipe Fittings Association, Inc.) [hereinafter cited as Statement of the Pipe Fittings Association]; *id.* at 570 (prepared statement of Lauren R. Howard on behalf of the Bicycle Manufacturers Association of America, Inc.) [hereinafter cited as Statement of the Bicycle Manufacturers Association].

ary developing countries,⁹¹ while competition from foreign interests caused Sherwin-Williams to lay-off almost one-third of its saccharin producing work force in 1982.⁹²

Although the original GSP program contained certain "safeguards" for protecting United States industries from competing products, anti-renewal forces argued that these protective mechanisms failed miserably to protect United States business interests from the flow of GSP competitive products, particularly with respect to the petition process and competitive need limitations.

The petition process under the present GSP program was inadequate because it did not address situations where a particular industry was suffering *immediate* injury from imports receiving GSP benefits or products which enjoyed a relatively short commercial life. Under the original administrative framework, petitions for withdrawal of GSP benefits were only accepted by the OTR once a year and were not acted upon for many months thereafter.⁹³ Often, by the time the OTR was prepared to act on a particular product the product had become obsolete and the American industry affected had long since suffered significant harm.⁹⁴

The competitive need limitations also proved in several instances to be inadequate in safeguarding United States business interests. Many of the "more developed" beneficiary developing countries created ingenious ways of avoiding the competitive need limitations. Sherwin-Williams described one such instance at the Senate hearings:

In 1981 Korean imports of saccharin exceeded competitive need limitations and, Korea was ineligible for GSP status (for that product) in 1982. The Koreans have since learned to be more careful. In 1983, Korea was able to keep its saccharin imports at a level just under [fifty percent] . . . of the total for all imports and at the same time increase its share of the U.S. market. By doing so, Korea was able to maintain its position as a leading

⁹¹ Statement of the Leather Products Coalition, *supra* note 85, at 104.

⁹² *Hearings on S. 1718*, *supra* note 6, at 362 and 364 (prepared statement of the Sherwin-Williams Co.) [hereinafter cited as Statement of Sherwin-Williams].

⁹³ Statement of the Chemical Manufacturers Association, *supra* note 67, at 247; Statement of the Headwear Institute and Clothing Workers Union, *supra* note 85, at 522-24. See also Nemmers and Rowland, *supra* note 27, at 862 n.41. The regulations covering the OTR's review of petitions did "not establish standards for the granting of immediate review." *Id.*

⁹⁴ Statement of the Headwear Institute and Clothing Workers Union, *supra* note 86, at 523. The Headwear Institute of America described one experience with the OTR as follows:

The domestic industry filed a petition in June, 1981 and presented its case before the GSP Subcommittee of the Trade Policy Staff Committee in September, 1981. Unable to make a decision, on February 26, 1982 the [OTR] . . . requested the U.S. International Trade Commission to provide advice on the issue, which caused considerable delay. The ITC was not able to hold a hearing until July, 1982, and the ITC's final report was not released until November, 1982, nearly a year and a half after the petition was initially brought before the [OTR] . . . and long after the import surge had affected the domestic industry.

Id. (emphasis added).

importer of saccharin while also receiving the benefits of preferential tariff treatment under the GSP program.⁹⁵

Competitive need limitations could also be avoided by classification of a product in a so-called "basket" category.⁹⁶ A basket category referred to the classification of a product within the Tariff Schedules which contained a large number of different articles. Many of these articles accounted for a significant amount of trade and would, if separately classified, probably have triggered the fifty percent competitive need limitation, thereby requiring removal of the article from the list of GSP eligible items for at least one year.⁹⁷ Unfortunately, there was no easy mechanism to remove articles from the "basket" categories. Therefore, the competitive need limitations were effectively by-passed to the detriment of United States industry.

C. Proposals for Modification of the Present Program

Although opposition to the renewal of the GSP program was at times fierce, those opposing removal begrudgingly realized that because of the popularity of the program some version of it would likely be implemented upon expiration of the original version. Hence, labor unions and some industries changed tactics by proposing modifications to the present GSP program which would protect their interests.⁹⁸

One popular proposal concerned country eligibility. Supporters argued that benefits afforded under the GSP program should be limited to those countries which could realistically be considered "beneficiary developing countries". Several industries advocated the immediate graduation of Taiwan, South Korea and Hong Kong from the GSP program due to the disproportionate share of GSP benefits they enjoyed in comparison to other beneficiary developing countries.⁹⁹ In that regard, it was argued that in no sense were Hong Kong, Taiwan and South Korea "less developed" countries in need of GSP benefits. In 1982, the per capita Gross National Products for Hong Kong, Taiwan and Korea were \$5,340, \$2,640, and \$1,910 respectively, a far cry from the majority of less developed countries with per capita incomes of less than \$1,000.¹⁰⁰

⁹⁵ Statement of Sherwin-Williams, *supra* note 92, at 363-64.

⁹⁶ See Statement of the Chemical Manufacturers Association, *supra* note 67, at 246-47; *Hearings on S. 1718*, *supra* note 6, at 358-59 (prepared statement of the Synthetic Organic Chemical Manufacturers Association).

⁹⁷ Statement of the Chemical Manufacturers Association, *supra* note 67, at 246-47.

⁹⁸ See, e.g., Statement of the AFL-CIO, *supra* note 57, at 94-97; Statement of The Plumbing Manufacturers, *supra* note 90, at 483-92.

⁹⁹ See, e.g., Statement of Dia-Compe, *supra* note 90, at 264; Statement of Rohm and Haas, *supra* note 90, at 315; Statement of the Plumbing Manufacturers, *supra* note 90, at 482-86.

¹⁰⁰ H.R. REP. NO. 98-1090, *supra* note 6, at 4.

Another factor favoring elimination of the "more advanced" beneficiary developing countries from the GSP program was their contribution to the United States' enormous trade deficit.¹⁰¹ Finally, several critics pointed out that many other countries with GSP programs did not extend preferential treatment to more advanced developing countries such as Taiwan.¹⁰² In 1984, of the nineteen countries maintaining GSP systems, only the United States, Austria, Australia and New Zealand granted beneficiary developing country status to Taiwan.¹⁰³

Other changes to the GSP were suggested which would predicate beneficiary developing country status on a finding that the country at issue met certain standards regarding protection of intellectual property and human and workers' rights, and afforded the products exported by United States industries fair access to the marketplace of such country.¹⁰⁴

United States publishing and recording industries strongly recommended that GSP status be denied to countries which failed to provide effective protection for intellectual property rights.¹⁰⁵ Extensive evidence was presented by these industries at Congressional hearings demonstrating that many of the countries receiving the most benefit under the GSP program were among the worst pirates of intellectual property.¹⁰⁶ Eleven of the top fifteen GSP beneficiaries failed to provide adequate protection to United States publishing and recording industries against the expropriation of their intellectual property.¹⁰⁷ The extent of the piracy problem was well summarized in the statement of Townsend Hoopes,

¹⁰¹ Green, *Senate Eludes Protectionists, OKs Trade Bill*, 1984 CONG. Q. 2295 (Sept. 22, 1984). See also Statement of the AFL-CIO, *supra* note 57, at 94. Statement of The Plumbing Manufacturers, *supra* note 90, at 488-89.

¹⁰² Statement of the Plumbing Manufacturers, *supra* note 90, at 488; President's Report, *supra* note 57, at 6.

¹⁰³ Statement of the Plumbing Manufacturers, *supra* note 90, at 488.

¹⁰⁴ See *infra* notes 105-16 and accompanying text.

¹⁰⁵ See, e.g., *Hearings on S. 1718*, *supra* note 6, at 167 (prepared statement of Townsend Hoopes, President, The Association of American Publishers) [hereinafter cited as Statement of the American Publishers]; *id.* at 187 (prepared statement of Stanley M. Gortikov, President, Recording Industry Association of America) [hereinafter cited as Statement of the Recording Industry]; *id.* at 269 (prepared statement of Donald W. Peterson, Vice-President International Anticounterfitting Coalition).

¹⁰⁶ For a discussion of the extent of publishing piracy by Taiwan, Korea and other GSP beneficiary developing countries, see Statement of the American Publishers, *supra* note 105, at 174-85. The record and publishing industries were not the only victims of foreign piracy. See *Hearings on S. 1718*, *supra* note 6, at 220 (prepared statement of the Motor Equipment Manufacturers Association) (motor vehicle parts and related equipment); *id.* at 390 (prepared statement of the National Agricultural Chemicals Association) (high technology products). See also Easton & Neeley, *Unfair Competition in U.S. Import Trade: Developments Since the Trade Act of 1974*, 5 INT'L TRADE L.J. 203 (1980).

¹⁰⁷ Statement of the American Publishers, *supra* note 105, at 168.

President of the Association of American Publishers before the Senate
Sub-Committee for International Trade:

The problems consist of more than isolated acts. In many cases, 'piracy' represents a wholesale disregard for the legal idea of copyright, as well as for the particular copyrights of U.S. nationals. In some countries, entire industries are built on the fact of intellectual property, aided by the complicity of governments who refuse either to enforce existing laws or to enact more stringent ones. Even when arrested, pirates are often released without fines or penalties to continue their unlawful behavior unchecked. Unauthorized versions of books and related products are sold within the pirate country. They are also sold for export to third-world countries further damaging the U.S. export market. Examples include books published illegally in Taiwan . . . that were exported to Nigeria, and books similarly pirated in Korea . . . that were exported to the Middle East and also sold via mail-order to Japan.¹⁰⁸

In linking GSP benefits to the protection of intellectual property rights, the recording and publishing industries felt that the governments of beneficiary developing countries would be encouraged to pass new and effective anti-piracy measures.¹⁰⁹ Passage of anti-counterfeiting legislation by some of the beneficiary developing countries would in turn encourage other nations to follow suit, and would provide an incentive for vigorous enforcement of similar laws in all beneficiary developing countries.¹¹⁰

Labor-related interests argued that GSP eligibility for a beneficiary developing country should turn partially on whether the country in issue guaranteed its workers basic human and civil rights, including the right to bargain collectively.¹¹¹ Significantly, several GSP countries were guilty of suspending civil liberties and penalizing labor movements.¹¹² The Philippines, for example, prohibited its workers from striking, while South Korea imprisoned many labor leaders and union members.¹¹³ Other beneficiary developing countries excluded citizens from the political process and denied basic democratic freedoms. In promoting the rights of international workers it was argued that the GSP would benefit the broadest sectors of the population within the beneficiary developing

¹⁰⁸ *Id.* at 168-69. See also HOUSE SUBCOMM. ON OVERSIGHT AND INVESTIGATIONS, UNFAIR FOREIGN TRADE PRACTICES AND STEALING AMERICAN INTELLECTUAL PROPERTY; IMITATION IS NOT FLATTERY, H.R. REP. 98TH CONG., 2D SESS. 1 (1984); U.S. INT'L TRADE COMM'N, PUB. NO. 1209, THE EFFECTS OF FOREIGN PRODUCT COUNTERFEITING ON U.S. INDUSTRY at xii (1984).

¹⁰⁹ *Supra* note 105, at 197 (statement of the Recording Industry).

¹¹⁰ *Id.*

¹¹¹ Statement of the AFL-CIO, *supra* note 57, at 96; *Hearings on S. 1718, supra* note 6, at 290 (statement of Bread for the World) [hereinafter cited as Statement of Bread for the World].

¹¹² Statement of Bread for the World, *supra* note 111, at 297.

¹¹³ *Id.*

countries and help discourage capital flight and overseas production by American industry which capitalized on substandard labor conditions.¹¹⁴

Finally, several industries advocated that beneficiary developing countries should be required to provide fair access to goods exported by United States industries.¹¹⁵ Several beneficiary developing countries were guilty of imposing tariff and non-tariff barriers on United States exports which effectively blocked access to their markets. For example, Taiwan, Hong Kong and South Korea virtually excluded United States cigarettes from their markets.¹¹⁶ Moreover, in South Korea, citizens possessing United States-made cigarettes were subject to extensive fines and/or imprisonment.¹¹⁷

Although critics realized that it would be unrealistic to expect beneficiary developing countries to eliminate all barriers to United States exports, it was reasonable to expect the gradual liberalization of trade, service and investment barriers, particularly in the more advanced beneficiary developing countries.

IV. THE MODIFIED VERSION OF THE GSP

On October 9, 1984, as part of the 1984 Trade Act, Congress renewed the GSP with several modifications for eight and one-half years. The changes to the program were designed primarily to aid in the redistribution of GSP benefits to countries which needed them the most, and to take into account many of the concerns voiced by United States business interests at the Congressional hearings.¹¹⁸ The most significant of these changes relate to beneficiary developing countries and limitation of GSP benefits.

A. Beneficiary Developing Countries

Several of the modifications to the GSP concern the conditions and criteria to be considered by the President in designating less developed countries as beneficiary developing countries. Under prior law, many countries mandatorily were excluded from receiving GSP benefits be-

¹¹⁴ *Id.* at 297-98.

¹¹⁵ *See, e.g.*, Statement of Emergency Committee for American Trade, *supra* note 66, at 129-31; Statement of the Chemical Manufacturers Association, *supra* note 67, at 248; Statement of Rohm and Haas, *supra* note 90, at 316-17.

¹¹⁶ Statement of Emergency Committee for American Trade, *supra* note 66, at 130. *But see Hearings on S. 1718, supra* note 6, at 466-67 (prepared statement of Hong Kong, where Hong Kong asserts that it does not discriminate against American cigarettes, rather, it states that duties are applied equally to all tobacco imports).

¹¹⁷ Statement of Emergency Committee for American Trade, *supra* note 66, at 130.

¹¹⁸ H.R. REP. NO. 98-1090, *supra* note 6, at 3.

cause they had reached a certain high level of economic development.¹¹⁹ An important change to the GSP is the removal of Hungary from this list.¹²⁰

Changes were also made to the Section 502(b) exclusion categories and the 502(c) discretionary criteria. Under prior law, Section 502(b)(4) prohibited designation of a country by the President for GSP status if such country was guilty of expropriating or nationalizing "property" owned by United States citizens or business entities unless the President determined that such designation was in the national economic interest of the United States.¹²¹ Under amended Section 502(b)(4), the concept of property has been expanded to include intangible property rights such as patents, trademarks, and copyrights.¹²² Thus, actions by a beneficiary developing country's government having the effect of nullifying or repudiating the above-mentioned intellectual property rights could now lead to disqualification from GSP status. In addition, a new exclusion category was added to Section 502(b) regarding recognition by beneficiary developing countries of internationally recognized workers' rights.¹²³

With respect to Section 502(c), three new discretionary criteria have been added for the President to consider in determining beneficiary developing country status, the first of which incorporates the "internationally recognized workers rights" concept set forth in amended Section 502(b).¹²⁴ According to this criterion, the President is to assess whether a beneficiary developing country has or is taking steps to afford internationally recognized workers rights to workers in that country."¹²⁵ The term "internationally recognized workers rights" is defined broadly to include: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of force or compulsory labor; (d) 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.¹²⁶

A second new criterion to be considered by the President in the beneficiary developing country determination is whether a country provides "*adequate and effective means* under its laws for *foreign nationals* to secure, to exercise, and to enforce exclusive rights in intellectual property,

¹¹⁹ See *supra* note 14 and accompanying text.

¹²⁰ Trade Act of 1974, § 502(b), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2462(b).

¹²¹ *Id.* at § 502(b)(4), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2462(b)(4).

¹²² *Id.* at § 502(b)(4), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2464(b)(4).

¹²³ *Id.* at § 502(b)(8), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2462(b)(8).

¹²⁴ *Id.* at § 502(c)(7), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2462(c)(7).

¹²⁵ *Id.*

¹²⁶ *Id.* at § 502(a)(4), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2462(a)(4).

including patents, trademarks, and copyrights (emphasis supplied).”¹²⁷ To aid the President in determining whether a particular country is providing “adequate and effective means” Congress directed him to consider several elements:

[T]he extent of statutory protection for intellectual property (including scope and duration of such protection), the remedies available to aggrieved parties, the willingness and ability of the government to enforce intellectual property rights on behalf of foreign nationals, the ability of foreign nationals effectively to enforce their intellectual property rights on their own behalf, and whether the country’s system of law imposes formalities or similar requirements that, in practice, are an obstacle to meaningful protection for foreign nationals which are not imposed upon domestic concerns.¹²⁸

Significantly, Congress intends the term “foreign nationals” to be interpreted broadly to cover all intellectual property interests of United States nationals including those arising by virtue of a license or similar contractual relationship with a non-United States national.¹²⁹

The third new discretionary criterion for the President to take into account is the extent to which a country has taken action “to reduce trade distorting investment practices and policies (including export performance requirements); and . . . reduce or eliminate barriers to trade in services.”¹³⁰ The purpose of this new criterion is to help combat the tariff and non-tariff barriers to United States goods raised by many beneficiary developing countries to the goods and services by United States industries.¹³¹ These barriers in the past ranged from import quotas and performance requirements to the full-fledged prohibition of the importation of certain products.¹³²

Congress’ adoption of the new workers rights, intellectual property and trade practice discretionary criteria serves two important purposes. First, the new criteria take into account many of the trade and protection concerns expressed by United States industry during Congressional hearings on the renewal of the GSP. Second, adoption of the new criteria gives a strong message from Congress to beneficiary developing countries “that countries wishing to reap the benefits of the preferential duty-free access to the United States market must fulfill international responsibilities in these three important areas.”¹³³

¹²⁷ *Id.* at § 502(c)(5), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2462(c)(5).

¹²⁸ H.R. REP. NO. 98-1090, *supra* note 6, at 12-13.

¹²⁹ *Id.* at 13.

¹³⁰ Trade Act of 1974, § 502(c)(6), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2462(c)(6).

¹³¹ H.R. REP. NO. 98-1090, *supra* note 6, at 13-14.

¹³² *See supra* notes 115-17 and accompanying text.

¹³³ H.R. REP. NO. 98-1090, *supra* note 6, at 12.

Although the new criteria are intended to address many of the concerns noted under prior law, significantly, none of these criteria provide a definitive standard. The reason for this lack of specificity is undoubtedly to allow the President a range of flexibility in assessing the particular circumstances of a given country. In adopting these criteria, Congress itself recognized that application of a single simplistic test with respect to any one of them would be impossible because of the political, economic and social differences between countries.¹³⁴ By way of example, one could hardly expect a beneficiary developing country to attain the prevailing labor standards of highly industrialized countries, let alone a uniform minimum standard.

Lacking an objective standard application of the new discretionary criteria may prove to be troublesome. The flexibility accorded the President, although intended in theory to allow him to take into account the specific circumstances of a given country, may in practice give rise to much uncertainty in that a beneficiary developing country may have difficulty determining at any one time whether its workers' rights, intellectual property and/or trade practices laws are sufficient for it to continue receiving GSP treatment. In addition, uneven application of these criteria by the President may result in increased political and economic tensions between the United States and certain beneficiary developing countries.

On the other hand, overly flexible application of these criteria may give rise to much unrest among United States industries. There is a preeminent concern that the President will not require any *real* improvements from beneficiary developing countries. It was suggested that unless the President requires beneficiary developing countries to meet some minimum standard as to the new criteria they will give no more than lip service to them.¹³⁵ United States skepticism toward the new criteria was well documented by one critic at the Congressional hearings who noted that: "The historical willingness of the United States trade policy makers to 'give away the store' to foreign countries with little concern for the impact on United States workers and firms gives no grounds for confidence that the [modified GSP] legislation will be anything less than a disaster for import-sensitive industries."¹³⁶

Congress, however, is not totally unmindful of the problematic ap-

¹³⁴ *Id.* at 13.

¹³⁵ Statement of The Headwear Institute and Clothing Workers Union, *supra* note 86, at 524. See also Statement of the AFL-CIO, *supra* note 57, at 96-97; Statement of the Bicycle Manufacturers Association, *supra* note 90, at 580-83.

¹³⁶ Statement of the Headwear Institute and Clothing Workers Union, *supra* note 86, at 525-26.

plication of these new criteria by the President. In order to determine the effect of the new criteria and the extent to which they are being complied with by individual countries, the President is required to submit a report to Congress by January 4, 1988 discussing all actions he has taken to withdraw, suspend or limit the application of duty-free treatment with respect to any country failing to comply with the new criteria.¹³⁷

B. Limitations on Benefits

The second major area of change in the GSP concerns limitations on benefits. Under prior law, Section 504(a) provided that the President may withdraw, suspend or limit the application of duty-free treatment as to any article or any country after considering the factors contained in Sections 501 and 502(c).¹³⁸ Under the new GSP, several new criteria have been added to both sections.

Under amended Section 501, the President will be required to consider not only the effect a particular article has on United States manufacturers of like or directly competitive articles, but also to assess a particular developing country's "competitiveness" with respect to that article.¹³⁹ Whether a beneficiary developing country has exhibited sufficient competitiveness regarding a particular article to require withdrawal of GSP duty-free treatment will depend to a great extent on that country's world and United States market shares, volumes and values of exports, and ability to penetrate foreign markets absent duty-free treatment.¹⁴⁰ Thus, absent a showing by a beneficiary developing country that it has limited economic strength, it will not receive GSP benefits on articles to which it has demonstrated competitiveness.

With respect to amended Section 502, as previously noted, the President is to consider several new criteria including the extent to which the beneficiary developing country protects intellectual property rights, affords its labor force internationally recognized workers' rights, and relaxes trade barriers it previously imposed on United States exports.¹⁴¹ The President is expected to vigorously enforce the Section 504(a) limitations if he is given reason to believe that certain countries are not complying with any of the criteria set forth in the amended Section 502(c).¹⁴²

Probably the most significant change in the new GSP is the change

¹³⁷ Trade Act of 1974, § 504(a)(2), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2464(a)(2).

¹³⁸ *Id.* at § 504(a)(1), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2464(a)(1).

¹³⁹ *Id.* at § 501(a)(4), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2461(4).

¹⁴⁰ H.R. REP. NO. 98-1090, *supra* note 6, at 8.

¹⁴¹ See *supra* notes 124-33 and accompanying text.

¹⁴² H.R. REP. NO. 98-1090, *supra* note 6, at 18.

of the competitive need limitations. Although the concept of competitive need limitations is retained in the new GSP, substantial changes have been made in their application in order to encourage a redistribution of GSP benefits to lesser developed beneficiary countries.

Under amended Section 504(c), the President is required by January 4, 1987 to conduct a general review, distinct from the annual reviews that will continue under existing law, of all GSP eligible articles based on the country and product eligibility considerations of Sections 501 or 502(c).¹⁴³ The purpose of the review is to have the President identify articles in which a particular beneficiary developing country has demonstrated a "sufficient degree of competitiveness" (relative to other beneficiary developing countries).¹⁴⁴ In those instances where the determination is affirmative, the President is authorized to lower the dollar and percentage competitive need limitations to twenty-five percent and \$25 million respectively.¹⁴⁵ Otherwise, the current limitations (fifty percent and \$57.7 million) will apply.

Notwithstanding a determination that an eligible article from a beneficiary developing country is "sufficiently competitive," the President, pursuant to a new paragraph (Section 504(c)(3)(A)), may waive the application of the lower competitive need limitations if the following conditions are met: (1) the International Trade Commission informs him that such waiver will not adversely affect a United States industry; (2) he determines that a waiver is in the best interests of the United States; and (3) such determination is published in the Federal Register.¹⁴⁶ In determining whether a Section 504(c)(3)(A) waiver of the lower competitive need limitations is appropriate in a particular instance, the President is directed to give great weight to the following:

- (i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the market and basic commodity resources of such country, and
- (ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.¹⁴⁷

The President's Section 504(c)(3)(A) waiver authority, however, is not unlimited. Congress placed several limitations on this authority pri-

¹⁴³ Trade Act of 1974, § 504(c)(2)(A), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2464(c)(2)(A).

¹⁴⁴ *Id.* at (c)(2)(B), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2464(c)(2)(B).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at § 504(c)(3)(A), amended by Trade and Tariff Act of 1984, 19 U.S.C. § 2464(c)(3)(A).

¹⁴⁷ *Id.* at § 504(c)(3)(B), amended by Trade and Tariff Act of 1984, § 2464(c)(3)(B).

marily to ensure that GSP benefits are more equally disbursed among beneficiary developing countries and to obviate any abuse by the President.¹⁴⁸

The value of beneficiary developing country trade benefiting from the President's Section 504(c)(3)(A) waiver cannot exceed thirty percent of the total value of *all* products receiving GSP duty-free treatment in any calendar year.¹⁴⁹ Furthermore, no more than one-half of this thirty percent can consist of trade from countries which account for ten percent or more of total GSP imports or have a per capita GNP in excess of \$5,000.¹⁵⁰

Finally, if a beneficiary developing country reaches a level of \$8,500 per capita GNP in any calendar year all of that country's products will be automatically subject to graduation over a phase-down period.¹⁵¹ During the calendar year when the \$8,500 GNP is attained, all eligible articles imported from such country will be subject to the reduced competitive need limitations for two years.¹⁵² Following this two year period the country in question is no longer eligible for GSP benefits.¹⁵³

In addition to the President's new Section 504(c)(3)(A) waiver authority, he is also authorized to waive the competitive need limitations in two other circumstances, both of which are carried over from prior law. First, he may waive the competitive need limitations if total United States imports of a particular product do not exceed a certain *de minimis* amount.¹⁵⁴ That amount was raised from \$1 million to \$5 million. The President may also waive the competitive need limitations in cases where a historical or current trade relationship exists between a particular country and the United States and that country does not impose unreasonable trade barriers to United States exports.¹⁵⁵ Significantly, however, this latter waiver authority cannot be used in the event the President previously made a determination that the country in issue was "sufficiently competitive" with respect to any eligible article.

One of the major complaints regarding the competitive need limitations under prior law was their unpredictability and ineffectiveness in

¹⁴⁸ H.R. REP. NO. 98-1090, *supra* note 6, at 19.

¹⁴⁹ Trade Act of 1974, § 504(c)(3)(D)(i), *amended by* Trade and Tariff Act of 1984, 19 U.S.C. § 2464(c)(3)(D)(i).

¹⁵⁰ *Id.* at § 504(c)(3)(D)(ii), *amended by* Trade and Tariff Act of 1984, 19 U.S.C. § 2464(c)(3)(D)(ii).

¹⁵¹ *Id.* at § 504(f), *amended by* Trade and Tariff Act of 1984, 19 U.S.C. § 2464(f).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at § 504(d)(2), *amended by* Trade and Tariff Act of 1984, 19 U.S.C. § 2464(d)(2).

¹⁵⁵ *Id.* at § 504(c)(4), *amended by* Trade and Tariff Act of 1984, 19 U.S.C. § 2464(c)(4).

application.¹⁵⁶ A contributing factor to the problems underlying the prior competitive need limitations was the extensive waiver authority afforded the President. That Congress intended to exercise significant control over the President's waiver authority under the new GSP is apparent from the legislative history accompanying the 1984 Trade Act.¹⁵⁷ As previously noted, Congress felt such control was necessary in order to prevent the President's abuse of such authority and to encourage a more equal distribution of GSP benefits among beneficiary developing countries.¹⁵⁸ Most industries hoped that Congressional limitations to the President's waiver authority would provide them with more protection from the products of the "more advanced" beneficiary developing countries. It is unclear from the new GSP, however, whether the Congressional limitations will have any perceptible effect on the President's waiver authority.

Congress chose in Section 504(c)(4) to carry over from prior law the President's waiver authority with respect to countries with which the United States has enjoyed or is enjoying trade relations and which do not raise barriers to United States trade. Congress' actions appear questionable, since Section 504(c)(4) appears to render many of Congress' purported limitations to the President's waiver power meaningless. For example, while a thirty percent cap is placed on the President's waiver authority regarding total GSP duty-free imports sourced from all beneficiary developing countries, this limitation only applies to waiver authority exercised by the President under Section 504(c)(3)(A) and not to that exercised by virtue of the carried over provision Section 504(c)(4). Thus, under present law it would appear that unless the President previously made a determination that a beneficiary developing country was "sufficiently competitive" with respect to a particular product, he is allowed virtually unbridled discretion in determining whether the competitive need limitations should be waived in any instance.¹⁵⁹

Many beneficiary developing countries object to the requirement that the President base his Section 504(c)(3)(A) competitive need waiver determination on whether a country is providing sufficient assurances of

¹⁵⁶ See *supra* notes 95-97 and accompanying text.

¹⁵⁷ H.R. REP. NO. 98-1090, *supra* note 6, at 19.

¹⁵⁸ *Id.*

¹⁵⁹ The extent of the President's waiver authority was frequently discussed at the Congressional Hearings on renewal of the GSP. See, e.g., Statement of the AFL-CIO, *supra* note 57, at 96: "[The new competitive need limitations] provide the President with a ten-year blank check to fashion a program in any way he wishes by vastly increasing his discretionary authority, further diluting the minimal protections provided by current law, and virtually eliminating the ability of Congress to monitor and review the operations of this system." *Id.*

“adequate and reasonable access” to its home market.¹⁶⁰ By requiring affirmative assurances from beneficiary developing countries regarding fair market access in their countries, it appears that the GSP is being used as a weapon rather than as an economic tool to aid lesser developed countries.¹⁶¹ Moreover, this requirement of reciprocity as to access to markets contravenes a fundamental premise of the GSP in that the program has always been intended to be *non-reciprocal*.¹⁶² Finally, like many of the other modifications to the GSP, the “adequate and reasonable access” requirement is inherently ambiguous and offers no guidelines as to compliance.

V. CONCLUSION

During its years of operation the GSP has aided significantly in strengthening the trade capabilities of lesser developed countries, some more than others. While the benefits of the program are enjoyed primarily by the countries to which trade preferences are allowed, the program provided significant benefits to United States industries and consumers and served important governmental interests. As a result of the immense popularity of the GSP, it was recently extended for an additional eight and one-half years with some modifications.

Many of the modifications were added in an attempt to address the program's shortcomings noted by critics and commentators alike under prior law. Sections were added in an attempt to ensure that GSP benefits were enjoyed by those countries which most needed them and to take into account the concerns of United States business. Because of the enormous amount of flexibility afforded the President and the inherent ambiguity surrounding many of the new modifications under the new law, it is unclear whether the new GSP will be any different than its forerunner. Only time will tell whether these changes will in fact result in a more equitable distribution of benefits to the needier beneficiary developing

¹⁶⁰ Statement of the Latin American Chambers of Commerce, *supra* note 68, at 145-48; Statement of the Mexican Chamber of Commerce, *supra* note 77, at 353-54; Statement of the Republic of China on Taiwan, *supra* note 66, at 446; Statement of Argentina, *supra* note 69, at 310-13; *Hearings on S. 1718*, *supra* note 6, at 562-63 (prepared statement on behalf of the Korean Traders Association) [hereinafter cited as Statement of the Korean Traders].

¹⁶¹ Statement of Customhouse Brokers, *supra* note 66, at 376-77.

¹⁶² *Id.*; Statement of UNCTAD, *supra* note 64, at 330, 336-38:

[The new GSP] makes continued preferential access in the United States contingent upon developing countries' commitment to reduce perfection of their markets. Such policy would be at complete variance with the agreements reached in international organizations. In effect, the GSP had been designed to assist developing countries in achieving development objectives, and its use for other purposes would clearly be incompatible with the system's basic principles of non-reciprocity and non-discrimination.

Id. at 330; Statement of the Korean Traders, *supra* note 160, at 563.

countries as well as offer sufficient protection to United States business interests.