

REFORMING THE GENERALIZED SYSTEM OF  
PREFERENCES TO SAFEGUARD  
U.S. SUPPLY CHAINS AND COMBAT CHINA

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON TRADE  
OF THE  
COMMITTEE ON WAYS AND MEANS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTEENTH CONGRESS  
FIRST SESSION

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SEPTEMBER 20, 2023

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United States House Committee on  
**Ways & Means**  
**CHAIRMAN JASON SMITH**

FOR IMMEDIATE RELEASE  
September 13, 2023  
No. TR-03

CONTACT: 202-225-3625

**Chairman Jason Smith and Trade Subcommittee Chairman Adrian Smith  
Announce Subcommittee Hearing on Reforming the Generalized System of  
Preferences to Safeguard U.S. Supply Chains and Combat China**

House Committee on Ways and Means Chairman Jason Smith (MO-08) and Trade Subcommittee Chairman Adrian Smith (NE-03) announced today that the Subcommittee on Trade will hold a hearing on Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China. The hearing will take place on **Wednesday, September 20, 2023, at 2:00PM in 1100 Longworth House Office Building**.

Members of the public may view the hearing via live webcast available at <https://waysandmeans.house.gov>. The webcast will not be available until the hearing starts.

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record can do so here: [WMSubmission@mail.house.gov](mailto:WMSubmission@mail.house.gov).

Please ATTACH your submission as a Microsoft Word document in compliance with the formatting requirements listed below, **by the close of business on Wednesday, October 4, 2023**. For questions, or if you encounter technical problems, please call (202) 225-3625.

**FORMATTING REQUIREMENTS:**

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission but reserves the right to format it according to guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Please indicate the title of the hearing as the subject line in your submission. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

**ACCOMMODATIONS:**

The Committee seeks to make its facilities accessible to persons with disabilities. If you require accommodations, please call 202-225-3625 or request via email to [WMSubmission@mail.house.gov](mailto:WMSubmission@mail.house.gov) in advance of the event (four business days' notice is requested). Questions regarding accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

**Note:** All Committee advisories and news releases are available on the Committee website at <http://www.waysandmeans.house.gov/>.

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## **REFORMING THE GENERALIZED SYSTEM OF PREFERENCES TO SAFEGUARD U.S. SUPPLY CHAINS AND COMBAT CHINA**

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**WEDNESDAY, SEPTEMBER 20, 2023**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON TRADE,  
COMMITTEE ON WAYS AND MEANS,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 2:34 p.m., in Room 1100, Longworth House Office Building, Hon. Adrian Smith [chairman of the subcommittee] presiding.

Chairman SMITH of Nebraska. The subcommittee will come to order. Thank you, Ranking Member Blumenauer, subcommittee members, and certainly our witnesses, for being here today.

Today's hearing is an important step as Congress considers the renewal of the Generalized System of Preferences program, or GSP.

When Congress created the GSP program in 1974, it recognized then, as we do now, that U.S. leadership on international trade and global economic development is vital. We may have had different global adversaries in 1974, but this still holds true today as we contend with the strategic and economic threat presented by the Chinese Communist Party.

There is no question, the GSP program has a proven track record. However, I do not believe we should forego the opportunity to examine ways to improve it. GSP is meant to foster economic growth in developing countries by providing duty-free access to the U.S. market while increasing standards in these countries through strict eligibility criteria set by Congress. Today, we will focus on how well the program has achieved these goals and explore ways it can be improved.

As we will hear today, GSP also helps create and support American jobs, many of which are in our districts. Amid high inflation, and exacerbated by the administration's so-called "Bidenomics," lower tariffs ultimately bring savings to those who need it the most. At the same time, GSP preserves American production by excluding import-sensitive products from the program. USTR maintains a robust process to periodically update this list, and we must carefully consider whether this process works as intended.

We will hear from witnesses today about a range of potential reforms that could make the program more effective in its strategic and economic goals, and I look forward to this thoughtful discussion.

For example, we have seen GSP be a successful enforcement tool for USTR, including helping open markets for U.S. agriculture. This is especially important given the Biden administration's very limited engagement to reduce tariffs or otherwise increase market access for American farmers and ranchers.

I am also interested in hearing more about a potential new criterion for digital trade. I am very concerned by the range of discriminatory policies, including taxes, which seek to undermine the leadership of U.S. companies when it comes to digital trade. I appreciate the leadership of Congressman LaHood in this very regard.

Additionally, I look forward to hearing about how GSP can be reformed to better align our domestic supply-chain goals. If done strategically, GSP can help shift key supply chains out of adversarial nations like China. GSP alone won't be the answer to our supply-chain challenges, but it certainly can be a helpful tool.

Lastly, while the focus of this hearing is on GSP, I would be remiss if I did not mention another key trade program in our arsenal which has expired as well. The Miscellaneous Tariff Bills, or MTB, is another important tool many job creators and consumers rely on. And I look forward to conversations about how to get both of these programs on a pathway to swift renewal.

I hope we can come together on a bipartisan basis and break the logjam that has held back GSP renewal since it expired at the end of 2020. Yes, that is 2020. I am confident we can do the hard work necessary to reform and renew GSP.

With that, I yield to Ranking Member Mr. Blumenauer for his opening statement.

Mr. BLUMENAUER. Thank you very much, Chairman Smith.

Today's hearing comes at an important juncture for the GSP, our oldest trade preference program. This program was established in the 1970s to extend benefits to sectors of developing countries which were not competitive. Today, some GSP beneficiary countries have sophisticated and large economies with globally competitive sectors that receive duty-free access to our market.

The global economic landscape has fundamentally changed since the 1970s. China, for instance, was not the second-largest economy then, nor were the supply chains nearly as globalized. While GSP has supported economic opportunities abroad and it has been leveraged to improve standards in developing countries, including worker rights, in its current form, GSP does not reflect the evolution of trade policy.

That is why House Democrats sought commonsense and equitable reforms to GSP previously. Such reforms included updating GSP's labor criteria, adding an environmental criterion, a human-rights criterion, and making the GSP program more transparent.

Last year, we were ready to move on these commonsense and equitable reforms to GSP. We proposed updating GSP to advance the rights of working people around the world. GSP reforms should improve labor standards abroad and support workers in developing nations, especially those who face gender-based violence in the workplace.

House Democrats also support adding an environmental criterion to GSP, which current GSP eligibility criteria do not include. One

of the greatest challenges in the last 40 years is the awareness of climate change. The American people expect us to address this climate crisis. Adding an effective environmental criterion to GSP would align the program with our broader trade policy, which has elevated environmental and conservation issues in our broader trade policy.

As we hear from Roy Houseman from the United Steelworkers, there should not be loopholes to enforcement in the form of requiring that violation of GSP's labor and environmental criteria be, quote, "sustained or reoccurring" and shown to have occurred in a manner, quote, "affecting trade" to be actionable in a GSP review.

Another topic we ought to address in our bill concerns the rules of origin in the GSP program. As Roy points out in his testimony, in its current form, GSP allows for most of a product to come from a non-GSP country and get GSP treatment. I am hopeful that we will be able to address this issue as we work to improve and renew GSP.

I am certainly open to the conversation on digital trade.

But if we are serious about supporting the American worker, I think we ought to address the fact that we need to reauthorize and reform Trade Adjustment Assistance. We need to ensure that the American economy have all the tools they need to be able to succeed in the global economy. That is why, last Congress, House Democrats passed legislation that renewed and reformed GSP and TAA. If this Congress is going to reimburse duties for GSP imports, it should also reauthorize TAA.

I stand ready to work with my Republican colleagues and turn our rhetoric into action. And I look forward to hearing from our witnesses today on these issues as we consider ways to update the GSP and build on activities we had in the past.

Thank you for your courtesy, Mr. Chairman.

Chairman SMITH of Nebraska. Thank you, Mr. Blumenauer.

I now have the pleasure of introducing our witnesses for today's hearing.

First, Mr. Edward Gresser, vice president and director for trade and global markets at the Progressive Policy Institute.

Next, Randy Spronk, a pork producer from Minnesota and also the former president of the National Pork Producers Council.

I would now like to recognize Mr. Moore from Utah to introduce our next witness.

Mr. MOORE of Utah. Thank you, Mr. Chairman.

I am honored to introduce Fabian Garza, the vice president of operations for Black Diamond Equipment, a major outdoor and recreation equipment manufacturer based in my home State of Utah. Mr. Garza has a deep background in supply-chain management, and he has helped turn Black Diamond into a major player on the international stage in this space.

Much of this is thanks to the Generalized System of Preferences program we are discussing today. I have previously met with Black Diamond to discuss their trade priorities and am confident that their testimony will shed some valuable light on the challenges caused by the program's expiration.

I am thrilled to have a great Utah company here with us today. Their experience speaks to what many in this sector face.

Thank you, and I yield back.

Chairman SMITH of Nebraska. Thank you.

We also have Nigel Cory, associate director of trade policy at the Information Technology and Innovation Foundation; and, also, Mr. Roy Houseman, the legislative director of the United Steelworkers union.

Thank you for all joining us today. And your written statement will be made a part of the record.

Each of you has 5 minutes to deliver your remarks. You will see the light is on there. When it turns yellow, if you wouldn't mind bringing the plane in for a landing so we can keep on schedule here.

Mr. Gresser, you may begin.

**STATEMENT OF ED GRESSER, VICE PRESIDENT AND DIRECTOR FOR TRADE AND GLOBAL MARKETS, PROGRESSIVE POLICY INSTITUTE**

Mr. GRESSER. Thank you very much, Mr. Chairman, Ranking Member Blumenauer, and members of the subcommittee. Thank you for inviting me to testify today.

I am vice president of the Progressive Policy Institute in Washington and, from 2015 until 2021, served as Assistant U.S. Trade Representative for Policy and Economics, with responsibilities including overseeing administration of the GSP.

As a brief introduction, GSP operates by waiving tariffs on about 3,600 tariff lines for goods viewed as non-import-sensitive from 119 low- and middle-income beneficiary countries. In exchange for this, it asks the beneficiaries to comply with 15 eligibility criteria on issues ranging from market access to labor standards, resource cartels, and intellectual property rights.

In 2020, the year before it lapsed, GSP covered \$17 billion worth of imports. This was about 11 percent of imports from the beneficiary countries and about 0.7 percent of our total of \$2.35 trillion in imports that year.

GSP adds value in three areas:

First, development and poverty alleviation as countries diversify their economies and create new jobs. Examples include Cambodian-made backpacks and suitcases, a direct result of Chairman Smith's work to make travel goods eligible in 2015; Kenyan horticulture; Armenian and Lebanese jewelry; Haitian mangos and flags; Ukrainian paint and carpentry supplies; and tropical agriculture and fishery projects from Fiji and the Solomon Islands.

Second, it provides sourcing alternatives for American buyers, in particular to China. Travel goods are again an example. In 2014, China accounted for 61 percent of U.S. imports of these goods, and GSP countries, 4 percent. By 2018, the shares had shifted to 54 and 12 percent. Now they are 23 percent for China and 39 percent for the GSP countries.

And, third, it supports U.S. policy in the areas covered by the eligibility criteria. Successful examples during my tenure included reform of Bolivian child labor law; passage of a national workplace health and safety law in Georgia; resolution of U.S. concerns related to dairy, horticultural, and meat exports in Indonesia and Argentina; digital data localization programs in Indonesia; and help-



ing to end systematic forced labor and child labor in Uzbekistan's cotton industry.

As the subcommittee considers reauthorization, renewal as is is not, I think, a bad option, as the program functions reasonably well. However, I share the view, implicit in various reauthorization proposals, that it could be updated and it can be improved.

I am happy to share specific experiences and ideas but will start with three general points.

One is to set priorities. Changes to GSP I think should be designed to serve Congress's top policy goals. If a core aim is to encourage sourcing diversification and alternatives to China, U.S. buyers should see GSP as a valuable and generally stable benefit that supports long-term planning.

This suggests a long authorization term, possibly greater economic value perhaps through broader product eligibility, reform of competitive deed limits, and/or study of rule-of-origin reforms, and confidence that removal of benefits would occur only for very serious noncompliance.

Alternatively, a focus on eligibility rules suggests a limited list of clearly defined criteria, ensuring that administrations center their work on these issues and beneficiary countries understand their importance, and criteria flexible enough to ensure that governments acting in good faith but with limited policy capacity, which is often the case for low-income countries and small islands, can qualify.

Second, new requirements for administrations operating the system.

Several bills envision codifying the triennial-assessment beneficiary countries for compliance with the eligibility rules that we conducted from 2017 to 2020. This system, designed by the late Erland Herfindahl, who was then the deputy for GSP, provided the first look at all the beneficiary countries since the 1970s and, I think, serves as a very valuable and useful baseline. I think it is a good innovation and appreciate the interest in extending it.

I would also note proposals for new reporting requirements where I do have some concern. Administrations very much need to keep Congress informed as they work on eligibility and product addition or removal, and they need to provide a public record of their decisions and rationales. But the GSP staff is very small—typically, it is two full-time people—and a very ambitious reporting requirement may be quite difficult for them to manage.

Third and most important, I believe: an expeditious renewal. Restoring benefits is the key step, whether we hope to add value for development, poverty alleviation, and workers in beneficiary countries; to encourage supply-chain security and diversification; or to support U.S. policy goals.

So I applaud the subcommittee for holding this hearing, Mr. Chairman, and I am happy to offer whatever help I can. Thank you very much.

[The statement of Mr. Gresser follows:]



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## **GENERALIZED SYSTEM OF PREFERENCES: OVERVIEW AND REAUTHORIZATION OPTIONS**

Edward Gresser  
Vice President, Progressive Policy Institute  
House Ways and Means Subcommittee on Trade  
September 20, 2023

Chairman Smith, Ranking Member Blumenauer, and Members of the Subcommittee:

Thank you for inviting me to testify at this morning's hearing on the Generalized System of Preferences (GSP). I am Vice President of the Progressive Policy Institute (PPI) in Washington, D.C., a 501(c)(3) nonprofit research institution established in 1989, which publishes a wide range of public policy topics. Before joining PPI, I served at the Office of the U.S. Trade Representative from 2015 to 2021, as Assistant U.S. Trade Representative for Policy and Economics. In this position, I had the responsibility of overseeing USTR's economic research and use of trade data, interagency policy coordination including chairing the interagency Trade Policy Staff Committee, and overseeing administration of the GSP.

I applaud the Subcommittee's interest in reauthorizing GSP. By waiving tariffs on about \$20 billion in imports from 119 low- and middle-income beneficiary countries, GSP makes a useful contributor to development and poverty alleviation, provides American buyers useful sourcing alternatives, and supports U.S. policy in areas such as labor, intellectual property, and market access. At the same time, GSP is a small program and can be revised and improved in several ways. My testimony discusses the system and some future options in detail, but I would like to begin with three general points:

1. Early Reauthorization: Most important, early reauthorization is important, in the aftermath of the current three-year lapse of benefits. Whether the concern is for development, supply chain security and diversification, or policy goals, the program needs benefits in place to succeed.
2. Clear Priorities: Revisions to GSP will likely achieve most when designed to serve clear larger priorities. If the aim is to encourage businesses to shift sourcing from China, these buyers should see GSP as a valuable, generally stable long-term benefit. This in turn suggests a long authorization term, possibly more significant economic benefits for users, and some confidence that removal of benefits based on eligibility criteria would be a last resort in serious cases of noncompliance. To maximize GSP's value as a policy tool, it would need (a) economic benefits significant enough to be major incentives for beneficiary countries to remain eligible, (b) a limited list of clearly defined criteria, so beneficiary countries clearly understand what they must do to qualify, and (c) criteria flexible enough to ensure governments acting in good faith but with limited capacity for policy implementation remain eligible.
3. Limited Reporting Requirements: Finally, I recommend caution on new reporting requirements. Administrations should keep Congress informed about emerging GSP eligibility issues, addition and removal of products, and so on, and provide a public record of decisions and their rationales. However, I

would recommend caution about new reporting requirements beyond this, especially with respect to matters beyond the agency's institutional expertise. USTR's GSP staff is quite small at 2.5 or fewer full-time employee equivalents, and should spend as much as possible of their time on substantive issues.

The balance of my testimony provides an overview of the system's current rules and trade coverage; the enforcement of existing eligibility criteria, with some observations from my experience in 2015-2020; trends since the lapse of benefits at the end of 2020; and some thoughts on several proposed revisions.

### **GSP COVERAGE AND ECONOMIC BENEFITS**

GSP is a 50-year-old system created as part of the Trade Act of 1974, which uses tariff waivers to help smaller and poorer countries develop by attracting investment, diversifying their economies, and creating better jobs. All developed economies, including Canada, the European Union, Switzerland, Norway, Israel, Japan, Australia, New Zealand, and Korea, run GSP systems, though their programs' product coverage, eligibility rules, and degrees of tariff reduction vary. Some large middle-income countries, including China, have smaller duty-free systems often for least-developed countries.

With benefits authorized, GSP waives tariffs on 3,614 of the U.S.' 11,414 HTS-8 lines for all 119 beneficiary countries (with some exceptions based on Competitive Need Limits), and 5,138 lines for 42 "least-developed" beneficiary countries.<sup>1</sup> Average rates on the lines authorized for waivers are 4.8%. To claim benefits, buyers must show that at least 35% of a given product's value comes from the beneficiary country. The system excludes a number of goods considered import-sensitive at the time of its creation, including clothing, textiles, shoes, and some others. Interested parties have annual opportunities to request removal of goods not on excluded lists, and/or to add new products (subject to review for import sensitivity). Several such cases typically occur each year, but at values small enough not to greatly affect overall levels of GSP trade. Congress' designation of new categories of products, however, can be significant — in fact, travel goods, designated eligible in 2015, are now the largest GSP import category.

By value, GSP covers about \$20 billion worth of imports annually, which was about 0.72% of all U.S. imports when the program lapsed in 2020 and about 0.6% now. It makes up about 11% of imports from beneficiary countries. The top imports in 2020 (at HTS-4 level in tariff jargon) were travel goods at \$1.9 billion, jewelry at \$1.05 billion, auto parts at \$0.56 billion, and mattress supports and similar goods at \$0.53 billion. Table 1 lists the ten leading beneficiary countries in 2020, as measured by total import value and by share of U.S. trade covered by GSP tariff waivers.

**TABLE 1: LEADING USERS OF GSP BENEFITS BY VALUE AND IMPORT SHARE**

<b>Total Imports GSP Total</b>	<b>Top Sources of GSP Imports, 2020</b>	<b>Top GSP Users by Share of Imports, 2020</b>
	<b>\$2,346 billion</b>	<b>0.7% of total U.S. goods imports</b>
	<b>\$17 billion – all beneficiaries</b>	<b>11.2% – Average across all beneficiaries</b>
1.	\$3.85 billion – Thailand	72% – Lebanon
2.	\$3.22 billion – Indonesia	67% – Georgia
3.	\$2.21 billion – Brazil	59% – Zimbabwe
4.	\$2.04 billion – Cambodia	41% – Armenia
5.	\$1.56 billion – Philippines	38% – Paraguay
6.	\$0.71 billion – South Africa	35% – Burma (pre-coup)
7.	\$0.59 billion – Ecuador	34% – Kosovo
8.	\$0.37 billion – Pakistan	34% – Serbia
9.	\$0.36 billion – Burma (pre-coup)	31% – Cambodia
10.	\$0.36 billion – Argentina	29% – Tunisia

Source: USITC Dataweb

GSP's core benefit is the creation of opportunity for beneficiary countries to use the tariff advantage the program offers to draw higher-value investment, diversify their economies, and create employment in value-added industries. Real-life examples appear in U.S. purchasing of Cambodian-produced backpacks and suitcases, Kenyan horticulture, Armenian and Lebanese jewelry, Tunisian dates and olive oil, Thai industrial inputs for American HVAC and automotive industry, Pakistani sports equipment, Ecuadoran roses, South African boats and auto parts, Paraguayan leather, Ukrainian paint and carpentry supplies, Moldovan wine and jam, and the Solomon Islands' exports of about 500 tons of canned tuna (a product for which tariff waivers are reserved to least-developed countries) per year in the 2010s. Macro-level effects, however, are limited given the small scale of the program, though more useful when taken together with those of other countries' GSP systems.

A second benefit is the creation of alternatives for U.S. buyers to heavy reliance on larger suppliers — particularly China, as the current leading supplier of the mid-level manufactured goods that account for most GSP trade. Congress' approval of "travel goods" (a tariff category including luggage, wallets and purses, handbags, backpacks, and some other products) as eligible for GSP at Chairman Smith's initiative in 2015 suggests that in some cases this can be very successful. As Table 2 shows, a year before Congress' action, China was the dominant supplier of travel goods and GSP countries were only very minor suppliers. By 2018 the GSP beneficiary share had tripled, largely at the expense of Chinese imports. By 2020, after the imposition of "301" tariffs on many Chinese products, GSP countries were a larger source than China.

**TABLE 2: TRAVEL GOODS IMPORT SHARES BEFORE & AFTER GSP DESIGNATION**

<b>Travel Goods Imports</b>	<b>2014</b>	<b>2017</b>	<b>2018</b>	<b>2020</b>	<b>2022</b>
World Total	\$5.529 billion	\$9.958 billion	\$10.757 billion	\$7.504 billion	\$12.84 billion
China Share	61%	57%	54%	26%	23%
GSP Beneficiary Share	4%	9%	12%	27%	39%
All Others	35%	34%	34%	47%	48%

Source: USITC Dataweb

Third, to the extent GSP benefits help smaller and poorer countries integrate into international trade and global supply chains, they also likely improve life for workers in these countries who are coming into

cities from rural areas or are looking for alternatives to informal-sector work in domestic service, construction, and day labor. The ILO's *World Employment and Social Outlook 2023* reports that in middle-income countries, supply-chain jobs linked to developed economies are generally better than purely domestic-economy jobs. Such jobs, ILO finds, provide generally higher wages and have lower levels of "informality," meaning workers in these jobs are more likely to have health and safety protection, social security, limited hours and required holidays, and other legal protections and benefits:

"[S]ectors with higher GSC ["global supply-chain"] integration tend to have a larger share of wage and salaries employment, a lower incidence of informality and a lower proportion of low-paid employment – and hence in principle a higher quality of employment."<sup>2</sup>

### ELIGIBILITY RULES AND THEIR ENFORCEMENT

Fourth, GSP also supports some important U.S. policy goals through its eligibility criteria.

The core eligibility rule is one of income levels — that is, a country must be at "middle-income" or "low-income" range, as defined by the World Bank, to qualify for GSP benefits. The Bank's threshold for "high-income" status is now \$13,845 in Gross National Income per capita, meaning that all countries above this level are in principle ineligible and that countries whose GNI per capita rises above the level must "graduate." Countries also graduate from the program if they join the European Union, and in most cases lose eligibility should they become U.S. Free Trade Agreement partners.

Beyond this income threshold, GSP has a list of 15 policy-based eligibility criteria created at different times in the 1970s, 1980s, and 1990s. Eight of these criteria are "mandatory" and seven are "discretionary." A country's failure to meet any one of them can result in loss of its tariff benefits, after a USTR-led "review" of benefits and engagement with the relevant government. The criteria most frequently invoked for reviews of benefits include "taking steps, or having taken steps, toward respect for internationally recognized labor rights," affording "adequate and effective protection of intellectual property," providing "prompt and adequate compensation for expropriation and respect for arbitral awards," and providing "reasonable assurance of access to markets." Administrations enforce these criteria in two ways:

(1) Annual solicitation of public comment through *Federal Register* notices. These notices at times elicit petitions for reviews of benefits by individuals, businesses, trade associations, NGOs, and other interested parties who believe a particular beneficiary country may not be compliant with one or more criteria. During my tenure, such petitions led to the opening of reviews of benefits regarding South Africa on intellectual property rights and Thailand on market access for pork. The review of South Africa remains open, while the review of Thailand did not succeed and led to the partial withdrawal of GSP benefits.

(2) Triennial "assessment" of all 119 beneficiary countries, in which USTR leads an interagency process examining each country's compliance with all 15 criteria. This system was designed in 2017, principally by the late Erland Herfindahl, then Deputy Assistant USTR responsible for GSP administration, and resulted in the first baseline assessment of all current beneficiaries since the 1970s. Its core goal was to ensure that all beneficiary countries met the program criteria, and that these criteria were enforced in a systematic and equitable way across the entire system, with similar problems in similar countries bringing similar treatment regardless of whether USTR had received a petition. The program assessed roughly 40 countries per year, proceeding by region with Asia and the Pacific Islands first; then Europe, Latin America/Caribbean, and the Middle East; then sub-Saharan Africa. These assessments led to self-

initiation of reviews of benefits for India and Indonesia on market access, and of Azerbaijan, Eritrea, and Zimbabwe on labor standards. The Indonesia market access case closed successfully, with the resolution of U.S. concerns related to dairy exports, import licensing in horticultural products, and digital trade issues. The India case, by contrast, did not resolve successfully, and the administration terminated India's GSP benefits. The labor cases related to Azerbaijan, Eritrea, and Zimbabwe remain open, and with the lapse of GSP benefits at the end of 2020 no action has been taken since.

Experience with these "enforcement" efforts offers some useful lessons. Several cases in my view yielded important and valuable results. In addition to the Indonesia case noted above, examples during my tenure included reform of child labor law in Bolivia in 2019, reduction of barriers to pork imports in Argentina in 2017, revision of copyright law in Ukraine in 2017, abolition of forced labor and abusive child labor in Uzbekistan's cotton industry, and revision of a national workplace safety and health law in Georgia in 2019 and 2020.

On the other hand, enforcement efforts sometimes fail, as in the India and Thailand cases and several earlier examples. Removal of benefits in these cases can come with a cost, and this cost often falls most heavily on workers and businesses rather than on governments or politicians. In 2013, academic economists Emily Blanchard and Shushan Habikyan noted that "when a developing country loses GSP access, its exports in affected industries fall by an average of 19% in the year of exclusion, an additional 20% in the first year, and are still 60% below pre-exclusion levels three years later."<sup>3</sup> A vivid illustration, drawn from the African Growth and Opportunity Act rather than GSP, of the inherent risk is that of the Obama administration's removal of Eswatini (then known as Swaziland) from AGOA benefits in 2014.<sup>4</sup> Here, an attempt to improve labor standards through the withdrawal of AGOA tariff waivers brought the collapse of the garment industry the administration was hoping to reform, with attendant job loss and harm to the workers the administration and the petitioners had meant to help.

#### COMPETITIVE NEED LIMITS

Finally, GSP also limits benefits through "Competitive Need Limits." These, known as "CNLs" for short, cap the level of exports of any particular product a country can provide under GSP by market share and by total value. A beneficiary country whose exports of a particular GSP good rise above an annually adjusted dollar ceiling (currently \$210 million and rising by \$5 million annually), or has more than half of all total U.S. imports of the relevant product, loses all duty-free benefits for this product. The dollar-value ceiling is not adjusted for inflation, and therefore has fallen in real dollars over time. Moreover, once a country loses eligibility for a product due to CNL imposition, it has great difficulty recovering it even if the country's market share drops below 50% or its export value declines.

#### DEVELOPMENTS SINCE LAPSE

The last reauthorization of GSP came in 2017, and program benefits lapsed on January 1, 2021. Since then, GSP users have continued to register products as GSP-eligible, but have not received benefits. To my knowledge, this is the longest lapse in program history. As renewal prospects have faded, the share of imports arriving under GSP has fallen from close to 0.8% to about 0.6%, and there are some cases of imports shifting away from GSP countries altogether.

An example is that of the Solomon Islands, a Pacific Island country of about 800,000 people with "least-developed" beneficiary country status. As of 2020, the Solomons exported about 500 tons of canned tuna



per year to the U.S. under GSP. This is normally a high-tariff product, with tariff rates ranging from 12.5% to 35%, but through 2020 GSP waived these tariffs for eligible least-developed countries. China buys most of the Solomons' roughly \$200 million in annual exports, principally raw lumber. U.S. purchases of canned tuna was less in value, but likely more useful as a job creator: though small-country economic statistics are often blurry, Australian estimates suggest that the tuna cannery in question provides about one-thirtieth of the Solomons' formal-sector, wage-paying jobs.

The U.S. has imported no canned tuna from the Solomons since the end of 2020. This does not mean U.S. production has risen to replace imports — in fact, import levels have risen from about 210,000 tons to 240,000 tons per year — but rather that a low-income, strategically sensitive country has lost trade to larger competitors. Buyers of the Solomons' modest shipments of tuna appear to have shifted to larger Southeast Asian and Latin American sources not eligible for LDC tariff benefits. Similar problematic cases show up in products removed from GSP by CNLs as well.

### REAUTHORIZATION OPTIONS AND TRADE-OFFS

Looking ahead, I applaud the Subcommittee's interest in reauthorizing and improving GSP.

Overall, the system provides some tangible U.S. support for smaller and poorer countries through trade opportunities. It gives the U.S. government a useful tool for several policy goals, and helps U.S. firms reduce production costs by saving tariff expenses on industrial inputs. From a different perspective, GSP is not a significant source of competition for domestic businesses, as it covers only a very small share of U.S. imports, applies to goods not considered "import-sensitive," and allows interested parties regular opportunities to remove goods that have become sensitive for some reason.

The option of renewing GSP without significant change is in my opinion not a bad choice, given that it is a relatively small program whose benefits have lapsed for a long time. On the other hand, I believe some changes could enable GSP to accomplish more than it now can. A few thoughts, therefore, on potential goals in reauthorization, and the types of changes to GSP that might make more able to help the U.S. reach them:

1. Supply Chain Security and Sourcing Diversification: If a primary goal of the reauthorization is to diversify U.S. sourcing and encourage less reliance on Chinese products, the program should probably have a relatively long reauthorization period, and within its limits should provide significant incentives for companies to use it. In policy terms, this could involve:

(a) Renewal term: A renewal of at least five years, taking the program at minimum to the end of the next Presidential term.

(b) Level of economic benefit: Some additional real-world benefits for users that provide more incentive to shift supply chains. My understanding is that some of the products excluded from the program as "import-sensitive" are now not made in the United States, and despite the opportunities presented by Free Trade Agreements and the AGOA and CBI programs, are often remain overwhelmingly sourced from China. These might be examined for inclusion in GSP.

Short of this, the CNL system limits the ability of beneficiary countries to export products in which they are particularly competitive, and based on analysis I've seen likely reduces the value of GSP imports by about a third. Legislation offered in the last Congress by the late Representative Jackie Walorski and

former Representative Stephanie Murphy represents a thoughtful approach to revising and improving it. Their bill would have replaced the current dollar-value threshold with a more economically sensible percentage-based annual increase, and given administrations more flexibility to restore benefits to countries in cases when a given product, having risen above a CNL threshold, then falls back below it.

(c) Stability of benefits: GSP's success as an incentive for supply chain shifts and diversification, especially in higher-value products requiring relatively greater capital investment, depends on buyers' confidence that benefits are relatively stable and that countries will undergo benefit reviews and removals only for very serious and clear evidence on failure to comply with the eligibility criteria. While I do believe some updates and additions to the list of criteria are appropriate, a very large number of new criteria (particularly if they include very general or vaguely written criteria), may require administrations to conduct many new reviews of benefits and so erode buyer confidence in the system as a whole.

(d) Rule of origin: GSP's 35% value-added rule of origin has some significant benefit. In particular, it makes the program simple and inexpensive for buyers to use. It is not, however, a feature of the program that has received much in-depth analysis, and some types of revisions to it could lead to greater value-added trade for GSP beneficiaries and less for other countries including China. It may be useful to explore in some rigorous way:

(i) whether allowing GSP beneficiaries to count value added by use of American input, or input from U.S. FTA partners and perhaps non-FTA allies, and/or input from other GSP beneficiaries, would help to diversify their sourcing of inputs; and

(ii) whether a requirement that more than 35% of the value of a GSP product come from GSP beneficiaries themselves (or some combination of beneficiary countries and other eligible contributors) would increase local production, or simply raise costs and deter use of the GSP system.

2. New Policy Goals and Addition of Criteria: Most recent reauthorization bills have included a significantly longer list of eligibility criteria than the current program has. I share the view that some updates are appropriate, for example the addition of an environmental criterion. However, I also have some concern about additions of a large number of new criteria:

(a) A significantly longer list of eligibility may not achieve more: The more new eligibility criteria are added, the less likely users are to see the overall benefits as stable and reliable. This is particularly likely when new criteria are written vaguely or have numerous sub-criteria that can cause the opening of reviews and loss of benefits for many different reasons. I feel that some criteria drawn from the African Growth and Opportunity Act have this sort of weakness. Likewise, a significantly longer list of eligibility criteria risks making it harder for beneficiary countries to understand what is necessary to remain in compliance, and for executive-branch administrators to enforce these criteria in systematic and equitable ways across the system. Alternatively, a list of many criteria may mean administrations feel they need to reduce the priority given to each individual criterion including those in the current list.

(b) Very strictly written criteria may be quite hard for some well-intentioned governments to meet: Developing-country governments – in particular, governments of low-income countries and small island states — often have very talented national leadership, but weak civil services and policy capacity. This can mean they impose policies unevenly, often effectively in national capitals but spottily in provinces.



The current GSP criteria typically (and I believe wisely) offer administrators flexibility to view governments whose records may be imperfect, but who are acting in good faith on relevant issues, as compliant. I hope this will remain the case if Congress chooses to add new criteria or revise existing ones.

3. New Requirements for Administrations: Several renewal bills suggest, in various ways, codifying the triennial “assessment” program that Mr. Herfindahl developed in 2017, and adding new reporting requirements.

(a) I feel the assessment program is a significant improvement on the purely petition-driven approach of earlier years, and that it has been quite valuable to develop a baseline of compliance for each country. I believe it is appropriate for this to continue.

(b) I would recommend caution about new reporting requirements. Administrations should keep Congress informed about emerging GSP eligibility issues, additions and removals of products, and so on, and provide a public record of decisions and their rationales. However, the GSP staff is quite small at 2.5 or fewer full-time employee equivalents. A reporting requirement that is very extensive and/or covers matters well beyond the agency’s institutional expertise would place a heavy new work burden on these people, and divert them from working directly on product and eligibility compliance issues to drafting, verifying, and producing reports. So I would hope any new reporting rules would be relatively limited.

### CONCLUSION

In conclusion, Mr. Chairman, thank you once again for this opportunity to share ideas and experience on GSP with you. I admire and applaud the work the Subcommittee is doing to affirm America’s commitment to support smaller and poorer countries through trade policy; think through ways GSP can most effectively promote supply chain security and diversification; and promote American policy goals. I would be happy to answer any questions you and the Subcommittee Members may have.

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<sup>1</sup> For context, as of 2023 the U.S. Harmonized Tariff System has 11,414 8-digit lines, of which 4,315 are permanently duty-free. This leaves 7,099 lines subject to tariffs above 0%, with 1,961 in excluded categories. The U.S. International Trade Commission’s line counts for the system as a whole, GSP, and other categories is at [https://www.usitc.gov/sites/default/files/tariff\\_affairs/documents/2023\\_hts\\_item\\_count.pdf](https://www.usitc.gov/sites/default/files/tariff_affairs/documents/2023_hts_item_count.pdf)

<sup>2</sup> *Employment and Social Outlook 2023: Trends*, International Labour Organization, pp. 16 and 44-45, at [https://www.ilo.org/global/research/global-reports/weso/WCMS\\_865332/lang-en/index.htm](https://www.ilo.org/global/research/global-reports/weso/WCMS_865332/lang-en/index.htm)

<sup>3</sup> Emily J. Blanchard and Shushanik Hakobyan, “The U.S. Generalized System of Preferences: In Principle and Practice,” *Tuck School of Business Working Paper No. 2439798*, December 19, 2013, <http://dx.doi.org/10.2139/ssrn.2439798>

<sup>4</sup> “President Obama Removes Swaziland, Reinstates Madagascar for AGOA Benefits,” Office of the United States Trade Representative, June 26, 2014, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2014/June/President-Obama-removes-Swaziland-reinstates-Madagascar-for-AGOA-Benefits>.

Chairman SMITH of Nebraska. Thank you, Mr. Gresser.  
Mr. SPRONK, you are now recognized.

**STATEMENT OF RANDALL SPRONK, PORK PRODUCER,  
FORMER PRESIDENT OF THE NATIONAL PORK PRODUCERS  
COUNCIL**

Mr. SPRONK. Good afternoon, Trade Subcommittee Chairman Smith, Ranking Member Blumenauer, and members of the subcommittee.

I am Randy Spronk, a pork producer and farmer from Pipestone, Minnesota. My family and I farm 2,500 acres of corn, soybeans, and hybrid rye, and we will market about 265,000 butcher hogs annually. I am a past president of the National Pork Producers Council and represent them on USDA's Agricultural Policy Advisory Committee.

Thank you for the opportunity to testify on behalf of NPPC and the Nation's 66,000 pork producers.

Trade is crucial to the U.S. pork industry. Last year, we exported nearly \$7.7 billion of pork. Those exports supported 155,000 mostly rural jobs and added \$14.5 billion to the country's GDP. More importantly, exports equated to around \$61 in value for every hog that was marketed in 2022.

The U.S. pork industry, like a lot of industries, has gone through some tough times in the past several years, but exports continue to be a bright spot for producers. Our trade successes can be largely attributed to our ability to produce the world's safest, most nutritious, most affordable pork in the world, and a fair and unfettered access to foreign markets negotiated through comprehensive trade agreements. It is very clear such agreements are why the U.S. exports more pork to the 20 countries that we have free-trade agreements with than the rest of the world combined.

Another tool critically important to obtaining market access for U.S. pork is the Generalized System of Preferences, which has unfortunately been expired since the end of 2020.

Pork producers support the objectives of the GSP program to offer opportunities to many of the world's poorest countries to use trade to grow their economies and climb out of poverty. We believe that promoting the economic growth and development of GSP recipient countries is a good business proposition, because increased income and buying power in those markets will create future export opportunities for U.S. pork producers.

We also view the GSP program as a very important trade enforcement tool that gives U.S. trade negotiators leverage to address market-access concerns.

As an example, GSP was successfully used as leverage to obtain market access for U.S. pork producers in India. At the time of the petition in 2017, India was the number-one recipient of preferential trade benefits under the U.S. GSP program and restricted or prohibited the import of many U.S. agricultural products, including my product, pork. The list of restrictions was quite extensive. But through the leverage created by GSP, the U.S. Government was able to successfully negotiate away a long list of issues. Currently, U.S. pork industry is working on exporting its first shipments of U.S. pork to India.

While the threat of removing GSP benefits can induce countries to improve market-access conditions for U.S. pork, the possibility of being added to the eligibility list is another mechanism for countries to remove longstanding barriers.

Argentina, for example, was under consideration for GSP eligibility in 2018. The U.S. Department of Agriculture was able to use that leverage to finalize the development of an export certificate for U.S. pork, giving us market access.

Another example where GSP could use its leverage is with Thailand, which has a de-facto ban on U.S. pork today. The country maintains high tariffs and several non-tariff trade barriers on U.S. pork, despite getting duty-free access to the United States under GSP. In 2018, NPPC successfully petitioned for a review of Thailand's GSP benefits. As a result of that review, Thailand's duty-free access under GSP was suspended on October 30, 2020.

However, current expiration of GSP has removed an important incentive for Thailand or other GSP-eligible countries to provide equitable market access to U.S. pork. That is why it is critical to renew GSP.

NPPC would like to urge Congress to consider the addition of stronger enforcement mechanisms in the GSP program to ensure that recipient countries are providing equitable and reasonable access to their markets. A mechanism that more quickly responds to unjustified barriers imposed by GSP recipient countries would also be welcomed.

In conclusion, U.S. pork producers support the renewal of GSP. We believe it is a valuable tool and a valuable program that will give U.S. trade negotiators another tool to get countries to eliminate trade restrictions on U.S. products.

Furthermore, a renewal of GSP should include stronger enforcement mechanisms that provide trade negotiators the tools to ensure countries are meeting their obligations.

Thank you for allowing me to testify. I would be happy to answer your questions.

[The statement of Mr. Spronk follows:]

**Written Testimony of  
National Pork Producers Council**

**Reforming the Generalized System of  
Preferences to Safeguard U.S. Supply Chains  
and Combat China**

**House Committee on Ways & Means  
Subcommittee on Trade**

**September 20, 2023**

### **Introduction**

The National Pork Producers Council (NPPC), representing 42 affiliated state associations, works to ensure the U.S. pork industry remains a consistent and responsible supplier of high-quality pork to domestic and international markets. Through public policy outreach, NPPC fights for reasonable legislation and regulation, develops revenue and market opportunities and protects the livelihoods of America's more than 66,000 pork producers.

### **Economic Contributions to the U.S. Economy**

The U.S. pork industry is a significant contributor to the economic activity of U.S. agriculture and the broader U.S. economy. Marketing more than 140 million hogs annually, those animals provided farm-level gross cash receipts of more than \$30 billion in 2022.

To produce those hogs, pork producers used roughly 1.6 billion bushels of corn and soybean meal from 433 million bushels of soybeans in 2022. The industry also purchased more than \$1.6 billion in other feed ingredients.

Economists at NPPC and Iowa State University estimated that in 2021, the U.S. pork industry was directly responsible for creating more than 36,000 full-time-equivalent jobs in pork production and generating roughly 122,000 jobs throughout all of agriculture. In addition, the pork sector was responsible for 138,000 jobs in meatpacking and processing and 39,000 jobs in professional services, such as financial services, insurance and real estate. In total, the U.S. pork industry supports 610,000 mostly rural jobs in the United States and adds more than \$57 billion to the country's GDP.

Most important, U.S. pork producers in 2022 provided more than 27 billion pounds of safe, wholesome and nutritious meat protein to consumers worldwide.

We are in a challenging time in the U.S. pork industry. Over the past ten months, hog producers have lost an average of \$20 per head on each hog marketed. This year, hog prices have averaged 14% lower than in 2022, though current losses are largely due to record-high production costs that have increased by as much as 60% in three years. These losses are putting a pinch on the

pork industry, and this economic reality may force producers to exit the industry, further driving consolidation at the farm-level.

### **Pork Exports**

One bright spot for producers is the pork industry's continuing robust exports. Annual exports of U.S. pork have been increasing for several years because of improving economies and a rising middle class worldwide. Other factors driving those increases include the emergence of hotel and restaurant industries in some nations – particularly as world travel has become relatively more accessible and affordable. Additionally, several important U.S. export markets in Southeast Asia, for example, have been battling African swine fever (ASF) for several years, raising demand for increased pork imports and benefiting U.S. pork producers.

America's pork producers annually export about a quarter of their total production to more than 100 countries. The pork industry exported \$7.68 billion of pork in 2022. Those exports equated to around \$61 in value for each hog marketed last year, supported 155,000 American jobs and contributed more than \$14.5 billion to the U.S. economy.

Despite numerous challenges, a strong U.S. dollar, ongoing supply chain issues, and trade retaliation from some of its top foreign markets - the U.S. pork industry continues to export a significant amount of pork. In fact, through March of this year, America's pork producers have shipped \$2.0 billion worth of product to foreign destinations, compared to about \$1.7 billion for the same period last year, a 14% increase.

### **Generalized System of Preferences**

The U.S. Generalized System of Preferences (GSP) expired December 31, 2020. GSP provides nonreciprocal, duty-free treatment of goods exported to the United States from beneficiary developing countries. NPPC supports the objective of the GSP program to offer opportunities for many of the world's poorest countries to use trade to grow their economies and climb out of poverty. NPPC believes promoting the economic growth and development of GSP recipient

countries is a good business proposition, because increased income and buying power in those markets will create future export opportunities for U.S. pork producers.

NPPC also views the GSP program as an essential trade enforcement tool that gives U.S. trade negotiators leverage to address market access concerns. GSP-eligible countries are required to meet statutory criteria set by Congress. Should they fail to meet those requirements, the United States can withdraw GSP benefits.

The GSP statute provides that the President shall not designate any country as a beneficiary developing country if it “affords preferential treatment to the products of another developed country, which has, or is likely to have, a significant adverse effect on United States commerce.” In addition, when determining whether a country should be eligible to continue to receive GSP benefits, the President is instructed to take into account the “extent to which such country has assured the United States that it will provide equitable access to [its] markets.”

In presenting the original GSP bill, the U.S. Senate Committee on Finance emphasized the importance of market access for U.S. goods as a precondition for GSP eligibility, stating in their report that “the Committee feels strongly that the beneficiary developing countries should reduce and eliminate their own barriers to U.S. commerce before they should be granted preferential treatment in the U.S. market.” During the floor debate in the U.S. House of Representatives, it was noted that “perhaps the most compelling reason” for the GSP program was the opportunity it would provide to increase U.S. exports to beneficiary countries.<sup>1</sup>

GSP was successfully leveraged to obtain market access for U.S. pork producers in India. At the time of the petition, in 2017, India was the number one recipient of preferential trade benefits under the U.S. GSP program – nearly \$5.6 billion – and restricted or prohibited importing many U.S. agricultural products, including pork.

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<sup>1</sup> 119 Congress, Rec 40,555 (1973) (statement of Rep Whalen).

The list of restrictions was quite extensive. Many of the constraints imposed by India on U.S. pork were contained in the Indian Department of Animal Husbandry's Veterinary Health Certificate for Pork and Pork Product Imports. Among the restrictions imposed through that certificate were 1) a scientifically unjustified ban on ruminant feeding, and 2) trichinae-related restrictions on pork imports from the United States. India imposed trichinae-related restrictions on U.S. pork, despite not even a single case of trichinosis detected in the U.S. commercial herd in over a decade. Ultimately, the U.S. government used the threat of removing GSP benefits as leverage and successfully negotiated the myriad issues. Currently, the U.S. pork industry is working on exporting its first shipment of U.S. pork to India.

NPPC has also used the GSP review process as a mechanism to address market access barriers in key countries where negotiations have stalled. In Thailand, GSP could be used as leverage, due to the country's *de facto* ban on U.S. pork. Despite obtaining duty-free access to the United States under the GSP, Thailand maintains high tariffs and several non-tariff barriers on U.S. pork. In 2018, NPPC successfully petitioned for a review of Thailand's GSP benefits. As a result, Thailand's duty-free access under GSP was suspended October 30, 2020. However, the current expiration of GSP has removed an important incentive for Thailand or other GSP-eligible countries to provide equitable market access to U.S. pork.

Similarly, NPPC has supported the removal of GSP benefits for several other countries that have imposed unjustified barriers to imports of U.S. pork, including Ecuador, Jamaica and South Africa.

While the threat of removing GSP benefits can induce countries to improve market access conditions for U.S. pork, the possibility of being added to the eligibility list is another way to persuade countries to remove long-standing barriers. For example, when Argentina was under consideration for GSP eligibility in 2018, the United States Department of Agriculture was able to use that leverage to finalize the development of an export certificate for U.S. pork. This removed restrictions that had previously impeded U.S. access to the Argentine market.



NPPC also urges Congress to consider adding stronger enforcement mechanisms in the GSP program to ensure that recipient countries provide equitable and reasonable access to their markets. A mechanism that more quickly responds to unjustified barriers imposed by GSP recipient countries is welcome.

### **Conclusion**

NPPC strongly supports the renewal of GSP, as it is a valuable program that will give U.S. trade negotiators another tool to persuade countries to eliminate trade restrictions on U.S. products. Further, a renewal of GSP should include stronger enforcement mechanisms that provide U.S. trade negotiators the tools to ensure countries are meeting their obligations.

Chairman SMITH of Nebraska. Thank you, Mr. Spronk. Mr. Garza, you are now recognized.

**STATEMENT OF FABIAN GARZA, VICE PRESIDENT OF  
OPERATIONS, BLACK DIAMOND EQUIPMENT**

Mr. GARZA. Good afternoon, Chairman Smith, Ranking Member Blumenauer, committee and subcommittee members. I appreciate the opportunity to testify today.

My name is Fabian Garza, vice president of operations at Black Diamond Equipment, and I am responsible for guiding our global supply-chain strategies and sourcing directions. While I represent Black Diamond today, our stance resonates with the broader sentiments of the Outdoor Industry Association.

Black Diamond is headquartered in Salt Lake City, Utah, and specializes in creating outdoor equipment and apparel, primarily for climbing, skiing, trail running, and hiking. Emerging from Chouinard Equipment alongside Patagonia, our company was established in 1989 and has since thrived, emphasizing quality, environmental sustainability, and broadening mountain communities.

We currently employ 321 U.S. professionals, with 49 specializing in manufacturing here in the U.S. In 2006, Black Diamond ventured into manufacturing in Zhuhai, China. However, by 2015, we closed our operations in China and diversified globally, while also amplifying our U.S. manufacturing.

A crucial tool in this strategic shift was GSP. Now our imports encompass over 20 countries, largely with GSP-eligible products from Cambodia, the Philippines, and Pakistan. GSP's duty-free advantages, especially on products like backpacks and duffel bags with duties up to 20 percent, are invaluable for our scale.

Regrettably, the 2020 GSP expiration burdened the outdoor sector with approximately \$1.7 billion in tariffs. Black Diamond shouldered over \$1 million of that.

The financial setback, compounded by unpredictable market and economic challenges, has made many industry players consider reverting their manufacturing back to China. Black Diamond is not taking this stance. However, we are halting hiring key positions, postponing crucial product development, and have deferred essential initiatives. A retroactive GSP reinstatement and recovering the duties is of paramount importance.

Additionally, there is an urgent need to reassess the competitive need limitations within GSP to better serve businesses aiming to diversify supply chains away from China. The current annual increment in CNLs does not reflect the shift of production from China to developing countries. This deviates from the legislation's original intent and imposes growth constraints at unjustifiably low levels.

The addition of travel goods to GSP, along with the 2017 extension to all beneficiary countries by Ambassador Lighthizer, led to a considerable shift away from China. However, creating a solid domestic industry is a prolonged process. Countries like Indonesia have already surpassed CNL benchmarks for backpacks, while Philippines is nearing the threshold. If genuine diversification from China is our goal, optimizing resources like GSP is essential.

Now, pivoting to Black Diamond's commitment to enhancing U.S. manufacturing, we, like other businesses, depend on imported materials for domestic production. The existing tariffs, especially China section 301 tariffs, unintentionally affect American companies.

Tariffs on raw materials, with many finished products being exempt, pose challenges, especially when certain unique components are only accessible in China. High tariffs, up to 25 percent on some components, drastically impact our operations.

As discussions on shifting supply chains from China continue, the significance of initiatives like GSP is paramount, as opposed to generalized tariffs, adversely influencing U.S. sectors.

While prioritizing GSP renewal, we also seek a new section 301 exclusion process, balanced tariffs for non-critical U.S. manufacturers, or any tariff relief that Congress might consider in the trade package.

A final item very important to OIA is the Miscellaneous Tariff Bills process, which historically has moved in tandem with GSP. We hope Congress will reauthorize that program as well.

In conclusion, this testimony underscores GSP's critical impact on companies like Black Diamond. Thank you for letting me share our journey and insights.

[The statement of Mr. Garza follows:]

**Fabian Garza, VP of Operations. Black Diamond Testimony. Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China.**

Good afternoon, Chairman Smith, ranking member Blumenauer and members of the committee, and members of the subcommittee, thank you for allowing me to testify today. My name is Fabian Garza, I am the Vice President of Operations at Black Diamond Equipment. I am responsible for steering the company's global supply chains and determining our strategic sourcing direction.

Our headquarters is based in Salt Lake City, Utah. We specialize in designing and manufacturing outdoor equipment and apparel, specifically for the activities of climbing, skiing, trail running, and hiking. Our legacy intertwines with that of Patagonia with both companies emerging from Chouinard Equipment, Black Diamond was founded in 1989 and prides itself on exceptional quality, its commitment to environmental sustainability and diversifying the mountain community. As a testament to our roots and growth, we currently employ 321 U.S. workers across six states, 49 of whom are in manufacturing roles.

Our representation here is not solely on behalf of Black Diamond, but also as members of the Outdoor Industry Association. The concerns we raise today resonate with the broader outdoor industry sector.

Beginning in 2006, Black Diamond Equipment established a significant manufacturing presence in Zhuhai, China, with a dedicated production facility and warehouse. By 2015, we opted to shift our focus from China, diversifying our manufacturing across various nations while also amplifying our U.S. manufacturing operations - a vision that came to fruition. One of the pivotal tools employed to facilitate the shift from China was GSP.

Today, we import vital outdoor industry goods from over 20 nations, with a significant portion of GSP-eligible products originating from Cambodia, the Philippines, and Pakistan. For our colleagues in the outdoor industry, Indonesia is also a key supplier. Duties on select products, such as backpacks, duffle bags, and chalk bags, can soar to 20%, making the duty-free advantages of GSP immensely beneficial for enterprises of our scale.

It is important to recognize other advantages of GSP, which include fostering industrial advancement in our beneficiary nations, which translates into job opportunities and improved living conditions. Such progress makes these countries attractive for investments. GSP also promotes trade with nations that are committed to reinforcing labor rights, protecting intellectual property, and other eligibility criteria. This approach not only bolsters our diplomatic relationships but also emphasizes our nation's commitment to principled and sustainable trade.

The expiration of GSP at the close of 2020 has imposed significant financial burdens on the outdoor industry, amounting to an estimated \$1.65 billion in tariffs. Of that amount, Black Diamond itself accounted for over one million dollars in additional duties. All of this while the broader outdoor sector is grappling with the adverse impacts of an unstable market. Mounting inflation and the current economic landscape have eroded the disposable income of American families, which in turn has detrimentally impacted leisure activities and our subsequent revenues. Given the uncertainty surrounding the renewal of the GSP, many of our industry peers are contemplating a return to manufacturing in China. Black Diamond has implemented a hiring hold this year, suspended select product development projects, and delayed other pivotal initiatives. The considerable impact of a potential retroactive reinstatement of GSP, along with the recovery of the previously mentioned \$1.65 billion in duties, is of paramount importance and immense urgency.

In addition to advocating for the retroactive renewal of the Generalized System of Preferences (GSP), there is an imperative need to revise the competitive needs limitations (CNLs). This revision would better support businesses like ours in diversifying supply chains away from China. The current model, wherein the CNLs' dollar threshold grows by a consistent \$5 million annually, fails to align with the escalating value of imports, especially in the realm of travel goods. For context, in 1996, this increment reflected a 6.7% rise, but by 2023, it has diminished to just 2.53%. Such a configuration deviates from the original intent of the legislation and inadvertently stunts the expansion potential of domestic sectors by imposing growth constraints at unduly low thresholds.

For our industry, challenges arise concerning the 8-digit HTS classification for backpacks. Since the inclusion of travel goods in the GSP program by Congress in 2016—a monumental step for the outdoor industry—we have witnessed a significant shift of production away from China. This transition gained momentum in 2017, when Ambassador Lighthizer extended duty-free benefits for travel goods to all GSP beneficiary nations, including the likes of the Philippines and Indonesia. Nonetheless, establishing a robust domestic industry is a long-term endeavor. Even with the rapid production surge in GSP beneficiary countries such as Cambodia, Indonesia, and the Philippines, China remains a predominant player in this segment. Notably, Indonesia has already exceeded the CNL benchmarks for backpacks.

In 2022, the CNL threshold was set at \$205 million. Surprisingly, this only constituted 8% of the total U.S. imports of items including backpacks and sports bags for that particular year. Despite China's dominant position as the leading supplier for these products, there exists a significant potential to further diversify and grow within this product sector. However, the constrained rate ensures nations like our partners in Indonesia, the Philippines, and others are unable to fully cultivate competitive industries due to these low-level cutoffs. Indonesia has already surpassed the CNL for this category, and the Philippines is swiftly nearing the limit. If the objective is genuinely to diversify our supply chains from China for these pivotal products, it would be prudent to leverage existing resources, such as GSP, to facilitate this transition.

Lastly, Black Diamond remains firmly devoted to strengthening our domestic manufacturing in the U.S. and fostering quality American employment. Amid complex supply chains, we, like many businesses, rely on imported materials for our U.S. production. These imports are further complicated by increased tariffs, such as the imprecisely applied Section 301 tariffs intended for China, which inadvertently burden American companies and consumers. Particularly concerning are tariffs on raw materials while many finished products go untaxed, as seen with our Salt Lake City products. Such policies intensify challenges for companies like ours that strive to redirect operations from China yet encounter difficulties due to unique components that are only available there. The tariffs, reaching up to 25% on some essential components, severely strain our operations. As we discuss the future of supply chains and their alignment away from China, we emphasize the immediate need for initiatives like GSP to aid domestic businesses, rather than generalized tariffs that negatively affect a vast range of U.S. industries.

While retroactive GSP renewal is our priority, I would be remiss not to mention that a new Section 301 exclusion process, a rebalancing of tariffs to mitigate harm to U.S. manufacturers in non-critical industries, or any action to bring tariff relief would be welcomed by our industry as Congress considers what to put in the trade package.

I hope this testimony gave a sense of the profound impacts GSP has on real American businesses like Black Diamond. Thank you for allowing me to share our story and our experience.

Sincerely,

Fabian Garza

VP of Operations

Black Diamond Equipment Limited

Chairman SMITH of Nebraska. Thank you, Mr. Garza.  
Mr. Cory, you are recognized.

**STATEMENT OF NIGEL CORY, ASSOCIATE DIRECTOR,  
INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION**

Mr. CORY. Good afternoon, Chairman Smith, Ranking Member Blumenauer, members of the committee. I appreciate this opportunity to testify about reforming GSP to address digital trade barriers.

Let me start by saying that, just as global trade has gone digital, so has protectionism. Many countries are enacting discriminatory, behind-the-border regulations on digital products and services to target U.S. firms in order to give their local competitors a leg up.

This digital protectionism is spreading. The number of local data requirements, a popular protectionist tool, has more than doubled in recent years, from 67 in 2017 to over 144 in 2021.

The digital protectionism toolkit is much broader, including discriminatory licensing, product reviews, and certification processes; digital service taxes; and local digital content requirements.

China is the world leader in digital protectionism. It pioneered the practice and refined it in targeting U.S. firms and products. Now, many developing countries are following suit. Several GSP beneficiaries have enacted barriers to digital trade or are considering it.

For example, in 2019, nearly \$3 billion of Indonesia's exports to the United States benefited from GSP access, representing nearly 14 percent of their total exports to the U.S. Yet Indonesia has enacted or is considering major digital restrictions, including local data storage, a digital services tax, and duties on imports of digital content.

Similarly, in 2019, \$346 million of Pakistan's exports to the United States benefited from the GSP, representing nearly 9 percent of their total exports to the U.S. Yet it, too, is considering a range of restrictive digital trade barriers.

Why should we care? Digital protectionism has already cost the United States dearly, especially in China, and it will cost us even more if GSP countries are allowed to get away with it just as their digital economies are growing. In countries like Indonesia, Brazil, Thailand, Nigeria, Kenya, the Philippines, and elsewhere, the U.S. will only benefit if they have fair and reasonable market access to these markets.

For example, U.S. digital trade exports to Indonesia were worth nearly a quarter-billion dollars in 2021, which is nearly a 90-percent increase since 2010. In 5 or 10 years' time, it could be much higher than that, but only if U.S. firms and digital products have fair and reasonable market access.

GSP provides the United States with critical leverage to force reforms. It is time Congress and the administration take this up by adding an explicit criterion for digital trade barriers and by making reporting and transparency reforms to ensure it is applied consistently and effectively.

Former USTR Lighthizer demonstrated just how useful this could be in elevating the importance of digital trade barriers in several GSP reviews that he conducted, forcing concrete changes in

certain countries like Indonesia. These GSP changes are important for three key reasons.

Firstly, it would support the digital trade that fosters U.S. economic competitiveness, innovation, and job creation. In 2021, the United States exported nearly \$90 billion in ICT services. Digital trade has democratized trade, as SMEs can use the internet and digital technologies to access customers and markets all around the world. But the flip side is also true: Digital barriers to trade disproportionately impact these smaller players, who don't have the resources or the expertise to adjust. The impact is compounded given these SMEs depend upon large U.S. platforms and servicers, who are often the explicit target of these digital trade barriers.

Second, a digital trade criterion is perfectly aligned with the GSP's core goal, as data and digital services are now critical to modern development. Besides my own research on the issue, the World Bank's 2020 World Development Report finds that, and I quote, "restrictions on data flows have large negative consequences on the productivity of local companies using digital technologies. . . . Countries would gain on average about 4.5 percent in productivity if they removed their restrictive data policies, whereas the benefits of reducing data restrictions on trade and services would on average be about 5 percent," end quote.

Third, reforms will ensure the administration uses the GSP program to support digital free trade. To date, the Biden administration's approach to countering digital protectionism is lackluster, to put it politely. U.S. Trade Representative Tai is unwilling to pursue new, ambitious, and binding digital trade rules like those in USMCA.

Some in the administration and Congress have expressed fears that digital trade rules would prevent Congress from enacting sensible new laws on digital issues, but those fears are unfounded. Australia, Canada, New Zealand, Singapore, Japan have all long pursued new digital trade rules, and none of them have stopped them from enacting new laws and regulations in relation to competition, content, intellectual property, privacy, or cybersecurity.

In conclusion, the GSP is only one tool in the U.S. toolkit, but it is an increasingly important one. Adding in an explicit criterion for digital trade barriers would ensure it remains relevant and effective.

And thank you.

[The statement of Mr. Cory follows:]



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COMMENTS OF ITIF

Before the  
U.S. House Committee on Ways and Means, Subcommittee on Trade  
Washington, D.C.

In the Matter of:

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Reforming the Generalized System of Preferences  
to Safeguard U.S. Supply Chains and Combat  
China

September 20, 2023



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## FORWARD

The Information Technology and Innovation Foundation (ITIF) appreciates the House Ways and Means Trade Subcommittee's invitation to testify regarding the proposal to add a criterion for digital trade barriers to the Generalized System of Preferences program and the importance of digital trade to the U.S. economy. ITIF is a nonpartisan think tank whose mission is to formulate and promote public policies to advance technological innovation and productivity internationally, in Washington, and the states. Recognizing the vital role of technology in ensuring prosperity, ITIF focuses on innovation, productivity, and digital economy issues. We have long been involved in the digital trade debate, advocating for policies that support the free flow of data across borders as essential to global trade and commerce.

## INTRODUCTION

At the heart of the United States' Generalized System of Preferences (GSP) lies a recognition that free trade supports economic growth in developing countries, and such trade can be mutually beneficial. However, several developing countries that benefit from GSP have enacted (with many more considering) digital trade barriers that hurt U.S. firms and workers and contravene the GSP's requirement that they provide reasonable and fair market access to U.S. firms and their goods and services. Many countries enact digital trade barriers that specifically target U.S. firms and their digital goods and services. Congress should update the GSP by creating an explicit criterion for assessing digital trade barriers and use this criterion to evaluate and, if needed, revoke GSP status. In 2018, ITIF first proposed this change in "Time to Restrict GSP Benefits to Fight Trade Mercantilism."<sup>1</sup>

Global trade is increasingly digital, and the U.S. is home to many of the world's leading firms that depend on the ability to transfer data and use digital technologies to engage in digital trade to support and grow their U.S. operations, workforce, and research and development programs. Digital trade—the cross-border transfer of data, products, or services by electronic means—involves firms of all sizes in every sector, not just big tech—in 2021, the digital economy accounted for an estimated 10.3 percent of U.S. GDP.<sup>2</sup> U.S. exports of all services that can be delivered digitally, including business services, were \$594 billion in 2021 (75 percent of total U.S. services exports), an increase of 33 percent since 2016.<sup>3</sup>

Just as global digital trade has grown, so have barriers to it. As policymakers in a growing number of countries realize there is a global race for innovation advantage, they're turning to new behind-the-border barriers to disadvantage U.S. firms and their digital products in favor of local ones. For example, the number of forced local data storage/residency requirements (a concept known as data-localization) has more than doubled in four years. In 2017, 35 countries had implemented 67 such barriers. Now, 62 countries have imposed 144 restrictions—and dozens more are under consideration.<sup>4</sup> Data localization is a common barrier, but there are many more (explained below), so digital protectionism is spreading in many ways. However, data localization is not only a trade barrier, but it also can be a human rights issue as it enables China-like digital authoritarianism by making it easier for governments to access and control data for social and political purposes.

Digital protectionism is spreading as current global trade rules at the World Trade Organization (WTO) are largely from the pre-Internet era and thus don't apply or were written in such a way that it's uncertain as to whether they apply. Countries have taken advantage of this vacuum and uncertainty to enact barriers to digital trade. China is the world leader in digital protectionism, enacting dozens of different data localization and other restrictions. There are ongoing e-commerce negotiations at the WTO; however, it's highly uncertain whether these will lead to ambitious and enforceable rules against digital protectionism. Bilateral and regional trade agreements among like-minded countries are the main effort to help build new norms, rules, and agreements that support digital trade. However, new trade agreements are not the only way to push back against digital protectionism. The United States has considerable leverage in using GSP as a tool to ensure a range of important trading partners do not succumb to digital protectionism; at least not while also benefiting from tariff-free access to the U.S. market.

While the GSP only applies to a subset of developing countries, its duty-free access to U.S. markets represents a major benefit to many trading partners that clearly do not provide fair and reasonable market access or treatment of U.S. firms and their goods and services. For example, in 2019, \$2.7 billion of Indonesia's exports (13.6 percent of total exports) benefited from GSP duty-free access. Yet, it has enacted, and is considering further, digital trade restrictions that disadvantage U.S. firms and products. Similarly, in 2019, \$346 million of Pakistan's exports (8.8

percent of total exports) to the United States benefited from GSP tariff-free market access, yet it, too, is considering a range of restrictive digital trade barriers. While U.S. digital exports to both countries (e.g., U.S. digital trade exports to Indonesia were worth \$222 million in 2021) are not comparable to major U.S. trading partners, their potential to tap into these large, growing markets will be cut off if these countries are allowed to enact barriers to digital trade. All the while, these countries continue to increase their GSP-eligible exports. From 2000 to 2017, Indonesia's GSP-eligible exports increased by nearly 100 percent, while Pakistan's increased by 271 percent.

The United States should use updated GSP criteria as another tool to force these countries to roll back digital trade barriers. In doing so, the goal is not the punitive removal of these benefits for developing countries but to fully enact the rules already clearly set out as part of the GSP program, which the beneficiary countries have long been aware of, as they have enjoyed the corresponding benefits without fulfilling their accompanying obligations. Ultimately, GSP aims to convince these countries that abandoning mercantilist-oriented practices will produce stronger economic growth outcomes for these countries over the long term, which, after all, is the core goal of the GSP program anyway.

Adding an explicit digital trade criterion would build on past reforms to keep GSP relevant. After the GSP's creation in 1974, the Trade and Tariff Act of 1984 linked intellectual property rights enforcement and trade by making them actionable under Section 301 of the 1974 Trade Act, which meant the U.S. government could unilaterally raise tariffs against trading partners that maintain "unjustifiable or unreasonable" restrictions against U.S. trade. More recently, the Trade Facilitation and Trade Enforcement Act of 2015 required the USTR to develop an action plan and set of benchmarks for countries with the most serious intellectual property rights deficiencies on the Section 301 Priority Watch List. A year after an action plan is developed, USTR can report to the U.S. president that a country has not substantially complied with the benchmarks and recommend appropriate action. The United States still has much more to do to fully enforce GSP's intellectual property criterion, given the long and detailed list of countries that the United States lists in its annual Special 301 report on global intellectual property protection and enforcement.

This written testimony proceeds as follows. Firstly, it analyzes the many and growing types of digital trade barriers. Secondly, it analyzes the economic impact digital trade barriers have on the U.S. economy. Thirdly, it analyzes how digital protectionism often enables China-like digital authoritarianism, which relates to proposals to add a GSP human rights criteria. Fourth, it reviews and builds on existing congressional proposals to reform GSP by adding a digital trade criterion and changes to GSP transparency and reporting to help ensure the U.S. government uses GSP to support digital trade. Fifth, it analyzes trade statistics that show how GSP countries benefit from its tariff-free market access and how this provides critical leverage to encourage them to live up to the GSP's criterion. It also analyzes U.S. digital trade with GSP countries (where data exists). Finally, it provides a detailed (but not exhaustive) list of digital trade barriers in GSP beneficiary countries.

## THE MANY AND GROWING TYPES OF DIGITAL TRADE BARRIERS

Data for legal goods and services will naturally flow across borders when needed, unless nations erect digital barriers that impede it. Unfortunately, despite the vast benefits to companies, workers, consumers, and economies that arise from the ability to easily share data across borders, dozens of developing countries have erected a wide slate of barriers to digital trade.

Countries that enact such barriers proffer a few main types of "justifications" for these policies: privacy and security concerns, national security and law enforcement concerns, censorship and surveillance, and aspirations for domestic economic growth (i.e. digital protectionism). In almost all cases, though, multiple motivations play a role. Also, none of these justifications validate the digital trade barriers all too many countries are increasingly erecting.

For example, misguided data privacy and protection and cybersecurity are common motivations. As more countries enact updated data protection frameworks, it is nearly inevitable that some policymakers will propose data localization as they reflexively and mistakenly believe that storing data within a country's borders is the best way to protect data. This misunderstanding remains at the core of many data-localization policies. However, the security of data does not depend on where it is stored.<sup>5</sup> This is misguided, as organizations cannot escape from complying with a nation's laws by transferring data abroad. Most companies doing business in a nation, including all domestic and most foreign companies, have a "legal nexus," which puts them in that country's jurisdiction.

Likewise, many policymakers try to justify data localization and other restrictions on the basis of cybersecurity. However, the security of data depends primarily on the logical and physical controls used to protect it, such as strong encryption on devices and perimeter security for data centers. Policymakers misunderstand that the confidentiality of data does not generally depend on which country the information is stored in, only on the measures used to store it securely. A secure server in Malaysia is no different from a secure server in the United Kingdom.

A growing number of countries are resorting to digital protectionism—a strategy that uses trade-distorting policies to advantage local technology firms and production activities. While modern forms of protectionism typically rely on behind-the-border regulations, not tariffs, to protect local firms, the objective and impact remain the same—to either replace foreign goods and services with local ones, unfairly promote exports, or both. Behind-the-border barriers cover various differential health, technical, product, labor, and environmental standards, internal taxes and charges, licensing and qualification recognition, and other administrative processes. These behind-the-border measures can be further differentiated by whether they apply to the establishment of a firm versus affecting its provision of services after establishment and measures that are discriminatory against foreign firms (to the advantage of local firms) versus non-discriminatory (meaning the regulation affects domestic and foreign firms alike).

There are several common types of digital trade barriers:

- **Forced local data-residency requirements that confine data within a country's borders, a concept known as “data localization”:** This disadvantages foreign firms that rely on centralized IT services to operate and otherwise need to set up or contract local data centers and services to enter and serve a market with data localization requirements. Local firms benefit as they're more likely to already use local data centers and service providers.
- **Discriminatory licensing, approval, and certification processes:** A growing number of countries are using licensing, approval, and certification policies to discriminate against U.S. payment, financial, cloud, and other services, as well as U.S. digital content (e.g., movies, TV shows, and video games).
- **Discriminatory and unwarranted digital service taxes (DSTs) and other similar tax measures, such as significant economic presence (SEP) taxes apply only to non-resident companies:** The first generation of DSTs (France, the United Kingdom, etc.) included scoping to target mainly U.S. firms through covered activities and dual revenue thresholds, but the second generation (Kenya, India, etc.) and third generation (SEPs) have generally applied to non-resident companies engaging with the market and do not include a global revenue threshold or narrowly defined activities as part of scoping. Countries worldwide have agreed to a moratorium on enacting digital service taxes given their agreement to the Organization for Economic Cooperation and Development's (OECD) ongoing work on a new multilateral tax convention. More than 140 governments have participated in the negotiations. Despite this global agreement, some countries are considering or enacting digital service taxes and other similar taxation measures that discriminate against U.S. firms and products.
- **Use of censorship as a non-tariff barrier to trade:** As in China (but spreading to other countries like Vietnam), complicated and often opaque legal, political, and bureaucratic censorship processes for blocking “illegal” and objectionable content are used as a non-tariff barrier to trade. Whether it's movies, TV shows, video games, or other digital content, countries can use inconsistent, vague, and non-transparent criteria to create an unpredictable and burdensome market access restriction.<sup>6</sup>
- **Discriminatory and onerous technical reviews and certifications:** This includes requirements to meet onerous and unnecessary security standards and requirements to disclose encryption algorithms or other proprietary source code.
- **Duties on imports of digital products:** Some countries (namely, Indonesia, India, and South Africa) want to end a decades-long World Trade Organization agreement not to enact duties on imports of digital content, which could include movies, TV shows, music, and software.
- **Digital local content requirements:** Some countries force over-the-top video streaming services to include a certain level of local content as part of a mandatory quota.

- **Weak or non-existent intellectual property protections:** To be effective, digital trade requires robust IP protections because without them, producers will be less able to sell their products and services across borders.
- **Foreign equity limitations (disallows or limits foreign participation in which foreign capital is restricted):** Such restrictions remain a significant barrier to ICT-based services trade as many ICT firms need to establish a local presence to better serve clients. Examples include measures on foreign firms that restrict direct equity stakes, requirements for foreign investment only through joint ventures, and limitations on mergers and acquisitions activity.
- **Market access limitations through requirements for citizenship or residency:** Also, countries are forcing foreign firms to set up a local physical office and designate a local official. This local presence is often used alongside data localization as countries essentially want a firm representative to be held accountable if the firm does not abide by local (often restrictive and problematic) laws and regulations regarding content and access to data.

#### DIGITAL TRADE BARRIERS IMPACT U.S. COMPETITIVENESS, EXPORTS, AND WORKERS, ESPECIALLY FOR SMES

Digital trade fosters U.S. economic competitiveness, job creation, and innovation. Modern trade is increasingly about services and data. In 2020, the total services supplied by U.S.-based firms to foreign persons through both trade and sales by foreign affiliates of U.S. MNEs was \$2.25 trillion. The United States has a clear comparative advantage in services trade, with a trade surplus of \$245 billion in 2021.<sup>7</sup> Similarly, in 2021, U.S. exports of ICT services (a core measure of digital trade) were \$89.4 billion, with a surplus of \$38.3 billion.<sup>8</sup>

Moreover, the United States realizes far more leverage from services exports than imports. Comparing production with the international purchases of services, the U.S. Department of Commerce shows that U.S. parent companies involved in international trade contributed nearly \$21 of value-added to the U.S. economy for every dollar of services they imported. This led to U.S. parent companies exporting about \$10,000 of services and importing nearly \$5,000 of services per employee.<sup>9</sup> Likewise, U.S. exporting firms pay higher wages than their non-exporting counterparts. The U.S. Census Bureau estimates the difference in wages to be as high as 18 percent.<sup>10</sup>

Digital trade democratizes access to markets as U.S. small businesses rely on digital tools to expand their reach and export goods and digital services to customers around the world. More than 97 percent of U.S. exporters are SMEs.<sup>11</sup> Small and medium-sized firms gain the most from the impact that the Internet and digital technologies (like global services and global marketplace platforms) have in removing geography as a barrier to trade. In essence, the Internet and digital technologies enable SMEs to be born global rather than go through the traditional growth path of first having to grow before exporting. New U.S. Small Business Administration (SBA) survey data shows time and again a correlation between e-commerce use, digitization, and exporting.<sup>12</sup> Exporting SMEs are more likely to not only survive but thrive, given trade provides them with greater economies of scale. SBA survey data shows the importance of getting more SMEs to use digital tools to export as exporting SMEs tend to outperform—they are more productive, profitable, capital-intensive, pay higher wages, and employ more skilled workers than non-exporters.<sup>13</sup>

Individuals, startups, and SMEs rely on the power of digital technologies and platforms to succeed in global markets. These tools level the playing field by making access to global markets easy and low-cost. For example, research reveals that 97 percent of women-owned eBay-enabled small businesses are exporters compared to less than 1 percent of traditional businesses. Additionally, they reach an average of 15 international markets with their goods, nearly 4 times that of traditional businesses.<sup>14</sup> Similarly, a survey of 336,000 SMEs on Facebook found that they are more likely to export (6.75 percent) than other firms (only 4.3 percent of which export). Likewise, PayPal states that 79 percent of U.S. SMEs on PayPal sell to foreign markets and that these firms experienced higher growth rates: small business exporters on PayPal grew 32.8 percent from 2015 to 2016 compared to 22.9 percent growth for small businesses in general.<sup>15</sup> This is to show that measures that specifically impact larger U.S. tech firms also have a direct and major impact on the many SMEs that depend on them to find and serve customers in foreign markets.

Conversely, digital trade barriers undermine U.S. economic interests. Many, if not most, digital trade barriers are purposely designed to disadvantage American firms, given the United States is a world leader in digital technologies. If U.S. firms lose market share to unfairly competing firms supported by their innovation mercantilist governments, it means two things. First, sales fall. This is true because global sales are largely fixed, and if a mercantilist-supported competitor (unfairly) gains market share, then the market-based competitor loses share. Second, because profits decline more than sales, it becomes more difficult for the market-based innovator to reinvest revenues in the next generation of products or services, meaning that the mercantilist-supported entrant has an advantage in creating the next generation of products. Studies show that barriers to trade in digital services, including data localization, decrease services trade.<sup>16</sup>

Digital trade barriers disproportionately disadvantage individual traders, startups, and SMEs as they do not have the resources or expertise to try and adjust to them. These operators depend on centralized IT systems to take advantage of global markets. These operators can't afford to set up local data centers, cloud services, or core digital platforms and services (payments, marketplaces, etc.) in each and every market they sell into. Likewise, digital trade restrictions that impact the leading U.S. digital services and platforms that individuals, startups, and SMEs rely on inevitably affect their ability to help them find, communicate, service, deliver to, and process payments from customers around the world. The same applies to some DSTs, which have an outsized effect on U.S. SMEs because, in some of these measures, a company is liable for the DST starting with its first dollar of revenue in a market. For example, Uganda adopted a DST earlier in 2023 that imposes a 5 percent tax on revenue derived by non-residents providing digital services to customers in Uganda. This also applies to Kenya's DST.

#### DATA LOCALIZATION ENABLES DIGITAL AUTHORITARIANISM

Digital authoritarianism—which can be generally defined as the governmental misuse of digital tools to repress civil and economic freedoms—often relies on data localization as it provides governments with easy access to data and content for surveillance and control purposes. As Congress considers stronger enforcement of the GSP's human rights-related criteria, it should recognize the cross-over with some digital trade restrictions, especially data localization. In this sense, an explicit digital trade criterion helps address two GSP criteria simultaneously.

Not every use of data localization is used for digital authoritarianism. However, many authoritarian countries use localization for exactly this reason. These countries don't publicly say this. Policymakers often take a “dual-use” approach with an official and seemingly legitimate objective, such as data privacy or cybersecurity, when their primary (hidden) motivation is censorship and surveillance. Countries use data localization as a cudgel to force foreign firms to provide easier access to data for surveillance and political purposes and force compliance with censorship requirements. Commonly mixed into this rationale is the specter—real and imagined—of foreign surveillance as a rationale for data localization when it actually enables their own surveillance.

Digital authoritarian governments—led by China and Russia—see physical access to data centers as a critical enabler of surveillance and political control. Data localization enables political oppression by bringing information under government control and allowing the government to identify and threaten individuals, impacting privacy, data protection, and freedom of expression.<sup>17</sup> China retains broad and vague legal authority in its laws to potentially access data for national security, public interest, and political purposes.<sup>18</sup> The lack of an independent judiciary and the opaque nature of these laws make it hard to judge how China uses these broad powers.<sup>19</sup> Yet, this doesn't stop these countries from referring to “data privacy” as a motivation for localization.<sup>20</sup>

Recent laws introduced in Pakistan and Vietnam highlight how data localization does not lead to greater data privacy—but the exact opposite in making it easier for governments to access a small number of servers. Related but different from this authoritarian motivation is when countries like India enact short deadlines for firms to respond to content takedown requests that create a de facto localization requirement. Firms have to do this; otherwise, they would not be able to comply (and thus avoid fines and other legal consequences).<sup>21</sup>

Pakistan is using data localization to support censorship and surveillance. Pakistan's “Removal and Blocking of Unlawful Online Content” includes broad data localization requirements. It also allows the government to force companies to block content critical of the government and facilitate access to user data. It allows the Pakistan Telecommunication Authority to avoid existing data access and privacy safeguards, allowing it to intervene on behalf of law enforcement agencies to ask social media companies to provide user data.<sup>22</sup> It also makes it

mandatory for firms to retain information, including traffic data linked to blocked content and decrypted information about subscribers and their activity.

#### TRADE DATA SHOW GSP PROVIDES THE UNITED STATES WITH CRITICAL LEVERAGE TO ROLL BACK DIGITAL TRADE BARRIERS

The GSP's duty-free access provides critical leverage for the United States in its engagement with a range of countries where USTR has reported a plethora of trade and market-access issues. The size, significance, and growth of the GSP's duty-free access is considerable for several GSP beneficiaries. In 2000, products valued at \$12.7 billion entered the United States duty-free under the program. In 2006, this figure peaked (before the global financial crisis) at \$28.4 billion, after which it fell to \$17.8 billion in 2009, before gradually increasing to \$21.2 billion in 2017.<sup>23</sup> In 2020, products valued at \$16.9 billion (imports for consumption) entered the United States duty-free under the program out of \$152.0 billion worth of total imports from GSP-eligible countries.<sup>24</sup>

Table 1 lists major GSP beneficiaries that have also enacted or are considering significant digital trade barriers. Indonesia is the most significant beneficiary country with the most concerning digital trade restrictions. In 2019, \$2.7 billion of Indonesia's exports to the United States benefited from GSP's tariff-free market access, which represented 13.6 percent of Indonesia's total exports to the United States. While Thailand's GSP-related exports to the United States represent a higher share of its total exports, it does not have nearly as many enacted or proposed digital trade restrictions as Indonesia. Similarly, Pakistan is another major beneficiary of GSP tariff-free market access that has also enacted (or is considering) a series of digital trade restrictions (that also raise human rights concerns in terms of privacy and freedom of speech). In 2019, \$346 million of Pakistan's exports to the United States benefited from GSP tariff-free market access, which represented 8.8 percent of Pakistan's total exports to the United States. It's also worth noting that exports from all these GSP-eligible countries that have digital trade barriers have grown considerably over time. From 2000 to 2017, Indonesia's GSP-eligible exports increased by nearly 100 percent, while Pakistan's increased by 271 percent.

Table 1: Imports of GSP-eligible goods by countries with digital trade barriers<sup>25</sup>

Country	GSP Imports in 2019 (\$Millions)	Growth, 2000–2019	U.S. General Imports in 2019 (\$Millions)	GSP as % of Total Imports
Thailand	\$4,861.0	120.5%	\$33,442.6	14.5%
Indonesia	\$2,730.6	99.5%	\$20,104.6	13.6%
South Africa	\$756.8	29.8%	\$7,794.5	9.7%
Pakistan	\$346.2	271.1%	\$3,920.2	8.8%
Brazil	\$2,322.1	11.3%	\$30,934.1	7.5%
India	\$2,902.6	155.0%	\$57,879.0	5.0%
Kenya	\$5.8	47.5%	\$667.1	0.9%
Nigeria	\$8.3	11,618.8%	\$4,609.5	0.2%

#### U.S. DIGITAL TRADE WITH GSP COUNTRIES IS GROWING. DIGITAL TRADE RESTRICTIONS WOULD PREVENT FUTURE GROWTH IN LARGE, GROWING DIGITAL ECONOMIES

Table 2 shows that U.S. exports of information communication technology (ICT) and potential ICT-enabled services (the statistic the U.S. Department of Commerce uses to measure digital trade) to some GSP countries are significant, increasing, and most importantly, hold the potential for significant future growth that would otherwise be cut off if these countries are allowed to enact digital trade barriers. Table 1 is a snapshot as the U.S. Department of Commerce does not have digital trade statistics for all GSP beneficiaries. For example, U.S. digital trade exports to Brazil were worth \$4.4 billion in 2021. U.S. digital trade exports to South Africa, the Philippines, Indonesia, and

Nigeria are relatively low compared to other major trading partners, but in all cases, the future potential for their respective digital economies is enormous and worth preserving access to via updated GSP criteria and other trade tools.

Table 2: ICT and ICT-enabled exports from the United States<sup>26</sup>

Country	ICT Exports from United States in 2010 (\$Millions)	ICT Exports from United States in 2021 (\$Millions)	Growth, 2010–2021
Brazil	\$4,407	\$3,342	-24.2%
South Africa	\$389	\$371	-4.6%
Philippines	\$189	\$253	33.9%
Indonesia	\$117	\$222	89.7%
Nigeria	\$87	\$97	11.5%

#### CURRENT AND POTENTIAL LEGISLATIVE PROPOSALS: ADD AN EXPLICIT DIGITAL TRADE CRITERION AND NEW TRANSPARENCY AND REPORTING REQUIREMENTS TO ENSURE GSP BECOMES AN EFFECTIVE DIGITAL TRADE TOOL

Congress should build on past bipartisan support to finally create an explicit digital trade criterion for GSP eligibility. Senate and House legislative proposals (both detailed below) have already considered (largely overlapping) legislative proposals that add an explicit criterion for digital trade barriers (along with other changes). Congress should finally add digital trade to GSP and make reporting and transparency reforms (detailed below) to GSP to ensure the current and future administrations use it to support digital free trade. These latter reforms are important given part of the Biden administration's reluctance (or aversion) to actually advocating for U.S. digital trade interests.

The Trump administration showed the advantages of making digital trade barriers a central feature of GSP reviews. Former USTR Lighthizer took several steps in the right direction in considering digital trade barriers in GSP reviews of India, Indonesia, and Kazakhstan. In October 2017, USTR Lighthizer announced his agency would step up GSP enforcement:

Countries receiving U.S. trade benefits must meet the eligibility criteria established by Congress.... By creating a more proactive process to assess beneficiary countries' eligibility, the United States can ensure that countries not playing by the rules do not receive U.S. trade preferences. This sets the correct balance for a system that helps incentivize economic reform in developing countries and achieve[s] a level playing field for American businesses.<sup>27</sup>

USTR Lighthizer asked USTR officials to conduct a broad triennial review of the GSP, starting with members in Asia (the administration has already initiated reviews of India, Indonesia, and Thailand). In particular, the U.S. threat of removing GSP benefits was one of the useful tools used to help convince Indonesia and Thailand from enacting data localization. This is why Congress should make digital trade barriers a clear and consistent feature of GSP reviews henceforth.

#### Congressman LaHood's Digital Trade for Development Act

In May 2021, Congressman Darin LaHood (IL-18) introduced the Digital Trade for Development Act (DTDA) to modernize the Generalized System of Preferences (GSP) to support open digital trade policies.<sup>28</sup> DTDA's provisions would be a valuable addition to GSP criteria.

DTDA would add the new provisions:



- “The President, acting through the United States Trade Representative, determines that such country restricts digital trade to the detriment of United States development goals, strategic interests, or competitiveness.”
- “The extent to which, in the determination 3 of the President acting through the United States Trade Representative, such country—
  - (A) has refrained from imposing, or has eliminated, digital trade barriers, including unnecessary data transfer restrictions and data localization mandates; and
  - (B) has taken steps to support consumer protections and the privacy of personal information online and to extend the benefits of digital trade to all.”<sup>29</sup>

#### The Senate’s Trade Preferences and American Manufacturing Competitiveness Act of 2021

In May 2021, Senator Rob Wyden (D-Ore) announced the Trade Preferences and American Manufacturing Competitiveness Act of 2021 to extend duty-free access to the U.S. market for certain developing countries under GSP until 2027, with important updates to eligibility rules that ensure trade policy rewards advances in human rights, women’s economic empowerment, labor, environment, the rule of law and digital trade, among others.<sup>30</sup>

This bill would add several important digital trade, transparency, and reporting provisions:

- (A) has refrained from imposing, or has eliminated, digital trade barriers, including unnecessary or discriminatory data localization or data transfer restrictions; and
- (B) has taken steps in the digital environment to support consumer protections, the privacy of personal information, and open digital ecosystems.
- Publication of determinations relating to petitions for review—The United States Trade Representative shall publish in the Federal Register a notice of, and the rationale for, any determination of the Trade Representative with respect to a petition for review of the eligibility of a country for designation as a beneficiary developing country, including a determination—
  - (1) to accept or deny such a petition;
  - (2) to continue to review the eligibility of the country; or
  - (3) to withdraw, suspend, or limit the application of duty-free treatment under this title with respect to the country.
- In General—The President shall—
  - (A) on an annual basis—
    - (i) conduct assessments of the compliance of an appropriate number of countries designated as beneficiary developing countries for purposes of this title in meeting or continuing to meet the eligibility requirements under this title; and
    - (ii) make determinations with respect to whether to initiate full reviews of the practices of those countries to assess the continued eligibility of those countries for designation as beneficiary developing countries under this title; and
  - (B) submit to Congress a report consisting of the results of such assessments and determinations.
    - Frequency—The President shall conduct an assessment described in clause (i) of paragraph (1)(A) and make a determination described in clause (ii) of that paragraph with respect to each country designated as a beneficiary developing country for purposes of this title not less frequently than once every 3 years.’

### Reform GSP to Ensure a Clearer and Stronger Role for Congress in GSP Oversight

The Biden administration’s unnecessarily reluctant approach to supporting digital trade and pushing back against digital protectionism points towards the need for GSP to have improved transparency and reporting requirements (akin to the Senate bill) to ensure Congress has clearer and stronger oversight of USTR’s use of GSP reviews.

USTR Tai and senior staff are ideologically opposed to fully, forcefully, and publicly advocating for new, stronger, and binding digital trade rules and pushing back against existing and proposed digital trade barriers, as they don’t want to do anything that they think helps “big tech.”<sup>31</sup> Even if it comes at the cost of U.S. jobs and economic, trade, technology, and strategic interests. So, it is important for the administration and bipartisan supporters of digital trade in Congress to understand why USTR Tai’s approach is misguided and to push back by making it clear in GSP reforms that Congress wants USTR to advocate for digital free trade.

USTR has the necessary rules and tools in place to turn the GSP into an effective mechanism to confront the mercantilist trade policies of many beneficiaries. But it’s an increasingly important question as to whether it uses it effectively. Congress should ensure GSP has improved transparency, reporting, and feedback mechanisms built into it to ensure that USTR consistently and effectively reviews whether countries meet all of the GSP criteria.

During the GSP review process, U.S. and foreign firms and foreign governments can petition the Trade Policy Staff Committee (the interagency committee chaired by USTR that manages the GSP review) about whether certain goods and countries should be eligible for GSP benefits. At the end of the review process, the GSP subcommittee provides advice to the U.S. president, who has the discretion to act accordingly. The key question is whether USTR uses the triennial review to reboot the GSP’s role in addressing mercantilist trade policies. Most of the time, USTR’s own reporting has all the evidence they should need to identify GSP beneficiaries who are not living up to the criteria and, therefore should have access suspended or revoked.

Greater congressional oversight would ensure USTR avoids its past practice of ad hoc GSP enforcement, as this is ineffective in encouraging countries to address digital trade barriers and other GSP criteria. Thus far, USTR has only withdrawn GSP benefits in a very limited number of instances based on intellectual property and workers’ rights issues (even though the GSP’s criteria are broader than these two explicitly listed criteria). For example, due to intellectual property issues, Argentina, Lebanon, Russia, and Ukraine have been cited and denied GSP benefits. Workers’ rights were the most prominent issue in the most recent GSP annual review, with six countries cited (based on petitions from the AFL-CIO, the International Labor Rights Forum (ILRF), and USTR itself). Intellectual property concerns were the second-most prominent category, with the International Intellectual Property Alliance (IIPA) citing concerns with Indonesia, Ukraine, and Uzbekistan.<sup>32</sup> Ad hoc scrutiny and enforcement do not send the much-needed signal that, in the future, participants will only be able to reap the rewards if they truly live up to the program’s free-trade principles and provide fair and reasonable market access and treatment to U.S. firms and their goods, services, and intellectual property.

### CONCLUSION

The United States needs to ramp up its use of existing trade enforcement tools—including GSP eligibility—to contest growing digital protectionism. The GSP’s duty-free access provides USTR with significant leverage that should be applied more forcefully to push trading partners—especially Brazil, Indonesia, Kenya, and Pakistan—to address various digital trade barriers. While more proactive and forceful enforcement of updated GSP’s trade criteria would only cover a subset of U.S. trading partners, it would still help a great deal in addressing some emerging trade issues in some key markets. In doing so, it would also send a message to other GSP countries that if they want to continue enjoying the program’s benefits, they should not follow the lead of countries using innovation mercantilist policies and enacting unwarranted barriers to trade.

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## APPENDIX: CASE STUDIES OF GSP RECIPIENTS AND DIGITAL TRADE BARRIERS

The list below details many (but by no means all) digital trade barriers in GSP beneficiary countries. It mainly focuses on explicit data localization measures. It also details a few proposed (but not enacted) localization requirements to highlight the spread of restrictions among GSP beneficiary countries. In these cases, it highlights the potential value of U.S. officials being able to point towards the withdrawal of GSP benefits in engagements with these countries to encourage them to reconsider.

In the case of Indonesia, the below also highlights preparations to enact duties on digital products, which could become another major barrier to digital trade around the world if the World Trade Organization's moratorium on such digital duties is not renewed in 2024.

The list also details digital service taxes and similar taxation measures (often called significant economic presence taxes) in Indonesia and Nigeria. Both Indonesia and Nigeria are involved with the Inclusive Framework. However, Nigeria did not agree to the October 2021 "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy," which included the standstill on newly enacted DSTs and similar measures (other non-joiners for the October 2021 Statement are Kenya, Sri Lanka, and Pakistan).

### Algeria

**2018:** Algeria signed into law legislation requiring electronic commerce platforms conducting business in Algeria to register with the government and to host their websites from a data center located in Algeria.<sup>33</sup>

### Brazil

**2018:** Brazil's Ministry of Planning released guidelines for government contracts related to information and communications, which may include encryption methods, firewalls, and other measures. Confidential data or information produced or safeguarded by the Federal Public Administration, including backup data, shall receive a security risk assessment and potentially be prohibited from being processed in a cloud computer software if deemed sufficiently sensitive. This data shall also be physically located in Brazil.<sup>34</sup>

**2020:** Brazil's General Law for the Protection of Personal Data (LGPD) took effect on September 18, 2020. The LGPD includes provisions concerning restrictions on the transfer of personal data outside of Brazil that will be implemented after promulgation of regulations required for international transfers of personal data.

**2020:** Brazil is considering various digital tax initiatives, including the introduction of a DST through an expansion of its existing CIDE (contribuição de intervenção no domínio econômico) regime. The CIDE-Digital tax (PL 2,358/2020) would apply progressively from 1 percent to 5 percent on gross revenues derived from (1) digital advertising; (2) operating a digital service that permits users to interact with each other for the sale of goods and services; and (3) collection of user-generated data in the operation of a digital platform.<sup>35</sup>

### Cambodia

**2020:** Cambodia's Law on Electronic Commerce mandates that personal data transfers can only take place based on certain conditions.<sup>36</sup> Furthermore, Cambodia's National Assembly passed a sub-decree in February 2021 to establish a National Internet Gateway that would require Internet providers to route all online traffic through a single node regulated by a government-appointed operator. Cambodia's implementation of the National Internet Gateway has been delayed but not canceled. Both the private sector and human rights organizations continue to express concerns over the National Internet Gateway's effect on internet freedom in Cambodia. Separate laws governing cybersecurity, cybercrime, and data privacy are in draft form.<sup>37</sup> The law was set to go into effect in February 2022 but has been postponed to an undetermined date due to the pandemic.<sup>38</sup>

**2022:** (Proposed) Cambodia has considered a draft Cybercrime bill that includes data localization.<sup>39</sup>

### Cote-d'Ivoire

**2013:** Cote-d'Ivoire enacted privacy laws that required firms to get pre-approval from the regulator before processing personal data outside of the Economic Community of West African States (ECOWAS, which includes 15 member countries, ranging from Benin, Ghana, Liberia, Mali, Niger, Nigeria, and Senegal).<sup>40</sup>

### Egypt

**2018:** Egypt's Law No. 180/2018 Regulating the Press, Media, and the Supreme Council for Media Regulation (SCMR) requires media outlets to pay a fee of 50,000 Egyptian Pounds (approximately \$1,636) to obtain a license from the SCMR and gain legal status. The law broadly defines "media outlet" to include any social media account with at least 5,000 subscribers. The Egyptian Government has used this and other laws as grounds to limit cross-border services.<sup>41</sup>

**2020:** Egypt enacted the Personal Data Protection Act (Law No. 151/2020), which requires licenses for cross-border data transfers.<sup>42</sup>

### Ghana

**2019:** Ghana enacted the Ghana Payment Systems Bill & Guidelines, which, among many other things, set out the requirements to obtain a payment systems operator license.<sup>43</sup> In particular, it calls for firms to establish a local entity, at least 30 percent local ownership, and for a board of directors that includes at least three Ghanaians, one of which must be the CEO. In July 2018, Ghana issued draft regulation that required all domestic transactions to be processed by the Ghana Interbank Payment and Settlement Systems Limited (GhiPPS, which the Central Bank of Ghana wholly owns). However, there were significant industry concerns, so the final implementing directive has not yet been issued.

### Indonesia

**2016:** OJK's Regulation 69/POJK.05/2016 mandates insurers/reinsurers to establish data centers and disaster recovery centers in Indonesia. Indonesia is considering national legislation and additional regulations on personal data protection, which could expand requirements for data localization.<sup>44</sup>

**2018:** Digital duties. In 2018, Indonesia's Ministry of Finance (MOF) issued Regulation 17/2018, which established five HS lines at the eight-digit level for digital products transmitted electronically, including applications, software, and video and audio content. The regulation sets import duty rates at zero percent. On January 14, 2023, the MOF issued Regulation No. 190/PMK.04/2022, which requires entities importing digital products covered by the five harmonized schedule (HS) lines to file a customs declaration within 30 days of receiving payment for the digital products.

Despite the zero percent duty rate, U.S. firms and other stakeholders have expressed concern over these new reporting requirements. It could potentially apply to a wide range of entities, including SMEs, that transmit files through the Internet to entities within Indonesia. Since no other country has taken similar steps to attempt to apply to digital products on electronic networks the rules and processes for the collection of customs duties on physical goods at the physical border, there are significant unanswered questions concerning how Indonesia will define the "border" on electronic networks and what steps Indonesia would take to "inspect" digital products.<sup>45</sup>

**2019:** Regulation 71 on Organization of Electronic Systems and Transactions imposes data localization obligations on public electronic systems operators. In GR 71/2019 draft implementation regulations, storing and processing of data offshore by any "Electronic Systems Providers" (ESPs) would require prior approval from the government.<sup>46</sup> The definition of Public Scope ESPs includes government agencies, which goes beyond national security and intelligence data. There is no further clarity regarding the circumstances by which data can be stored and processed offshore in the case of Public Scope ESPs, including the guidelines that the Minister of Communications and Informatics will use when reviewing data offshoring required by Privacy Scope ESPs. GR 71 establishes an interagency committee to set up and oversee the exception for Public Scope ESPs to store and process data offshore. Yet, this committee does not seem to have met or helped clarify who exactly GR71 applies to.

Essentially, this creates an ambiguous data localization requirement for firms associated with Public Scope ESPs. There is also a Ministry of Communications and Informatics Circular Letter that requires all ministries to obtain clearance from the Ministry of Communications and Informatics for any IT procurement to ensure maximum utilization of the National Government Data Center, which acts as a de facto localization and data processing barrier.<sup>47</sup> Foreign firms have lost, and continue to lose, business in Indonesia due to the ambiguity in these data localization requirements.

GR 71 also requires private sector ESPs to facilitate government agencies' supervision, including granting access to electronic systems and data for monitoring and law enforcement purposes. Indonesia's Ministry of Communications and Information Technology (MCIT) issued implementing regulations for GR 71, Regulation 5/2020 and Regulation 10/2021, which require private sector ESPs, including those providing services on a cross-border basis, to register with MCIT by July 20, 2022 or be subject to blocking. Failure to comply with government takedown orders for a potentially broad category of "prohibited electronic information" can also result in blocking.<sup>48</sup>

2019 (Proposed). Indonesia considered but revised, certain rules that would've effectively prohibited foreign firms from playing a role in its domestic payments sector as part of its initiative to launch a domestic payment gateway.<sup>49</sup> These restrictions would've led not only to data localization but also forced data sharing so that a single state-supported company would be solely responsible for processing credit and debit data. The initial proposal by Indonesia's central bank would've forced payment firms to store data locally and mandated that payment gateway providers must be approved by the central bank and 80 percent domestically owned. This would've included the "standards institution," which is in charge of creating, developing, and managing the technical and operational specifications (including security and data protection) of the domestic gateway. It also would've included the "switching" institution, which is in charge of processing domestic payment transactions data.

Prior to this proposal, Indonesia allowed 100 percent foreign ownership. In 2018, Indonesia's central bank reconsidered these restrictions and excluded credit card transactions from the rules, thus allowing them to transfer this data offshore.<sup>50</sup> However, Indonesia maintains local ownership requirements for payment systems. In 2021, Indonesia's central bank released new regulations that require nonbank payment services to have at least 15 percent Indonesian ownership. Indonesians, individuals, or entities must own at least 51 percent of shares with voting rights.<sup>51</sup>

**2020:** Under Law 2/2020, Indonesia introduced a series of changes to its tax code, including an expansion of the definition of permanent establishment for purposes of Indonesia's corporate income tax, and a new electronic transaction tax (ETT) that targets cross-border transactions where tax treaties (such as the U.S.-Indonesia tax treaty) prohibit Indonesia from taxing corporate income from the transaction. The MOF would need to issue additional legal measures for these new taxes to go into effect.<sup>52</sup> USTR launched and subsequently closed a Section 301 investigation into Indonesia's new tax measures.

While structurally different from DSTs in European countries, the tax is similarly concerning insofar as it looks to increase U.S. firms' tax payments in the region by departing from longstanding international taxation norms. U.S. companies were cited as targets of these tax measures. Implementation details are still uncertain, even as Indonesian officials have stated that they would align policies with the OECD consensus reached in October 2021. A new VAT on digital goods and services went into effect on April 1, 2022. The VAT will be collected on all goods and services that are taxable and delivered to Indonesia via electronic systems at a rate of 11 percent (which will rise to 12 percent starting in 2025).<sup>53</sup>

Indonesia joined the October 2021 "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," but it had already adopted its measure before October 2021. The October 2021 Statement commits jurisdictions to not imposing any newly enacted measures on any company from October 7, 2021, until the earlier of the coming into force of the framework agreement or December 31, 2023. Again, Indonesia hasn't put forward implementing regulations, so while the SEP/ETT is on the books, it is not being imposed.

**2020:** Indonesia's Ministry of Communications and Information Technology (KOMINFO) issued the "Regulation on Governance of Private Scope Electronic System Administrators (ESA)," which is very vague and broad and

contains de facto localization requirements that contravene existing regulations (GR71) which allow firms to store data offshore. The definition of what a private scope ESA is not clear and could cover a broad range of digital activity. It requires all ESAs to register (whether foreign or domestic) with KOMINFO. Those who fail to register face sanctions, such as having their website/service blocked. Article 6 on the management, processing, and/or retention of data requires all ESAs to have approval from the minister, who must take into account the requirements and consideration of “national interests,” such as to ensure effective regulatory supervision and law enforcement access to data. It doesn’t specify the requirements and criteria to obtain approval to maintain data outside Indonesia. It also only provides firms with 12 hours to remove illegal content after notification, which would create a de facto localization requirement as it’d be technically impossible for firms to abide by such a requirement. It requires private ESAs to provide access to their systems and data to government ministries and law enforcement within 24 hours after receiving a request. Further, Article 99 of GR 71 states that institutions holding “Strategic Electronic Data” must hold archives and must be connected to a specific data center (presumably one that is managed by the Government). Included in sectors stipulated as holders of “Strategic Electronic Data” are energy, transportation, financial, health care, ICT, food, defense, and any other sectors stipulated by the Government.<sup>54</sup>

**2021:** Indonesia’s Ministry of Communication and Information Technology issued Ministerial Circular No. 3/2021 on the use of third-party cloud services for central government agencies for FY2021. The circular sets out 13 security criteria for third-party cloud providers that public agencies can use, among others: they must have at least 2 (two) availability zones at different data center locations in Indonesia, and they must store encryption keys within Indonesia.<sup>55</sup>

**2021:** Indonesia’s overall approach to financial data governance is based on data localization. The Bank of Indonesia still requires core/important financial transactions to be processed domestically, while the Financial Services Authority (known as OJK) has incrementally allowed some electronic processing systems to be based offshore for banking services, insurance services, multi-financing services, and lending-based technology. Despite some progress, the overall policy requires businesses to domestically process their financial transactions.<sup>56</sup> In 2021, OJK enacted a regulation (4/POJK.05/2021) on IT risk management for nonbank financial institutions that they must have data centers and disaster recovery centers in Indonesia, though some exceptions apply.<sup>57</sup>

## Kazakhstan

**2021:** Kazakhstan adopted new rules as part of its personal data protection framework, which specified that all personal data should be stored locally.<sup>58</sup>

**2015:** Kazakhstan enacted a law (No. 418-V) on informatization that reaffirmed that organizations store electronic databases containing personal data in the country.<sup>59</sup>

**2013:** Kazakhstan enacted an amendment to its personal data protection law that requires owners and operators collecting and using personal data to keep such data in-country. The requirement for localization of personal data applies to companies established in Kazakhstan and individual proprietors in Kazakhstan, including branches and representative offices of foreign companies.<sup>60</sup>

**2010:** Kazakhstan enacted a regulation on telecommunication subscriber information, which prohibits the storage of subscriber information outside the country.<sup>61</sup>

**2005:** (reinforced in a revised regulation in 2018), Kazakhstan has required that all domestically registered domain names (i.e., those on the “.kz” top-level domain) operate on physical servers within the country).<sup>62</sup>

**2004:** Kazakhstan enacted a communications law that requires certain communication services to store data in the country.<sup>63</sup>

## Kenya

**2016:** (Proposed) Kenya's Communications Authority considered including data localization provisions within Kenya Information Communications (Cyber-Security) Regulations (2016). Article 10(1) required the hosting and storage of "public information" within Kenya.<sup>64</sup>

**2019:** Kenya Data Protection Act excluded explicit data localization provisions from earlier drafts but still included unclear and potentially restrictive provisions governing the cross-border transfer of personal information, such as explicit consent for transfers of "sensitive personal data" (a broad category) and that data controllers provide unspecified proof that personal data transferred abroad receives the same protection as if stored at home. Furthermore, it empowers a political official to prohibit the cross-border transfer of certain categories of data, creating uncertainty for businesses.<sup>65</sup> The 2021 Data Protection (General) Regulations require the processing of personal data "for the purposes of actualizing a public good" to be processed through a server and data center located in Kenya or that at least one copy of the personal data be stored in a data center located in Kenya.

**2021:** (Proposed) Kenya's released draft data protection regulations (to implement the Data Protection Bill) require firms to store data (a copy) and process data locally if the data processing is done "for the purpose of actualizing a public good." This apparently includes managing an electronic payment system licensed under the National Payment Systems Act; processing health data for any other purpose other than providing health care directly to a data subject; managing personal data to facilitate access of primary and secondary education; and management of a system designated as a protected computer system under the Computer Misuse and Cybercrime Act, 2018.<sup>66</sup>

**2021:** The 2021 Finance Act includes a 1.5 percent digital services tax for non-resident businesses. The DST taxes gross revenue accrued through any "digital marketplace," defined as "an online platform which enables users to sell or provide services, goods, or other property to other users." Kenya has engaged in discussions with the Organization for Economic Cooperation and Development (OECD) and other partners on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting but has not endorsed or adopted it and continues to apply its unilateral DST.<sup>67</sup>

## Nigeria

**2011:** The Central Bank of Nigeria enacted a de facto local storage and processing requirement for entities engaging in point-of-sale (POS) card services. Domestic transactions cannot be routed outside Nigeria for switching between Nigerian issuers and acquirers.<sup>68</sup>

**2015:** Nigeria enacted broad data localization requirements as part of the Guidelines for Nigerian Content Development in ICT. Nigeria wants ICT companies to "host all subscriber and consumer data" and all government data inside the country.<sup>69</sup>

**2020:** Nigeria's 2020 Finance Act introduces income tax obligations for non-resident companies providing digital goods and services in Nigeria.<sup>70</sup> While the law applies to all non-resident companies earning above a certain threshold, extensive media coverage and analysis by experts has repeatedly mentioned the targeting of US multinationals.<sup>71</sup> The law specifically references non-resident companies with a 'significant economic presence' in the country which is defined by a number of factors including: a minimum amount of revenue generated from users in Nigeria, transmitting data about Nigerian users, or the availability of local websites or local payment options. Exceptions have been built into the law for companies that are covered by a multilateral agreement to which the Nigerian government is a party.<sup>72</sup> This policy was eventually signed into law as the Finance Act of 2021 on December 31, 2021, which captured U.S. tech firms under revisions to its Value Added Tax code policies and resulted in a knock-on 7.5 percent VAT rate for tech firms such as Google. Non-resident digital services firms are also required to pay 6 percent of their yearly turnover as well.<sup>73</sup>

## Pakistan

**2020–Present:** (Proposed) Pakistan's Cabinet approved a draft data protection bill that includes a range of data localization and processing requirements (including for "critical personal data" (which is not clearly defined)).<sup>74</sup> The PDP Bill in Pakistan is expected to be introduced in parliament shortly and is expected to be passed soon.

thereafter. The exact date is unknown. The Pakistani government has not shared a copy of the latest version of the PDP bill, so there has not been an opportunity for the public and other countries to submit feedback.

Section 14 states that “critical personal data shall only be processed in a server or data center located in Pakistan.” Section 15 states that “personal data other than those categorize[d] as critical personal data may be transferred outside the territory of Pakistan under a framework (on conditions) to be devised by the Commission ... The Commission shall also devise a mechanism for keeping some components of the sensitive personal data in Pakistan to which this act applies, provided that related to public order or national security.”<sup>75</sup> Critical and sensitive data is to be defined by the Personal Data Protection Authority, which will reportedly have extensive powers to introduce new regulatory frameworks and data access requirements. Furthermore, the Authority has the power to impose data mirroring requirements that would require a copy of the data to be stored in Pakistan.<sup>76</sup> It also does not protect personal data from state surveillance because of broad exceptions—allowing collection and storage of personal data “for legitimate interests,” which is undefined by the bill, and giving the government the ability to exempt any provision from applying to itself.<sup>77</sup>

The draft bill includes vague and broad extraterritorial applications (section 3), stating that it applies to (A) all persons that process, have control over, or authorize the processing of personal data, where the data controller or data processor is located in Pakistan; (B) all foreign-incorporated data controllers or data processors who operate (whether “digitally or non-digitally”) in Pakistan and are involved in any commercial or non-commercial activity in Pakistan; (C) all processing outside of Pakistan in places where Pakistani law applies “by virtue of private and public international law”; and (D) any data subject in Pakistan. The thresholds in this version of the draft bill are much wider than those under Europe’s General Data Protection Regulation (GDPR), including foreign entities engaged in the broadly worded “non-commercial” activity in Pakistan, and foreign entities to which Pakistani laws apply “by virtue of private and public international law.”<sup>78</sup>

**2016:** Pakistan enacted PECA (commonly known as the Cyber Crimes Law).<sup>79</sup> PECA goes beyond traditional cybercrimes and criminalizes certain online speech, while giving authorities unchecked powers to curtail and prosecute it. Section 37 of PECA gives unbridled powers to the Pakistan Telecommunications Authority (PTA) to block or remove online content, thereby restricting the right to freedom of expression, as Article 19 of the constitution guarantees. Under PECA, the Ministry of Religious Affairs and Interfaith Harmony can also review Internet traffic and report blasphemous or offensive content to the PTA for possible removal or to the Federal Investigative Agency for possible criminal prosecution.

Under PECA, in 2020, Pakistan enacted the Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2020.<sup>80</sup> Pakistan considered and enacted amendments to this legislation in 2021, but most problematic provisions remain unchanged, including data localization and a local office/staff.<sup>81</sup> Rules 7 and 8 provide for blocking and removal of unlawful online content. Rule 9 stipulates further obligations of ISPs and Social Media Companies (SMCs). For example, it requires social media platforms (with more than 500,000 users in Pakistan or in the list of ISPs or SMCs with the PTA) to (a) register with the PTA within nine months; (b) establish a permanent registered office in Pakistan within nine months; (c) appoint a focal person based in Pakistan to coordinate with the authorities for compliance with domestic law; and (d) establish a database server in Pakistan within 18 months. Rule 9 further obliges ISPs or SMCs to issue certain community guidelines for access and usage of any online system. It requires SMCs to provide the designated investigation agency with any information or data in a decrypted, readable, and comprehensible format. If the service provider doesn’t respond, the government may degrade or completely block the services of such service providers for a period of time and fine them up to Rs500 million. These restrictive requirements are problematic, but so is the oversight. The rules allow a broad range of state agencies to make confidential requests for content removal through the PTA without any visibility into the source of the complaint. Similarly troubling, the authority has been empowered to hear reviews against its own decisions.<sup>82</sup>

### The Philippines

**2023: (Proposed)** A draft presidential executive order calls for explicit and broad data localization and local data processing. The proposed rule would extend to “cloud service providers, intermediaries, and other private entities with transactions, contracts, or data related to, in connection with, or arising from the rendition of cloud computing services i.) for the Philippine government; ii) for private entities processing sensitive personal



information as defined in Republic Act No 10173; iii) private entities processing subscriber's information as defined in Republic Act No. 11223... and v) private entities processing personal information declared to be confidential in nature under existing laws.<sup>79</sup>

#### Rwanda

**2012:** Rwanda enacted a regulation that all critical information data within the government (website hosting, email hosting, shared applications such as Document Management and e-archiving, and enterprise applications) should be hosted in their national data center.<sup>83</sup>

#### Senegal

**2021:** Senegal announced that it would move all government data and digital platforms from foreign servers to a new national data centre in hopes of strengthening its digital sovereignty.<sup>84</sup>

#### Sri Lanka

**2023:** Sri Lanka's Data Protection Bill only allows public authorities (who may be using a foreign cloud provider) who are processing personal data as a controller or processor to only process this data within Sri Lanka. The public authority can only process this data in another country if it is listed as an "adequate" country by the government.

#### South Africa

**2018:** The South African Reserve Bank imposed a moratorium prohibiting the migration of domestic transaction volumes from Bankserv (South Africa's bank-owned domestic payment switch) to international payment schemes. The South African Reserve Bank enacted the moratorium after it found out that domestic South African banks planned to move more of their transactions to global payment service networks. The moratorium was to be in place until a new policy was developed and enacted.<sup>85</sup>

**2021:** (Proposed) South Africa's "Draft National Policy on Data and Cloud" recommends data localization and local data processing for all data related to "critical information infrastructure" and data mirroring for personal data (for the purposes of law enforcement). It also states that all data generated in South Africa shall be the property of South Africa, regardless of the nationality of the firm involved in collecting it.<sup>86</sup>

#### Thailand

**2022:** Thailand's Personal Data Protection Act (PDPA) was enacted in 2022. In September 2022, the Thai Office of the Personal Data Protection Committee released draft regulations to dictate rules for transferring personal data outside of Thailand under the PDPA, called the "Notification of the personal data protection committee on rules and principles of appropriate personal data protection for international transfer."<sup>87</sup> The rules governing the export of data from Thailand include a provision that could lead to companies needing to obtain consent from customers if they opt to change business partnerships surrounding the sub-processing of data. If enacted, this could prove restrictive for businesses that would be obligated to wait for consent from each of its customers in Thailand to approve what is usually seen as a standard business decision requiring swift movement.<sup>88</sup>

#### Uganda

**2023:** Uganda adopted a DST that imposes a 5 percent tax on revenue derived by non-residents providing digital services to customers in Uganda.<sup>89</sup> Digital services covered by this tax include online advertising services; data services; services delivered through an online marketplace or intermediation platform, including an accommodation online marketplace, a vehicle hire online market place and any other transport online marketplace; digital content services, including access and downloading of digital content; online gaming services; cloud computing services; data warehousing; and other services delivered through a social media platform or an Internet search engine. The legislation does not establish thresholds for in-market activity, so a U.S. company would be liable for the DST from the first dollar of revenue.<sup>90</sup>

**Uzbekistan**

**2019:** Uzbekistan's revised personal data law requires explicit local personal data storage and processing.<sup>91</sup>

## ENDNOTES

1. Nigel Cory and Rob Atkinson, "Time to Restrict GSP Benefits to Fight Trade Mercantilism" (ITIF, 2018), <https://itif.org/publications/2018/08/20/time-restrict-gsp-benefits-fight-trade-mercantilism/>.
2. Nigel Cory, "Explainer: Understanding Digital Trade," *Real Clear Policy*, March 13, 2019, [https://www.realclearpolicy.com/articles/2019/03/13/explainer\\_understanding\\_digital\\_trade\\_111113.html](https://www.realclearpolicy.com/articles/2019/03/13/explainer_understanding_digital_trade_111113.html).
3. Global Innovation Forum, "Making Small Business Mighty: The Digital Trade Opportunity for Small Businesses in the Indo-Pacific," <https://globalinnovationforum.com/reports/us-apac-small-business-digital-trade/>; Daniel Castro and Alan McQuinn, "Cross-Border Data Flows Enable Growth in All Industries" (ITIF, 2015), <https://itif.org/publications/2015/02/24/cross-border-data-flows-enable-growth-all-industries/>; Tina Highfill and Christopher Surfeld, "New and Revised Statistics of the U.S. Digital Economy, 2005–2021," U.S. Bureau of Economic Analysis, <https://www.bea.gov/system/files/2022-11/new-and-revised-statistics-of-the-us-digital-economy-2005-2021.pdf>; Danielle Trachtenberg, "Digital Trade and Data Policy: Select Key Issues," (Congressional Research Service, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF12347>.
4. Nigel Cory and Luke Dascoli, "How Barriers to Cross-Border Data Flows Are Spreading Globally, What They Cost, and How to Address Them" (ITIF, 2021), <https://itif.org/publications/2021/07/19/how-barriers-cross-border-data-flows-are-spreading-globally-what-they-cost/>.
5. Daniel Castro, "The False Promise of Data Nationalism" (ITIF, December 2013), <http://www2.itif.org/2013-false-promise-data-nationalism.pdf>.
6. Nigel Cory, "Testimony to the U.S. Senate Subcommittee on Trade Regarding Censorship as a Non-Tariff Barrier to Trade" (ITIF, 2020), <https://itif.org/publications/2020/06/30/testimony-us-senate-subcommittee-trade-regarding-censorship-non-tariff/>.
7. Shari Allen and Maryam Fatima, "U.S. International Services: Trade in Services in 2021 and Services Supplied Through Affiliates in 2020," U.S. Department of Commerce, October 19, 2022, <https://apps.bea.gov/scb/issues/2022/10-october/1022-international-services.htm>.
8. Ibid.
9. Kevin Barefoot and Jennifer Koncz-Bruner, "A Profile of U.S. Exporters and Importers of Services" (Washington, DC: International Trade Administration, June 2012), [http://www.bea.gov/scb/pdf/2012/06%20June/0612\\_MNC.pdf](http://www.bea.gov/scb/pdf/2012/06%20June/0612_MNC.pdf).
10. U.S. International Trade Commission (USITC), *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2021 Report* (USITC, June, 2021), <https://www.usitc.gov/publications/332/pub5199.pdf>.
11. "ITA's Exporter Database," U.S. International Trade Administration, <https://www.trade.gov/ita-us-exporters-database-home>.
12. U.S. Small Business Administration (SBA), Report with Eight Deliverables for Project to Support Small Business Administration (SBA) to Identify the Total Addressable Market of Small Business Exporters (SBA, 2023), <https://www.sba.gov/sites/sbagov/files/2023-02/SBA%20Total%20Addressable%20Market%20Study%20FINAL-508%20%281%29.pdf>.
13. Ibid; See for example: "State of MSME Ecommerce Around the World," Nexttrade Group, <https://www.nexttradegroupllc.com/nexttrade-ecommerce-diagnostics>; The World Bank, *World Development Report 2016: Digital Dividends* (Washington, D.C. 2016), <https://www.worldbank.org/en/publication/wdr2016>; Sanjay Kathuria, Arti Grover, Viviana Maria Eugenia Perego, Aaditya Mattoo, and Pritam Banerjee, *Unleashing E-Commerce for South Asian Integration*, (Washington, D.C., 2020), <https://openknowledge.worldbank.org/bitstream/handle/10986/32718/9781464815195.pdf?sequence=4&isAllowed=y>.
14. "US Women-Owned Small Online Business Export Report," eBay, October, 2022, <https://www.ebaymainstreet.com/news-events/eBay-publishes-us-women-owned-small-online-business-export-report>.
15. Christine McDaniel and Daniele Parks, "Businesses on Facebook and Propensity to Export: The United States" (Mercatus Center, George Mason University, February, 2019), <https://www.mercatus.org/media/69441/download>.
16. Eric van der Marel and Martina Ferracane, "Do data policy restrictions inhibit trade in services?" *Review of World Economics*, 157, 727-776. doi: <https://doi.org/10.1007/s10290-021-00417-2>.

17. Erica Fraser, "Data Localisation and the Balkanisation of the Internet," *SCRIPTed*, 2016, Vol. 13, p. 359, <https://script-ed.org/article/data-localisation-and-the-balkanisation-of-the-internet/>.
18. Murray Scot Tanner, "Beijing's New National Intelligence Law: From Defense to Offense," Lawfare blog post, July 20, 2017, <https://www.lawfareblog.com/beijings-new-national-intelligence-law-defense-offense>; Sam Sacks, Qiheng Chen, and Graham Webster, "Five Important Takeaways From China's Draft Data Security Law," DigiChina Project blog post, July 9, 2020, <https://www.newamerica.org/cybersecurity-initiative/digichina/blog/five-important-take-aways-chinas-draft-data-security-law/>.
19. Bill Bishop, "One country, one Internet?; TikTok; Gaokao; Floods in China; US FBI head on China," Sinocism newsletter, July 7, 2020, <https://sinocism.com/p/one-country-one-internet-tiktok-gaokao>.
20. For example, Russia stated that its personal data localization requirement (enacted in 2015) was to "provide extra protection for Russian citizens both from misuse of their personal data by foreign companies and surveillance of foreign governments." Alexander Savelyev, "Russia's new personal data localization regulations: A step forward or a self-imposed sanction?" *Computer Law & Security Review*, 32 (2016) 128–145, <https://doi.org/10.1016/j.clsr.2015.12.003>; "Russia's security service tells internet firms to hand over user data: The Bell," *Reuters*, February 12, 2020, <https://www.reuters.com/article/us-russia-internet/russias-security-service-tells-internet-firms-to-hand-over-user-data-the-bell-idUSKBN2060UV>.
21. Daniel Castro, "India's Intermediary Liability Law Out of Step With Global Norms," Innovation Files blog post, May 11, 2021, <https://itif.org/publications/2021/05/11/indias-intermediary-liability-law-out-step-global-norms>.
22. "PTA empowered to block online speech critical of government & public officers; gets power to block entire online systems," Digital Rights Monitor, November 18, 2020, <https://www.digitalrightsmonitor.pk/pta-empowered-to-block-online-speech-critical-of-government-gets-power-to-block-entire-online-systems/>; Sadaf Khan, Zoya Rehman, and Salwa Rana, "The Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2020: A legal analysis" (Media Matters for Democracy, 2020), <https://www.digitalrightsmonitor.pk/wp-content/uploads/2021/01/Social-Media-Rules-2020-Legal-Analysis.pdf>; "Media Matters for Democracy conducts an initial analysis of the new social media rules and their potential impact on digital rights and economy in Pakistan," Media Matters for Democracy blog post, November 23, 2020, <https://mediamatters.pk/media-matters-for-democracy-conducts-an-initial-analysis-of-the-new-social-media-rules-and-their-potential-impact-on-digital-rights-and-economy-in-pakistan/>.
23. U.S. International Trade Commission Interactive Trade DataWeb (USITC DataWeb), using data retrieved from the U.S. Bureau of the Census, accessed June 4, 2018, <https://dataweb.usitc.gov/>.
24. Liana Wong, "Generalized System of Preferences (GSP): Overview and Issues for Congress" (Congressional Research Service, 2022), <https://sgp.fas.org/crs/misc/RL33663.pdf>.
25. U.S. International Trade Commission Interactive Trade DataWeb (USITC DataWeb), using data retrieved from the U.S. Bureau of the Census, accessed September 12, 2023, <https://dataweb.usitc.gov/>.
26. Bureau of Economic Analysis, Table 3.3. U.S. Trade in ICT and Potentially ICT-Enabled Services, by Country or Affiliation (Exports); accessed September 13, 2023, <https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&6210=4#eyJhcHBpZCI6NjlsInN0ZXBzIjpBM5w5LDZdLCJkYXRhIjpWYjQcm9kdWN0IiwuNCJdLFsiVGFiVGVMaXN0IiwuMzU5IiwidGQ==>.
27. Jack Caporal, "USTR announces new, beefed-up GSP enforcement scheme," *Inside U.S. Trade*, June 11, 2018, <https://insidetrade.com/daily-news/ustr-announces-new-beefed-gsp-enforcement-scheme>.
28. "The Digital Trade for Development Act," [https://lahood.house.gov/index.cfm?a=Files.serve&file\\_id=0026F552-DD54-4AFE-9743-46F95E48D76B](https://lahood.house.gov/index.cfm?a=Files.serve&file_id=0026F552-DD54-4AFE-9743-46F95E48D76B).
29. Ibid.
30. "Trade Preferences and American Manufacturing Competitiveness Act of 2021," <https://www.finance.senate.gov/chairemans-news/wyden-announces-legislation-to-extend-trade-preferences-and-tariff-relief>; <https://www.finance.senate.gov/download/legislative-text-of-the-trade-preferences-and-american-manufacturing-competitiveness-act-of-2021>.
31. Nigel Cory and Rob Atkinson, "The Administration Should Disregard Progressives' Unfair Attacks on Its Digital Trade Agenda" (ITIF, 2023), <https://itif.org/publications/2023/05/25/the-administration-should-disregard-progressives-unfair-attacks-on-its-digital-trade-agenda/>.
32. "Public Hearings: Initiation of the 2017 Annual Generalized System of Preferences Product and Country Practices Review; Deadlines for Filing Petitions," Regulations.gov, accessed June 11, 2018,

- <https://www.regulations.gov/document?D=USTR-2017-0014-0001>; “Active and Recently Completed GSP Eligibility and Country Practices Reviews,” United States Trade Representative website, accessed June 11, 2018, <https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp/current-review-0>.
33. Law No. 18-05 of 24 Chaabane 1439 (corresponding to May 10, 2018); International Trade Administration (ITA), “Algeria -- Country Commercial Guide,” (September 14, 2019), <https://www.trade.gov/knowledge-product/algeria-ecommerce>; United States Trade Representative (USTR), 2021 National Trade Estimate Report on foreign Trade Barriers, (Washington, DC: USTR, 2021), <https://ustr.gov/sites/default/files/files/reports/2021/2021NTE.pdf>; Algerian Law No. 18-07 of 25 Ramadhan 1439 (Corresponding to June 10, 2018) Relating to the Protection of Individuals in the Processing of Personal Data, available at <https://www.dataguidance.com/jurisdiction/algeria>.
  34. See: GSI/PR Supplementary Norms no. 4 and 19; MP/STI Ordinance no. 20/2016; and Ordinance No. 9, 2018.”
  35. Brazil Congressman Proposed Digital Services Tax, EY (May 8, 2020), <https://taxnews.ey.com/news/2020-1246-brazilian-congressman-proposes-digital-services-tax>.
  36. Som Sothea, “Law on Electronic Commerce of Kingdom of Cambodia,” June 13, 2021, <https://commerce-cambodia.com/2021/06/13/law-on-electronic-commerce-of-kingdom-of-cambodia/>.
  37. USTR, “2023 National Trade Estimate Report on Foreign Trade Barriers,” <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf>.
  38. United National Human Rights Office of the High Commissioner, State of Press Freedom in Cambodia (Aug. 2022), <https://www.ohchr.org/sites/default/files/2022-08/press-freedom-cambodia-en.pdf> at 11.
  39. Activists: Cambodia’s Draft Cybercrime Law, VOA (Oct. 11, 2020) <https://www.voanews.com/a/eastasia-pacific-activists-cambodias-draft-cybercrime-law-imperils-free-expression-privacy/6196959.html>; Cyberlaw to Address Security Concerns, KHMER TIMES (May 24, 2022), <https://www.khmertimeskh.com/501080863/cyberlaw-to-address-security-concerns/>; Draft Cybercrime Law Nearing Completion, PHNOM PENH POST (Sept. 7, 2022), <https://www.phnompenhpost.com/national/draft-cybercrime-law-nearing-completion>.
  40. “African Union National Data Protection Act,” UNODC website, [https://www.unodc.org/res/cld/document/civ/loi-no-2013-450-relative-a-la-protection-des-donnees-a-caractere-personnel\\_html/06192013\\_loi\\_donne\\_es\\_personnelles.pdf](https://www.unodc.org/res/cld/document/civ/loi-no-2013-450-relative-a-la-protection-des-donnees-a-caractere-personnel_html/06192013_loi_donne_es_personnelles.pdf).
  41. USTR, “2023 National Trade Estimate Report on Foreign Trade Barriers,” <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf>.
  42. Clyde & Co, “Egypt’s Data Protection Law enters into force,” Clyde & Co, October 19, 2020, <https://www.clydeco.com/en/insights/2020/10/egypt-s-data-protection-law-enters-into-force>.
  43. “Public Notices: Payment Systems and Services Act, 2019,” Bank of Ghana website, June 12, 2019, <https://www.bog.gov.gh/public-notice/4231-payment-systems-and-services-bill-2019>.
  44. Global Business Guide, “The OJK Issues Regulation on Implementation of Insurance and Reinsurance Companies,” January 2017, [http://www.gbgingonesia.com/en/main/legal\\_updates/the\\_ojk\\_issues\\_regulation\\_on\\_implementation\\_of\\_insurance\\_and\\_reinsurance\\_companies.php](http://www.gbgingonesia.com/en/main/legal_updates/the_ojk_issues_regulation_on_implementation_of_insurance_and_reinsurance_companies.php).
  45. USTR, “2023 National Trade Estimate Report on Foreign Trade Barriers,” <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf>.
  46. Indonesia, Asia Internet Coalition, submission, <https://aicasia.org/category/regions/indonesia>.
  47. Asia Internet Coalition, “Letter: Follow-up on the Government Regulation No. 71/2019 on Electronic System and Transaction (“GR 71”) and Industry Request for Amended Regulation,” October 1, 2020, [https://aicasia.org/wp-content/uploads/2020/10/AIC-letter-to-Kominfo\\_Government-Regulation\\_01102020.pdf](https://aicasia.org/wp-content/uploads/2020/10/AIC-letter-to-Kominfo_Government-Regulation_01102020.pdf).
  48. USTR, “2023 National Trade Estimate Report on Foreign Trade Barriers,” <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf>.
  49. “Regulation of Bank Indonesia No. 19/8/PBI/2017 on National Payment Gateway,” Bank Indonesia website, November 1, 2017, [https://www.bi.go.id/en/peraturan/sistem-pembayaran/Pages/pbi\\_190817.aspx](https://www.bi.go.id/en/peraturan/sistem-pembayaran/Pages/pbi_190817.aspx).
  50. Gayatri Suroyo, Aditya Kalra, and Fanny Potkin, “Exclusive: U.S. helps Mastercard, Visa score victory in Indonesia in global lobbying effort,” *Reuters*, October 4, 2019, <https://www.reuters.com/article/us-mastercard-usa-lobbying->

- exclusive/exclusive-u-s-helps-mastercard-visa-score-victory-in-indonesia-in-global-lobbying-effort-idUSKBN1WJOIX.
51. “Indonesia sets new rules on payments systems,” *Reuters*, January 8, 2021, <https://www.reuters.com/article/indonesia-economy-payments/indonesia-sets-new-rules-on-payments-systems-idUSLAN2JJ1HN>.
  52. USTR, “2023 National Trade Estimate Report on Foreign Trade Barriers,” <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf>.
  53. “Computer and Communication Industry Association (CCIA) Submission to the 2023 National Trade Estimate Report on Foreign Trade Barriers,” October, 2022, <https://ccianet.org/wp-content/uploads/2022/10/CCIA-Comments-2023-National-Trade-Estimate-Reporting.pdf>.
  54. Jeff Paine, “Asia Internet Coalition Submission on Regulation on Governance of Private Scope Electronic System Administrator,” (Asia Internet Coalition, March 2020), [https://aicasia.org/wp-content/uploads/2020/04/AIC-Submission-on-Regulation-on-Governance-of-Private-Scope-Electronic-System-Administrator\\_26032020\\_English.pdf](https://aicasia.org/wp-content/uploads/2020/04/AIC-Submission-on-Regulation-on-Governance-of-Private-Scope-Electronic-System-Administrator_26032020_English.pdf); Baker McKenzie, “Indonesia: Indonesia Regulates Foreign Private Electronic System Operators,” Lexology, December 2020, <https://www.lexology.com/library/detail.aspx?g=237ba0a4-2616-4106-af25-f26ddbafcf0e>.
  55. Asia Internet Coalition, translation of Kominfo Circular 3/2021 on the Use of Cloud for the Public Sector.
  56. Indonesia’s Regulation on Information Technology Risk Management requires foreign banks and payments networks to locate data centers and process payments in the economy “Comments in Response to Executive Order Regarding Trade Agreements Violations and Abuses,” The Information Technology Industry Council, 2017, <https://www.itic.org/dotAsset/9d22f0e2-90cb-467d-81c8-ecc87e8dbd2b.pdf>.
  57. Deloitte, “Financial Services Authority and Banking Regulations Update KM No. 4/April/2021,” <https://www2.deloitte.com/content/dam/Deloitte/id/Documents/audit/id-aud-ojk-banking-regulations-updates-apr2021.pdf>; (Translation) “Implementation of Risk Management in Use of IT by Non-Bank Financial Service Institutions,” 2021, <https://www.ojk.go.id/id/regulasi/Documents/Pages/Penerapan-Manajemen-Risiko-dalam-Penggunaan-Teknologi-Informasi-oleh-Lembaga-Jasa-Keuangan-Nonbank/pojk%204-2021.pdf>.
  58. Aliya Seitova and Victoria Simonova, “Kazakhstan strengthens personal data protection by gradually moving toward GDPR standards,” *JD Spura*, January 28, 2021, <https://www.jdsupra.com/legalnews/kazakhstan-strengthens-personal-data-9616681/>.
  59. “Law of the Republic of Kazakhstan dated 24 November 2015 No. 418-V,” <https://adilet.zan.kz/eng/docs/Z1500000418>.
  60. Ravil Kassilgov, “Kazakhstan—Localization of Personal Data,” Lexology, January 12, 2016, <http://www.lexology.com/library/detail.aspx?g=303621d9-e5b7-4115-9d8c-2a5d1d40ed2c>; <https://adilet.zan.kz/eng/docs/Z1300000094>; Aset Shyngyssov et al., “Data Localization Laws: Overview (Kazakhstan),” *Thomson Reuters*, 2019, <https://www.morganlewis.com/-/media/files/publication/outside-publication/article/2019/data-localization-law-overview-kazakhstan.ashx?la=en&hash=CAAEA6B82869DD66B3BA8D3E62D05DDE8CBCC7EE>.
  61. “Resolution of the Government of the Republic of Kazakhstan dated March 30, 2010 No. 246,” [https://adilet.zan.kz/rus/docs/P100000246\\_](https://adilet.zan.kz/rus/docs/P100000246_).
  62. Anupam Chander and Uyên P. Lê, *Data Nationalism*, 64 *Emory Law Journal* 677 (2015), <https://scholarlycommons.law.emory.edu/elj/vol64/iss3/2/>; “Order of the Minister of Defense and Aerospace Industry of the Republic of Kazakhstan dated March 13, 2018 No. 38 / NK,” <https://adilet.zan.kz/rus/docs/V1800016654>.
  63. “The Law of the Republic of Kazakhstan dated 5 July 2004 No. 567,” a [https://adilet.zan.kz/eng/docs/Z040000567\\_](https://adilet.zan.kz/eng/docs/Z040000567_).
  64. “Kenya: Information Communications (Cybersecurity) and (Electronic Transactions) Draft Regulations,” (Article 19 working paper, April 2016), <https://www.article19.org/data/files/medialibrary/38413/Kenya-Cyber-Security-and-Electronic-Transactions-Legal-Analysis-21-April-2016.pdf>.
  65. Joseph Kaguru, Dean Wanjala, and Daniel Wanjau, “Recent developments on data privacy and protection in Kenya,” *JD Spura*, March, 2021, <https://www.jdsupra.com/legalnews/recent-developments-on-data-privacy-and-1051513/>.
  66. Ibid.

67. USTR, “2023 National Trade Estimate Report on Foreign Trade Barriers,” <https://ustr.gov/sites/default/files/2023-03/2023%20NTE%20Report.pdf>.
68. Jumoke Lambo, “Data Localization Laws: Nigeria,” Practical Law, <https://www.uubo.org/media/1795/data-localization-laws-nigeria-w-022-1015.pdf>.
69. PwC Nigeria, *NITDA Has Issued a Final Notice of Local Content Compliance for ICT Companies*, (accessed December 11, 2015), <https://nlipw.com/wp-content/uploads/Guidelines-for-Nigerian-Content-Development-in-Information-and-Communications-Technology-ICT.pdf>.
70. KPMG, Nigeria: Tax Provisions in Finance Act, 2019, <https://home.kpmg/us/en/home/insights/2020/01/tmf-nigeria-tax-provisions-in-finance-act-2020.html>.
71. “Computer and Communication Industry Association (CCIA) Submission to the 2023 National Trade Estimate Report on Foreign Trade Barriers,” October, 2022, <https://ccianet.org/wp-content/uploads/2022/10/CCIA-Comments-2023-National-Trade-Estimate-Reporting.pdf>.
72. Ibid.
73. “Finance Act 2021,” Federal Republic of Nigeria Official Gazette, <https://www.firs.gov.ng/wp-content/uploads/2022/04/Finance-Act-2021-Gazetted.pdf> and <https://pwcngigeria.typepad.com/files/finance-act-2021-gazette.pdf>; Google, Meta, and Others Raise Nigeria Prices Due to Digital Tax, *QZ* (Mar. 4, 2022), <https://qz.com/africa/2137660/google-meta-and-others-raise-nigeria-prices-due-to-digital-tax/>.
74. Kalbe Ali, “Federal cabinet approves Cloud First Policy, Personal Data Protection Bill,” February 16, 2022, <https://www.dawn.com/news/1675330>; “Pakistan: Federal Cabinet approves Draft Personal Data Protection Bill,” February 28, 2022, <https://www.dataguidance.com/news/pakistan-federal-cabinet-approves-draft-personal-data>; Asia Internet Coalition (AIC), Industry Submission by AIC on Pakistan’s Personal Data Protection Bill 2020; Tahir Amin, “Ministry finalizes ‘Personal Data Protection Bill’,” *Business Recorder*, January 15, 2021, <https://www.brecorder.com/news/40051791>.
75. “Personal Data Protection Bill 2021,” [https://moitt.gov.pk/SiteImage/Misc/files/25821%20DPA%20Bill%20Consultation%20Draft\\_docx.pdf](https://moitt.gov.pk/SiteImage/Misc/files/25821%20DPA%20Bill%20Consultation%20Draft_docx.pdf); Asian Internet Coalition, “Submission on Pakistan’s Data Protection Bill 2021,” September 22, 2021, <https://aicasia.org/wp-content/uploads/2021/10/Pakistans-Personal-Data-Protection-Bill-2021-9-22.pdf>.
76. Ibid.
77. Ibid.
78. Ibid.
79. Fariha Aziz, “Pakistan’s cybercrime law: boon or bane?,” Heinrich Boll Stiftung, February 14, 2018, <https://www.boell.de/en/2018/02/07/pakistans-cybercrime-law-boon-or-bane>.
80. “President passes ordinance to regulate social media, as Naseem warns against spreading ‘fake news’,” February 20, 2022, <https://www.pakistantoday.com.pk/2022/02/20/president-passes-ordinance-to-regulate-social-media-as-naseem-warns-against-spreading-fake-news/>; Asia Internet Coalition, “Letter: Industry comments on the Amendment - Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules,” June 28, 2021, [https://aicasia.org/wp-content/uploads/2021/06/Asia-Internet-Coalition-AIC-Industry-comments-on-the-Amendment-Removal-and-Blocking-of-Unlawful-Online-Content-Procedure-Oversight-and-Safeguards-Rules\\_28-June-2021.pdf](https://aicasia.org/wp-content/uploads/2021/06/Asia-Internet-Coalition-AIC-Industry-comments-on-the-Amendment-Removal-and-Blocking-of-Unlawful-Online-Content-Procedure-Oversight-and-Safeguards-Rules_28-June-2021.pdf).
81. Riazul Haq, “Cabinet approves amendments to controversial social media rules,” *Dawn*, September 29, 2021, <https://www.dawn.com/news/1649144>.
82. Ramsha Jahangir, “Govt’s revised internet rules fuel tension with tech firms,” *Dawn*, June 29, 2021, <https://www.dawn.com/news/1632070>.
83. International Bank for Reconstruction and Development/The World Bank, “A Single Digital Market for East Africa,” (World Bank, 2018), <http://documents1.worldbank.org/curated/en/809911557382027900/pdf/A-Single-Digital-Market-for-East-Africa-Presenting-Vision-Strategic-Framework-Implementation-Roadmap-and-Impact-Assessment.pdf>; “Ministerial order N°001/MINICT/2012 of 12/03/2012,” <https://businessprocedures.rdb.rw/media/Ministerial%20order%20Number%2013-2012%20of%2020-02-2012%20determining%20licence%20fees%20for%20Special%20Economic%20Zones%20developers%20-%20operators%20in%20Rwanda.pdf>.



84. Dan Swinhoe, "Senegal to migrate all government data and applications to new government data center," *Data Center Dynamics*, June 23, 2021, <https://www.datacenterdynamics.com/en/news/senegal-to-migrate-all-government-data-and-applications-to-new-government-data-center/>.
85. "Consultation Paper Processing of Payments in South Africa," South African Reserve Bank, [https://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem\(NPS\)/Legal/Documents/Documents%20for%20Comment/Domestic%20Processing%20-%202014%20Nov%202018%20-publication.pdf](https://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem(NPS)/Legal/Documents/Documents%20for%20Comment/Domestic%20Processing%20-%202014%20Nov%202018%20-publication.pdf).
86. "Electronic Communications Act, 2005," [https://www.gov.za/sites/default/files/gcis\\_document/202104/44389gon206.pdf](https://www.gov.za/sites/default/files/gcis_document/202104/44389gon206.pdf).
87. "Thailand: PDPC launches consultation period on rules for cross-border transfer of personal data," One Trust Data Guidance, October, 2022, <https://www.dataguidance.com/news/thailand-pdpc-launches-consultation-period-rules-cross>.
88. "Computer and Communication Industry Association (CCIA) Submission to the 2023 National Trade Estimate Report on Foreign Trade Barriers," October, 2022, <https://ccianet.org/wp-content/uploads/2022/10/CCIA-Comments-2023-National-Trade-Estimate-Reporting.pdf>.
89. "The Income Tax (Amendment) Bill of 2023," The Uganda Gazette, March 30, 2023, <https://www.parliament.go.ug/sites/default/files/Income%20Tax%20%28Amendment%29%20Bill%2C%202023%20Edited.pdf>.
90. "Access Alert: Uganda follows growing trend, implements digital services tax law," Access Partnership, July 20, 2023, <https://accesspartnership.com/access-alert-uganda-follows-growing-trend-implements-digital-services-tax-law/>.
91. Ulugbek Abdullaev and Eldor Mannopov, "Uzbekistan: Data localization requirement to be effective in April 2021," JD Spura, January 25, 2021, <https://www.jdsupra.com/legalnews/uzbekistan-data-localization-3000241/>.



Chairman SMITH of Nebraska. Thank you, Mr. Cory.  
Now, Mr. HOUSEMAN, you are recognized.

**STATEMENT OF ROY HOUSEMAN, LEGISLATIVE DIRECTOR,  
UNITED STEELWORKERS**

Mr. HOUSEMAN. All right. Chairman Smith, Ranking Member Blumenauer, Chairman Smith, thank you for the opportunity to testify today—members of the committee.

As this committee begins the process of potentially renewing the Generalized System of Preferences, a unilateral tariff-cut program, it is the union's hope that this body will take a more sophisticated approach to what we ask in return for that benefit.

The GSP program was developed during a Cold War two-super-power era, before China became the second-largest economy. It is a program that does not account for modern multinational corporations and state-owned enterprises. GSP lacks sophistication. And, when the data shows that the largest beneficiaries of U.S. unilateral tariff cuts are importers of jewelry made of precious metals and high-end handbags, the USW believes we should demand more of countries that benefit from this program.

This testimony will focus on several key issues for the USW that will ensure we meet the GSP goals of diversifying economically developing countries and grow trade without undercutting the American worker. This includes: updating the import-sensitive list, improving the GSP rules of origin, aligning labor and environmental standards to reflect modern trade agreements, and restarting Trade Adjustment Assistance, or TAA.

We need to recognize the threats to American workers if Congress does not take a more active role in managing the GSP program. The USW, which represents over 20,000 tire workers, has previously raised before this committee that the GSP program lowers a 4-percent tariff on tires. Our union has spent millions of dollars defending American workers, both union and non-union, against dumped and subsidized tires from foreign producers, many of whom are based in the People's Republic of China.

We have highlighted to this committee that GSP countries are now seeing China's Belt and Road Initiative build tire plants. One country, Serbia, saw a plant built that can make 13.5 million tires, and imports into the U.S. have since doubled. Cambodia, another GSP country, saw a 5-million-unit tire plant constructed where, in press, it is stated that the plant is built mostly to export into the U.S. and Europe.

Congress should not pad Chinese-company profit margins by another 4 percent at the expense of the American worker. The USW calls on Congress to add tires to the import-sensitive list.

Next, the rule-of-origin standards of the GSP program are set at an absurdly low 35 percent. A GSP country can assemble a product with 65 percent of that good coming from China or Russia and then send it in tariff-free.

U.S. content does not even get a preference in this program. Personally, I would rather see an American rancher from my home State of Montana benefit from selling leather to a GSP-country manufacturer than Xinjiang forced-labor leather going into that handbag.

The USW urges Congress to raise the rule of origin in the GSP program to at least 60 percent and incorporate American content into that threshold.

The USW believes our values are important to export too. That is why the union and the American labor movement urge improved labor and environmental standards in the GSP renewal. In 2010, the AFL-CIO wrote extensive comments on how to update the GSP program—issues that still need to be addressed 13 years later.

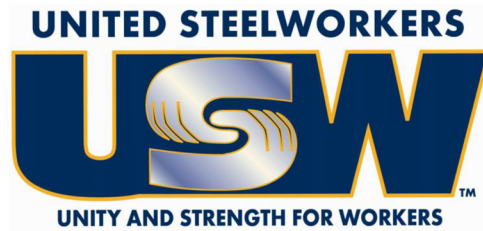
Some of these provisions have since been adopted in bipartisan-passed USMCA, and Congress should not backtrack on labor and environmental progress made in modern trade agreements. That is why the USW joins the AFL-CIO in supporting updating labor standards as drafted in Ranking Member Blumenauer's American Worker and Trade Competitiveness Act.

Finally, the USW strongly urges Congress to renew Trade Adjustment Assistance with a GSP renewal. Congress has made a choice to enter into 14 comprehensive free-trade agreements with 20 countries, and these agreements continue to create winners and losers. Over 500 workers at Republic Steel are losing their job because the company is moving most of its production to Mexico. Congress voted to renew our free-trade agreement with that country. The least Congress can do now is offer benefits that have been available in one form or another since the Kennedy administration.

In conclusion, the USW urges this committee to update the import-sensitive list, improve the rules of origin, bring GSP to a 21st-century labor and environmental standards program, and renew TAA if you move on GSP. My written testimony has other important trade policies that could be incorporated as well.

It is an honor to represent our union before the oldest committee of the United States Congress. You have the power to balance American interests in global trade, and USW workers urge you to adopt our policy requests.

[The statement of Mr. Houseman follows:]



**Testimony**

**of**

**Roy Houseman Jr.  
Legislative Director  
The United Steel, Paper and Forestry, Rubber,  
Manufacturing, Energy, Allied Industrial and Service  
Workers International Union (USW)**

**for the**

**House Ways and Means Committee**

**Trade Subcommittee Hearing**

**on**

**Reforming the Generalized System of Preferences to  
Safeguard U.S. Supply Chains and Combat China**

**September 20, 2023**

Chairman Smith, Ranking Member Blumenauer, thank you for the opportunity to testify at today's hearing, and USW International President Thomas Conway gives his regards. As this committee begins the process of potentially renewing the Generalized System of Preferences (GSP), a unilateral tariff cut program, it is the union's hope that this body will take a more sophisticated approach to what we ask in return for that benefit.

The GSP program was developed during a cold war and two super-power era, before China became the second largest economy in the world. It is a program that does not account for modern multi-national corporations and state-owned enterprises. In 2022, U.S. imports claimed under GSP were \$21.5 billion, up 15 percent from 2021 and 26.7 percent from 2020.<sup>1</sup> GSP lacks sophistication, and when the data shows that the largest beneficiaries of a U.S. unilateral tariff cut are importers of jewelry made of precious metals and high-end handbags, the USW believes we should demand more from the countries that benefit off this program.

This testimony will focus on a few key issues for the USW, which will ensure that we are actually meeting the goals of diversifying economically developing countries and growing trade without undercutting the American worker. This includes updating the import sensitive list, improving the GSP rules of origin, aligning labor and environmental standards to reflect modern trade agreements, and restarting Trade Adjustment Assistance (TAA).

### **Import Sensitive List**

We need to recognize the threats to American workers if Congress does not take a more active role in managing the GSP program. USW, which represents over 20,000 tire workers, has previously raised before the committee how the GSP program lowers a 4 percent tariff on tires.<sup>2</sup> Our union has spent millions of dollars defending American workers, both union and non-union, against dumped and subsidized tires from foreign producers, many of whom are based in the People's Republic of China (PRC). We've highlighted that GSP countries are now the sites of China's Belt and Road Initiative (BRI) tire plants. One country, Serbia, saw a \$13.5 million tire plant built, and imports into the U.S. have since doubled.<sup>3</sup> Cambodia, another GSP country, saw a five-million-unit tire plant constructed, and it is stated in the press that the plant is built mostly to export into the U.S. and European countries.<sup>4</sup> Congress should not pad Chinese company profit margins by another 4 percent at the expense of American workers. USW calls on Congress to add pneumatic tires to the import sensitive list.

<sup>1</sup> [Office of the USTR](#), "2023 Trade Policy Agenda and 2022 Annual Report", March 2023.

<sup>2</sup> [United Steelworkers](#), "Local Union President Testifies on Behalf of Workers at Congressional Hearing on Trade", May 9, 2023.

<sup>3</sup> [U.S. International Trade Commission DataWeb](#), Accessed September 17, 2023.

<sup>4</sup> [Khmer Times](#), "Chinese-invested car tire factory in Cambodia set to export close to 6 million tires per year", May 23, 2023.

### **Rules of Origin**

Updating the GSP program to ensure that less Chinese and Russian content goes into goods is common sense to meet our democratic goals. The Rules of Origin Standards in the GSP program are set at an absurdly low 35 percent. A GSP country can assemble a product with 65 percent of the materials coming from China or Russia, and then send it into our country tariff free. U.S. content does not even get a preference in this program. Personally, I would rather see an American rancher from my home state of Montana benefit from selling leather to a GSP country handbag manufacturer than customs tracing the supply chain to find forced labor leather coming from Xinjiang. USW urges Congress to raise the Rule of Origin in the GSP program to at least 60 percent, and incorporate American content into that threshold.

### **Labor and Environmental Standards**

USW believes our values are an important export too. That is why the union and American labor movement see it as necessary to update the GSP program, so as to encourage democratic labor rights. The AFL-CIO has written extensively on the deficiencies related to labor in the GSP program. A 2010 proposal to update the GSP program provides detailed descriptions of issues that still need to be addressed 13 years later.<sup>5</sup> Some of these provisions have now been adopted in the bipartisan passed United States-Mexico-Canada Agreement. We cannot backtrack on progress related to concepts included in modern trade agreements, like requiring countries to “effectively afford” internationally recognized workers’ rights.

Multinational tire corporations also take advantage of inadequate labor protections and stand to benefit from weak labor standards in the GSP. USW recently completed a report after working with researchers in Indonesia on conditions at a massive tire plant in the country. Around 17,000 Gajah Tunggal workers experience abysmal room conditions with bad air and a foul sewer smell radiating from the nearby river. Workers claim that the union was “controlled by management” and a labor contract was agreed to without worker input.

While there are successful examples of the U.S. Trade Representative’s (USTR) enforcement of GSP’s labor provisions, such as the review of Bolivia’s child labor laws in 2017<sup>6</sup>, the criteria needs to be strengthened in order to ensure that labor rights are protected both to the fullest extent possible and in a timely manner. For example, GSP reform should not include loopholes to enforcement. There should be no requirements that violations of GSP’s labor and environmental eligibility provisions be “sustained or recurring” and shown to have occurred in a manner “affecting trade” in order to be actionable in a GSP review. These examples showcase how these requirements would allow unconscionable behavior to go unchecked:

<sup>5</sup> [AFL-CIO](#), “The Labor Provisions of a Future, Consolidated Generalized System of Preferences”, Accessed September 18, 2023.

<sup>6</sup> [Office of the USTR](#), “USTR Announces GSP Enforcement Actions and Successes for Seven Countries”, October 25, 2019.

- The murder of a trade unionist, like the tragic loss of Dandy Miguel in the Philippines, may be a one-time killing, but the fear created by the act is long lasting.<sup>7</sup> However, attorneys will argue otherwise, and the union hopes the Congress of the most powerful democracy in the world would see through these sorts of democracy stifling events and raise the bar on countries that want access to our powerful consumer market.
- In 2017, there was a dispute between the U.S. and Guatemala under the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR). After nine years of what the union sees as delays, it was the first instance in which a labor law complaint was completed under the arbitration mechanisms of a free trade agreement. An arbitration panel's narrow focus of the "affecting trade" requirement in the CAFTA-DR proved that labor issues continue to remain secondary in trade enforcement. Only workers have to prove this "affecting trade" stipulation affirmatively – a hurdle not placed in front of companies seeking to remedy violations of the financial services or other chapters of the agreement.<sup>8</sup>

That is why USW joins the AFL-CIO in supporting these labor concepts in Ranking Member Blumenauer's American Worker and Trade Competitiveness Act. GSP reforms will help to improve labor standards abroad, and support workers organizing in developing nations, including those who face intimidation, harassment, or even violence for exercising their rights on the job.

#### **Trade Adjustment Assistance**

USW strongly urges Congress to renew Trade Adjustment Assistance with a GSP renewal. Congress has made a choice to enter into 14 comprehensive free trade agreements with 20 countries, and these agreements have created winners and losers. A renewal of GSP, even with every reform our union has requested, will still create some losers, and we should provide a robust benefit for those workers. Over 500 workers at Republic Steel are losing their jobs because the company is moving most of its production to Mexico. Since Congress voted to renew our free trade agreement with that country, the least you can do is offer benefits that have been available in one form or another since the Kennedy Administration. Finally, cutting tariffs and forgoing federal revenue on gold chains and high-end handbags, while withholding job training benefits to American workers impacted by bad trade, is about as out of touch with working people as you can get.

<sup>7</sup> [IndustriALL Global Union](#), "Trade unionist killed in the Philippines", March 31, 2021.

<sup>8</sup> [AFL-CIO](#), "U.S. Trade Policy Fails Workers", June 26, 2017.

**Conclusion**

USW recognizes the power and potential of this committee to modernize the GSP program and provide robust benefits to workers impacted by trade. We urge this committee to update the import sensitive list, improve the Rules of Origin, bring in 21<sup>st</sup> century labor and environmental standards, and renew TAA if you move on GSP. It is an honor to represent our union before the oldest committee of the United States Congress. You have the power to balance American interests in global trade, and USW workers urge you to adopt our policy requests to make the GSP program a bit more balanced. Thank you.

**Additional Trade Policies for Consideration if Congress Considers  
Renewing GSP**

- **H.R. 3882, the Leveling the Playing Field 2.0 Act:** USW strongly supports Representatives Terri Sewell and Bill Johnson's Leveling the Playing Field 2.0 Act. The legislation would:
  - **Target Cross-Border Subsidies:** Right now, China is spending billions to build factories that will dump products into the U.S. and other markets through a funding strategy called BRI. This global infrastructure development strategy, adopted by the Chinese government in 2013, includes plans to invest in nearly 70 countries and international organizations. This measure will give the U.S. government the authority to call out and account for those subsidies in trade cases.
  - **Allow Rapid Successive Trade Remedy Investigations:** American workers and producers are often successful in bringing trade cases against dumped and subsidized imports, but then imports shift to a third country as producers attempt to avoid duties. This legislation would provide an expedited system to address surges in third-country imports of the same product following a successful trade remedy.
  - **Strengthen Enforcement:** Importers constantly pull tricks to try and lower or evade duties. This legislation will clarify processes and timelines making government more efficient in stopping dumped and illegally subsidized goods.
- **H.R. 4148, the Import Security and Fairness Act (de minimis):** Another trade tool that would realign our de minimis threshold to reduce direct trade from China should be a priority. Currently, individual shipments into the U.S. are exempt from duties and tariffs, so long as they are valued below the "de minimis" threshold of \$800. This threshold is far too high, and has allowed a new model of direct-to-consumer imports, particularly from China which allows circumvention of the Uyghur Forced Labor Prevention Act.
- **H.R. 3136, the National Critical Capabilities Defense Act of 2023 (NCCDA):** This legislation would establish a statutory approved review process over the potential offshoring of critical United States' supply chains to foreign adversaries, such as China and Russia. While the Biden Administration has taken steps to better address U.S. investments in certain national security technologies and products in countries of concern, the NCCDA would create a permanent committee to monitor critical industries and make recommendations to the President. A form of this legislation has been included as a Senate passed amendment in the National Defense Authorization Act.
- **H.R. 2667, the Fighting Trade Cheats Act of 2023:** Led by Representatives Mike Bost and Terri Sewell, this legislation would take aim at companies dumping foreign-made goods in U.S. markets by allowing U.S. manufacturers to sue foreign producers for customs fraud.



Chairman SMITH of Nebraska. Thank you, Mr. Houseman.

I appreciate all of your testimony here on the panel. We will now proceed to the question-and-answer session, and I will begin.

In addition to the successful leveraging of GSP to address tariff barriers to U.S. ag exports, it has come to my attention that the ag sector relies on materials as well as—

Mr. BLUMENAUER. Mr. Chairman, we have three of us that are about to vote in the Budget Committee. If we could be excused and—

Chairman SMITH of Nebraska. Yes. We anxiously await your return from the Budget Committee.

Mr. BLUMENAUER. Yes. You and me both.

Chairman SMITH of Nebraska. Thank you. Budget action is a good thing.

We know that the ag sector has relied on materials and equipment that fall under GSP.

And, Mr. Gresser and Mr. Spronk, can you elaborate on or provide examples of how renewing GSP will actually help keep input costs lower for our ag producers?

Mr. Spronk, why don't you go ahead?

Mr. SPRONK. Thank you very much for the question.

In the manufacturing process we have, we actually use citric acid and lactic acid in a process to improve food safety here. Those actually are imported in here, but yet the countries that we import those from actually have trade barriers against us.

And so we believe that we are benefiting their—how should I say—economy by buying their products, but yet they are banning our products or having trade barriers to our products going back in.

So GSP would be very useful as a tool for our administration to be able to utilize and open those markets up for us and to continue the trade both ways back and forth.

Chairman SMITH of Nebraska. Very good.

Mr. Gresser.

Mr. GRESSER. Yes. With respect to GSP's role in reducing costs, the tariff system, in its role as a tax, is the U.S.'s fourth-largest tax, \$90 billion a year last year. It is principally paid by buyers of goods—so retailers, manufacturers, families, construction companies, and farms.

And there are quite a number of specialized products that are useful to agriculture that are GSP products. Irrigation equipment is a 2.4-percent tariff. Brazil and Argentina are alternatives to China. Sharing clippers for animals like sheep is 4 percent. Insecticide, 6.5 percent.

And then there are a lot of more general-use products that are also, I think, quite valuable to farmers: building screws, at 8.5 percent; plywood, at 8 percent; worked stone and roofing slate, 2 percent to 6 percent.

So there are a lot of products where small businesses, agricultural producers, get a—not a huge but a useful break on tariff payments.

Chairman SMITH of Nebraska. Very good.

Now, speaking a little more broadly, can you discuss how GSP can bring partner countries closer to the U.S. economically, for ex-

ample, with aligning standards or perhaps providing countries with alternatives to China and exporting American values, actually?

And, Mr. Garza, if you have some insight on that as well.

Mr. GARZA. Sure. Thank you for the question.

I think, in general, GSP has huge impact on the developing country. There are multiple benefits. As you know, there is job creation that is part of a positive result of these type of free-trade agreements. There is improved infrastructure. There is transfer of knowledge. There is growth in the population. Education.

And all of this makes the beneficiary country worthy of additional investment. That is one of the main benefits I see in GSP.

Chairman SMITH of Nebraska. Thank you.

Mr. Gresser or others wanting to add to that?

Mr. GRESSER. Sure. Let me give you, like, two real-world examples. While I was administering the system, I would occasionally do trips to kind of discuss the program, the eligibility rules. I will take two of them.

One was a visit to Fiji in 2018. I went to a ginger plant that was the country's main GSP exporter. They were employing about 300 women, doing dicing and running machinery. You know, so there is a job-creation benefit. They were using, for the sushi-grade ginger, vinegar that they had imported from Oregon. They were using food-processing machinery manufactured in Florida. So there was a lot of benefit economically as well as to the actual workers.

The other example that comes to mind, a visit to Uzbekistan. One of the benefit reviews we had for Uzbekistan was on intellectual property rights. We were able to talk through the concepts with them and give them some examples—like Bukhara carpets, a very famous local product, a big employer, and the name “Bukhara” is very frequently taken by Indian or Pakistani or others to get additional value. And they were thinking, “Yes, that makes sense; we have some of our own IP that we would like to be defending.”

So there are ways GSP has brought us into closer contact with people, has helped governments think through issues that are important to us—

Chairman SMITH of Nebraska. Uh-huh.

Mr. GRESSER [continuing]. And see them not only as a demand but as something that might be useful to them.

Chairman SMITH of Nebraska. Okay.

Now, there has been the accusation that GSP has undermined domestic production.

Mr. Gresser, can you elaborate on how GSP can be fashioned, or how it already is, in terms of import-sensitive products?

Mr. GRESSER. Yeah, a couple things to mention.

I mean, just in the big picture, GSP is about \$20 billion a year. That is as against about \$440 billion in imports from Canada. So it is fairly small.

It has, as an integral and important part of the program, a petitioning process where interested parties can ask USTR to remove a product from the eligible list. While I was working on the program, we had a petition from USA Rice, which resulted in the removal of most rice products. We had such a petition from the

Michigan Cherry Board, which resulted in the removal of cherry juice.

So this is an important part of the program. If there are particular products that are becoming sensitive, everyone has a right to file such a petition, and I am sure the USTR professional staff and officials will take it seriously.

Chairman SMITH of Nebraska. Thank you.

Thank you, again, for responding to the questions.

I now recognize Ms. DelBene for her questions for 5 minutes.

Ms. DELBENE. Thank you, Mr. Chairman.

And thank you to all of our witnesses for joining us today.

The Constitution gives Congress authority to regulate foreign commerce. And that means we, as a committee, have to do the hard work and not let important programs expire.

Trade Adjustment Assistance, TAA, is a key program that provides job-training benefits to American workers, and it has been expired for over a year.

GSP, a critical foreign policy tool that helps poorer countries develop their industries, has been expired for nearly 3 years. In fact, Congress has let GSP expire 10 of the last 14 times it has been extended.

The expiration of these programs harms our economy, worsens our ability to strengthen our supply chains and reduce our dependency on China, and it damages the United States' reliability as a partner of choice for foreign countries.

So, sure, these programs need updating, but we need to move quickly, as we shouldn't let programs that American workers and our allies and partners around the world depend on expire.

Mr. Gresser, I wonder if you could talk about, on GSP, what has been the impact of the constant expirations and short-term extensions on the effectiveness of the program?

Mr. GRESSER. Yeah, that is a great question. And I share a lot of what you said.

The more a program expires frequently and for extended and unpredictable periods of time, the less likely buyers are to see it as a useful part of their long-term plans. They may see a few particular products as valuable to buy off and on, but something that requires significant investment or a long-term commitment is going to be harder to make.

And in those sorts of circumstances, they will say, well, we could save a bit of money if we buy from country X, but we may lose that investment. And that is more of an incentive to stay where they are, to buy from China, to buy from the European Union, and so forth. So I think it is a debilitating effect.

Ms. DELBENE. Thank you.

You know, both you and Mr. Houseman, in your testimony, talk about GSP currently having a 35-percent value-added rule of origin, meaning that a partner country can assemble a product with 65 percent of materials coming from non-GSP countries, including China and Russia.

Additionally, American-made inputs are currently ineligible for our 35-percent-content requirement, and neither are inputs from some of our closest allies and trading partners.

So, I wondered, how should Congress consider updating the rules of origin in GSP?

Mr. Houseman, I guess I will start with you.

Mr. HOUSEMAN. Sure. You know, looking back at, like, USMCA negotiations, you know, Ambassador Lighthizer worked really hard and diligently to raise the content standards in the auto rule of origin, for example. And this body has the ability, just the same, to kind of set some prioritization.

If you look at the auto rule of origin as an example, you know, it was a stepped process. It has the ability to kind of, you know, work through in an effort with the ITC review. I have testified in front of the ITC in regards to that process. And I think you have existing policy examples that I think you can use to help upgrade and improve that standard and hopefully incorporate American content.

Ms. DELBENE. Mr. Gresser, anything you want to add there?

Mr. GRESSER. I think your point about cumulation and use of U.S. content is a very important one, and I think that is something that seems to me like a good idea. I would like to know a little bit more.

But, more generally, the 35-percent rule of origin has been there from the beginning. It is something that, you know, shouldn't be sacred and should be looked at, but I don't think we can really predict what the effect would be of raising that standard.

A lot of the GSP countries are quite small and simple places. They do not have a lot of local inputs. They need to bring them in from somewhere else. And it is not out of the question that a higher rule of origin would mean shifting back to China. I think, in the case of travel goods, those products used to be made in China, so they used to have 100-percent Chinese content. Now they have—you know, if they are coming from Cambodia, they might have some, but it is quite a lot less.

So I think it is something that is worth exploring and looking at, but I would like to do it in a, kind of, rigorous way to make sure we understand the implications and the likely results.

Ms. DELBENE. Thank you.

And we may not have time to fully go into this, but, in your testimony, you highlight the ways that GSP's competitive need limitations, or CNLs, could be updated to improve the economic benefits of the program.

I have also heard from several companies in my district who are concerned about how CNLs could lead to higher import prices. And I wondered if you could comment at all on how we update CNLs.

Mr. GRESSER. Yes. Thank you for asking that.

CNL limits the total amount of goods that a country can export under GSP, and if they exceed it, then they fall out completely; the good is removed.

If the goal is to encourage buyers to source other than China, the CNL concept, to me, is one that we ought to reexamine. The way it works is to remove eligibility for something the country is really good at. And that is a questionable concept.

At a lower level, I think the bill that the late Congresswoman Walorski and former Rep. Stephanie Murphy put in last year was quite a good one, that it would shift the program from a dollar

value limit each year to a percentage-based increase, make some other reforms.

So I think that is definitely part of the program that is dated and needs some reexamination.

Ms. DELBENE. Thank you.

I yield back.

Chairman SMITH of Nebraska. Thank you.

I now recognize the chairman of the full committee, Mr. Smith from Missouri.

Chairman SMITH. Thank you, Chairman Smith. Thank you for hosting this committee hearing.

And I want to thank all the witnesses for being here as well.

Mr. Garza, your company chose to move its production out of China. So thank you. I hope more companies do that as well.

But to what extent was the GSP program an incentive for you all to make that decision? And how could the program be improved to encourage others to also move production and supply chains out of nations like China?

Mr. GARZA. Thank you for the question.

I think, for companies like Black Diamond, we are a company that makes highly technical gear, but we also have to be very conscious in terms of our pricing structure. The competition is very aggressive. Very aggressive. And we do highly regulated personal protective equipment. So our main criteria always has to be quality. Quality, number one.

But, at the same time, we have the pricing pressure that the market and our competition outlays. We cannot go and charge whatever we need to for a jacket, because we have many, many competitors that have very good jackets, potentially very nice pricing, from a consumer standpoint.

So GSP is a tool for us. It is one of the main tools for us to actually drive down our product costs. It is one of the main tools.

And that, as a whole—I can't tell you it—we specifically take China and move it—the pieces of a product from one place to another very targetedly. As a whole, we have to optimize our supply chains. And our supply chains are complicated. We play in 33 different categories, from helmets to harnesses, to ski poles, to skis, et cetera. We have to optimize our supply chains. So programs like these, as a whole, help us tremendously.

Now, you ask, how can it be more beneficial? I will tell you, there are three main areas, frankly.

Number one is, the dependability of the program is essential. This 3 years, lapse, 3 years on, lapse, 3 years, is very, very difficult for us to plan around. Supply chains are not Lego pieces. You do not just pick them up and place them. It takes a tremendous amount of resources, it takes a tremendous amount of time to move product around. Frankly, as we move product around, we are consuming a lot of human resource, where we would rather be creating better programs for our company, better products for our company, and more U.S. jobs, frankly.

So number one is, the dependability of the program is absolutely critical.

Number two is reassessing the products that are in the program. We don't want to harm U.S. manufacturing, but, if we looked at

certain products like footwear, footwear that isn't manufactured here in the U.S., I think you would see a tremendous amount of shift, like we saw with travel goods from China elsewhere. It would be a huge lift for our industry.

Last but not least, we mentioned CNLs. CNLs, to us, are very similar to the dependability piece. It is not a sure thing for us. And, as I mentioned, supply chains aren't Lego pieces. You cannot just pick them up and drop them into a place and then pick them up and move them again. For products like ours, we have a tremendous amount of scrutiny to go into a country, to go with a partner.

So, in summary, three things—three things—

Chairman SMITH. Uh-huh.

Mr. GARZA [continuing]. Dependability; relook at the products; and then improve CNLs—raise CNLs or eliminate them.

Chairman SMITH. Thank you.

Mr. Houseman, it is great to see you again.

In addition to bringing more of our supply chains home, we want to strengthen trade relations in our backyard. Currently, U.S. content is not counted towards the rule-of-origin regional requirements under the GSP like it is under the African Growth and Opportunity Act trade preferences and USMCA.

Our trade policy should support American jobs at every opportunity. Should Congress consider changing the GSP rule of origin to allow GSP countries to purchase U.S. components to help meet the rule of origin, perhaps coupled with an increase in the 35-percent rule-of-origin threshold?

Mr. HOUSEMAN. The short answer: Yes.

And, you know, look, our members make a host of products. The name "United Steelworkers" oftentimes belies the fact that we are the largest union in rubber, glass, paper, and a host of commodities—citric acid.

So there is an opportunity here. If we raise the standard, we are asking our trading partners to do a little bit more for those producers in those countries, and then, at the same time, American producers could benefit as well. And I think that that is a key element that really, I think, is a value to add to the GSP program.

Chairman SMITH. Thank you.

Mr. Spronk, given the Biden administration's disappointing lack of engagement to open new markets in the Indo-Pacific on behalf of U.S. agriculture, how might Congress consider updating GSP eligibility criteria to prioritize American farmers? For example, adding more specific criteria on agriculture market access when it comes to non-tariff barriers, like food safety and biotechnology regulations, foreign countries continue to use against American farmers.

Mr. SPRONK. Thank you very much for highlighting that and pointing that out.

My career, I definitely benefited from lowering tariff trade barriers and non-tariff trade barriers. When I started my career, we were a net importer of pork products into the United States. Through my career, over the last—between the last 7 months—or, beginning 7 months of this year, we are exporting about 30 per-

cent. That is because of free-trade agreements; it is because of lowering tariff trade barriers.

And I think that is one of the great things—and I am here not because of my career. I am kind of the gray-haired guy on the panel here. It is about the next generation, which is very important to agriculture. It is about my son and my daughter-in-law to be able to have the same opportunities that I did with trade.

And trade is very important to agriculture. We are very productive. We utilize—you can see, when we get the opportunity to lower trade barriers, lower tariffs, we actually have the ability to compete and be very productive on exporting agricultural products.

GSP is a prime example of that, where we have rules-based, where we actually give leverage to our negotiators and our U.S. Government, whereby those countries can benefit from products that come into our economy but, also, then we have a tool that thereby we can actually export our products.

Thailand and the Philippines are two prime examples of that, where we have tariff and non-tariff barrier restrictions. They are members of GSP. And so it is a great tool that we would like to be able to utilize to, there again—we talk about diversification in agriculture. We want to broaden who we can export to. Those two countries could utilize GSP, and we think they have great potential for us to increase our exports to.

Chairman SMITH. Mr. Cory, one of the major victories in the USMCA was assurances that countries could not discriminate against U.S. companies when it comes to digital regulations.

A few weeks ago, I led a delegation to Europe with seven of my colleagues on this committee to address the new taxes European countries are planning to impose on U.S. job-creators.

With the proliferation of discriminatory digital service taxes, including among developing countries, should Congress consider updating the GSP eligibility criteria to include provisions related to countries engaging in discriminatory digital trade practices?

Mr. CORY. Thank you for the question, Mr. Chairman. And the short answer again is: Most definitely, yes.

As Chairman Smith also mentioned, we need to bring up GSP so it is relevant for the nature of modern trade compared to what trade was like at its inception. And global trade is becoming increasingly digital. And, unless the United States ensures that it is using every tool in its toolkit as effectively as possible, I suppose especially in the absence of broader, more comprehensive trade agreements, it needs to be used especially well.

And the problem, especially so in the digital realm, is that there is a leader-follower effect. Whether it is overly stringent and discriminatory regulation or taxes in Europe or China's unique blending of digital protectionism and authoritarianism, we see developing countries, many of which are GSP beneficiaries, picking and choosing a range of different digital regulations to follow. And, if there isn't a clear tool the United States can use to push back and hold them to account, then the nature of this digitalization of trade will fundamentally change as more and more countries adopt policies from one region or one country or the other.

So I think it is important, as Congress considers renewing it, updating it, to ensure that it addresses the barriers affecting a large

part of the United States' advanced technology economy, to ensure that it holds them to account and provides fair and reasonable market access for digital trade as much as it does for agriculture and other products.

Chairman SMITH. Thank you, Chairman Smith. I yield back.

Chairman SMITH of Nebraska. Thank you.

I now recognize Ms. Sánchez for 5 minutes.

Ms. SANCHEZ. Thank you, Chairman Smith.

GSP is the oldest U.S. trade preference program, and the program was conceived to help developing countries diversify their economies and transition them from foreign aid. And, as Ranking Member Blumenauer noted, GSP needs updating to reflect the evolution of our trade policy, because our trade policy has evolved over time.

And that is why House Democrats have worked hard to include commonsense and equitable reforms to GSP, such as updates to the labor criteria in GSP and adding an environmental criterion, along with Trade Adjustment Assistance.

With respect to China and GSP, to claim simply that GSP renewal would facilitate supply-chain shifts out of China, I think, is speculative at best. As we heard from Mr. Houseman with the Steelworkers, GSP's rules of origin allow up to 65 percent of a product to enter the United States duty-free from any non-GSP country, such as China.

And I hope that our conversation today underscores that a program that we developed 50 years ago needs a bit of a refresh, it needs a facelift, a more sophisticated approach that does support our developing partner economies but, also, at the same time, doesn't undercut the American worker.

I am going to start with Mr. Houseman.

Welcome back to the committee. It is good to see you again.

Much like the United Steelworkers, I strongly believe that our values are an important export. One GSP beneficiary country, the Philippines, is ranked among the world's deadliest countries for labor organizers. And, in fact, since 2016, there have been over 50 trade unionists extrajudicially killed in that country.

Can you tell me why countries with serious labor violations are in the program today? And what should we do about that, as we consider updating GSP's mandatory criteria to ensure improvement in labor standards and support for workers who are trying to organize across beneficiary countries?

Mr. HOUSEMAN. Sure. Thank you, Representative Sánchez.

You know, as you pointed out, over 50 Filipino trade unionists have been murdered in the country since 2016. And the idea that this is not a sustained and recurring event—you know, there is nothing more chilling than finding out that the person that you are working with to try and organize your workplace, to make sure it is safer, pays better, is murdered or put on a red list.

And this idea that—I have heard a lot about leverage here, that various producers and others have been able to see GSP be used to leverage access to a market. Well, we should be using that leverage to also improve working people's lives in the fifth-largest GSP beneficiary country.



And this idea that, as was pointed out, if you increase their wages, their ability to bargain, their ability to purchase American goods increases as well. So there is this opportunity here.

And we do have a systematic issue here. So this idea of “sustained and recurring,” adding it into our labor standards here in GSP—and on the environmental side. I have here a report that USW here recently did on the Indonesian tire workers, another significant beneficiary of GSP. And, you know, we have pictures of the living conditions in that country. And the idea——

Ms. SANCHEZ. I want to ask unanimous consent to make that a part of the record, Mr. Chairman.

Chairman SMITH of Nebraska. Without objection.

Ms. SANCHEZ. Thank you.

[The information follows:]

# GAJAH TUNGGAL:

**WORKING CONDITIONS  
AND LABOR RIGHTS AT  
INDONESIA'S LARGEST  
TIRE MAKER**



## Executive Summary

The Indo-Pacific Economic Framework for Prosperity (IPEF) offers historic opportunities to fuel economic growth and strengthen ties among participating nations, provided the parties unequivocally commit to model labor standards and fair treatment of workers.

Gajah Tunggal (GT), the largest producer of tires in Indonesia, falls far short of these requirements even though one of the parent company's top officials, Cherie Nursalim, portrays herself as a champion of the United Nations Sustainable Development Goals, which include workers' rights. Despite holding itself out as a global model, the company cheats workers out of wages, engages in worker misclassification, forces workers to live in slum housing, and deprives women employees of government-mandated health benefits, all with the aid of a company-controlled union.

As the United States pursues a worker-centered trade policy, it must demand that trade agreements prioritize fair wages and working conditions at home and abroad and ensure that current trading partners like Indonesia demand that global corporations operating within their borders respect workers' rights.

## Introduction

The Indo-Pacific Economic Framework for Prosperity (IPEF) offers an opportunity to advance the goal of developing a more open and connected Indo-Pacific region by developing new approaches to trade and strengthening ties with U.S. partners.<sup>1</sup>

Workers across the region and in the United States stand to benefit from these connections, but only if the IPEF agreement adheres to worker-centered values and ideals, prioritizing international labor standards and engaging with partners who have the capacity and intent to meet its terms.

The Biden administration identified a number of leading regional partners to be involved in the framework, including Indonesia, one of the largest tire-exporting countries to the United States and home to many of the world's largest global tire manufacturers.<sup>2</sup>

Tiremakers in Indonesia enjoy special trade privileges with the United States,<sup>3</sup> and the nation is the second largest exporter of tires to the United States under the Generalized System of Preferences (GSP) program. In 2022, Indonesian manufacturers imported \$198.6 million in tires under the GSP, accounting for 27.3% of the value of all of the tires imported under this program.<sup>4</sup>

The United Steelworkers union (USW) represents a majority of tire manufacturing workers in the United States<sup>5</sup> and has successfully filed trade cases to help protect both domestic and foreign workers.<sup>6,7</sup>

The union supports many of the principles of the IPEF, but it also believes that provisions relating to corporate accountability and workers' rights must permeate all aspects of any potential agreement.

With this aim in mind, the USW sent a team of researchers to Indonesia's Banten Province, the home of Gajah Tunggal. Gajah Tunggal produces the most tires in Indonesia, and it is part of the global tire manufacturing giant, Giti Tire Pte Ltd (Giti). The researchers lived among Gajah Tunggal's workers and learned more about the working conditions at Gajah Tunggal's mega-factory from ethnographic interviews with workers.<sup>8</sup>

<sup>1</sup><https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-Strategy.pdf>, accessed 12/6/2022.

<sup>2</sup> "Tariffs Impacted Import Trends," Modern Tire Dealer, January 2022, p. 42. [https://issuu.com/10missionsmedia/docs/mtd\\_0122/1](https://issuu.com/10missionsmedia/docs/mtd_0122/1).

<sup>3</sup> <https://ustr.gov/sites/default/files/gsp/GSPnumbers2021.pdf>, accessed 1/29/2023.

<sup>4</sup> Internal analysis based on data obtained from the USITC Dataweb on 8/7/2023.

<sup>5</sup> Passenger Vehicle and Light Truck Tires from China Investigation Nos. 701-TA-522 and 731-TA-1258 (Review). Publication 5158, Feb. 2021, [https://www.usitc.gov/publications/701\\_731/pub5158.pdf](https://www.usitc.gov/publications/701_731/pub5158.pdf), p. 4 (redacted).

<sup>6</sup> See "United States Prevails in WTO Dispute about Chinese Tire Imports," <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2011/september/united-states-prevails-wto-dispute-about-chinese-and-USW-Comments-Preliminary-Findings-by-Commerce-Dept.-In-Trade-Case-Against-Imports-of-Vehicle-Tires-from-China>, "https://m.usw.org/news/media-center/releases/2014/usw-commends-preliminary-findings-by-commerce-dept-in-trade-case-against-imports-of-vehicle-tires-from-china."

<sup>7</sup> "The GSP was set up to help bring economically developing countries out of poverty, not allow foreign companies to undermine U.S. jobs," in [https://uswlocals.org/system/files/infoalert\\_gsp.pdf](https://uswlocals.org/system/files/infoalert_gsp.pdf).

<sup>8</sup> Data in this research was collected through a combination of a desk study as well as field research and in-depth interviews. The desk study was conducted between September and November 2021, and data came mainly from the company's annual reports for the years 2017 through 2021 and from media reports. Field research took place during two periods where the researchers had in-depth interviews with Gajah Tunggal workers, former workers, a landlord from whom Gajah Tunggal workers rent their rooms and food sellers from whom Gajah Tunggal's workers buy food. The first period of interviews was conducted in two weeks in November 2021 and the second period was conducted from December 2021 to January 2022. In addition, we also interviewed two union officers in Tangerang to get their perspective about the role and involvement of SPSI Gajah Tunggal in the labor movement.

What researchers found is disturbing.

Gajah Tunggal, Indonesia's largest tire exporter to the United States, forces its predominantly migrant, Muslim workforce to live in squalid conditions; misclassifies and underpays a significant number of its low-wage workforce; offers its workers substandard healthcare; segregates women to particular departments; and keeps workers from challenging unsafe working conditions through an undemocratic, company-controlled union.

As the United States pursues a worker-centered trade policy, these findings merit additional investigation – to ensure our current trading partners respect labor rights and that any agreements we make with them moving forward include mechanisms to enforce these priorities.

### Gajah Tunggal as a case study

Gajah Tunggal provides an important case study because of its significant market share in Indonesia, its relationships with other international tire manufacturers, and its prolific trade relationship with the United States.

The company owns and operates the largest, vertically integrated tire manufacturing facility in Southeast Asia,<sup>9</sup> employing more than 17,000 workers.<sup>10</sup> Due to this great capacity, it produced the most tires of any company in Indonesia as of 2020, both by volume and by tonnage.<sup>11</sup> In 2022, Gajah Tunggal had an estimated capacity of 25 million tires per year, still the largest of any company that manufactured tires in Indonesia.<sup>12</sup> It claimed to have a 50% share of the domestic passenger vehicle market and a 47% share of the domestic motorcycle tire market.<sup>13</sup>

Gajah Tunggal exports the most tires of any Indonesian company to the United States. Over the past decade, Gajah Tunggal shipped more than 33.9 million tires, valued at nearly \$2.1 billion, to its U.S.-based importer, Giti Tire (USA) Ltd.<sup>14</sup>

This is not surprising considering that Gajah Tunggal's business strategy includes a stated intent to expand sales in the United States and to "leverage the market and regulatory shifts which are favorable to [Gajah Tunggal], such as anti-dumping tariffs imposed on tires manufactured in other Asian countries."<sup>15</sup>

Furthermore, Gajah Tunggal has close relationships with other international tire manufacturers in Indonesia. Michelin has a "strategic alliance" and an offtake agreement with Gajah Tunggal, and the company owns a 10% stake in Gajah Tunggal.<sup>16</sup> Additionally, the Giti Group has an offtake agreement with Gajah Tunggal to produce Giti-branded truck and bus radial (TBR) tires for sale at sites around the world.<sup>17</sup> Gajah Tunggal manufactures the Primewell All Season<sup>18</sup> tires that are sold exclusively at Firestone Complete Care stores and repair shops in the United States.<sup>19</sup>

Gajah Tunggal is a subsidiary of Giti Tire Pte Ltd, a Singapore-based global tire company with factories in China and one in the United States.<sup>20</sup> Giti opened its factory in Richburg, South Carolina, in 2017, in response to tariffs imposed on imports of passenger vehicle and light truck tires from China, where Giti previously sourced a majority of its tires sold in U.S. markets.<sup>21</sup>

### Beyond tires

Over the past five decades, longtime owner Sjamsul Nursalim expanded Gajah Tunggal and developed it into the Gajah Tunggal Group, or Giti Group, a global

<sup>9</sup> <https://www.gt-tires.com/indonesia/corporate.asp?menuid=3&classification=12&language=1#:-:text=PT%20Gajah%20Tunggal%20Tbk&text=The%20Company%20owns%20and%20operates,tire%20manufacturing%20facility%20in%20Indonesia.>

<sup>10</sup> PT Gajah Tunggal 2021 Annual Report, p. 74. <http://gt-tires.com/indonesia/corporate.asp?page=&menuid=3&classification=19&subid=39&id=&language=1&year=2021.>

<sup>11</sup> Offering Memorandum for Senior Secured Notes due 2026, issued June 2021, p. 1, [https://links.sgx.com/FileOpen/PT%20GAJAH%20TUNGGA%20TBK%20-%20Final%20Offering%20Memorandum%20\(16%20June%202021\).ashx?App=Prospectus&FileID=52518.](https://links.sgx.com/FileOpen/PT%20GAJAH%20TUNGGA%20TBK%20-%20Final%20Offering%20Memorandum%20(16%20June%202021).ashx?App=Prospectus&FileID=52518.)

<sup>12</sup> Tire Business Data Book 2022, <https://www.tirebusiness.com/data-lists/market-data-book-2022.> p. 28.

<sup>13</sup> "Gajah Tunggal Reigns in the Domestic Tire Market," Investor.id, <https://investor.id/industry-trade/188056/gajah-tunggal-raja-pasar-ban-domestik>.

<sup>14</sup> Based on an internal analysis conducted with data obtained from the USITC Dataweb on 8/7/2023 and PIERS Import Data, downloaded on 8/7/2023.

<sup>15</sup> Offering Memorandum for Senior Secured Notes due 2026, issued June 2021, p. 4, [https://links.sgx.com/FileOpen/PT%20GAJAH%20TUNGGA%20TBK%20-%20Final%20Offering%20Memorandum%20\(16%20June%202021\).ashx?App=Prospectus&FileID=52518.](https://links.sgx.com/FileOpen/PT%20GAJAH%20TUNGGA%20TBK%20-%20Final%20Offering%20Memorandum%20(16%20June%202021).ashx?App=Prospectus&FileID=52518.)

<sup>16</sup> Offering Memorandum for Senior Secured Notes due 2026, issued June 2021, [https://links.sgx.com/FileOpen/PT%20GAJAH%20TUNGGA%20TBK%20-%20Final%20Offering%20Memorandum%20\(16%20June%202021\).ashx?App=Prospectus&FileID=52518.](https://links.sgx.com/FileOpen/PT%20GAJAH%20TUNGGA%20TBK%20-%20Final%20Offering%20Memorandum%20(16%20June%202021).ashx?App=Prospectus&FileID=52518.) p. 4, 104, 119.

<sup>17</sup> Ibid. Offering Memo, p. 3.

<sup>18</sup> <https://primewelltires.com/about-giti-usa/>.

<sup>19</sup> <https://www.bridgestoneamericas.com/en/company/businesses/products/primewell>, accessed 12/7/2022.

<sup>20</sup> While Gajah Tunggal is publicly traded on the Indonesia Stock Exchange, it is controlled by Denham Pte Ltd with 49.5% of its outstanding shares. Denham Pte Ltd is controlled by Giti Tire Pte Ltd., which also controls Giti Tire USA, Giti Tire Manufacturing USA, Giti Tire Corporation, and dozens of other related entities. [https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From\\_EREP/202105/263c4441ed\\_f4360f7274.pdf](https://www.idx.co.id/StaticData/NewsAndAnnouncement/ANNOUNCEMENTSTOCK/From_EREP/202105/263c4441ed_f4360f7274.pdf) and Company Overview Giti Tire, <https://www.giti.com/en-us/about-us/company-overview>, accessed 9/16/2022. See "Information of Disclosure to The Gajah Tunggal's Shareholders", <https://www.gt-tires.com/indonesia/images/infoati20167172443798.pdf>.

<sup>21</sup> "Giti seeks to strengthen global supply chain with U.S. plant," Rubber News, 7/7/2014. <https://www.rubbernews.com/article/20140707/NEWS/306309992/giti-seeks-to-strengthen-global-supply-chain-with-u-s-plant.>

conglomerate that not only manufactures tires, but also operates business segments in real estate, retail, and other industries.<sup>22,23</sup>

While Sjamsul Nursalim today holds no official role in running the company, his daughter, Cherie Nursalim, is the Vice-Chair of the Giti Group. Her husband, Enki Tan, is the Vice President Commissioner of Gajah Tunggal and also the Executive Chairman of Giti Tire Pte Ltd.<sup>24</sup>

In addition to her work in the tire industry, Cherie Nursalim currently serves as a Special Advisor on Climate to the government of Indonesia's Minister of Maritime and Investment Affairs, Luhut Binsar Pandjaitan.<sup>25</sup> Pandjaitan plans and coordinates Indonesia's maritime and energy policies.<sup>26</sup>

Cherie Nursalim also serves on the Leadership Council for the United Nations Sustainable Development Solutions Network. The network advocates for the U.N.'s 17 sustainable development goals, which include eliminating poverty, promoting gender equality, providing decent work, building sustainable communities, ensuring clean water and sanitation, and many others.<sup>27</sup>

Nursalim also founded United in Diversity, a non-profit that brings together business, civil society, and government to solve problems in Indonesia, and she was a founding member of the Synergos Global Philanthropic Foundation with Rockefeller heirs.<sup>28,29</sup>

Unfortunately, reports from workers, both in Indonesia and South Carolina, indicate a jarring dissonance between the stated priorities of Nursalim's government-related and philanthropic work and her corporation's labor practices.

### Living conditions in the shadow of Gajah Tunggal

More than 17,000 workers operate Gajah Tunggal's sprawling, integrated tire manufacturing complex, the largest in Southeast Asia, consisting of nine tire producing plants in Tangerang Regency.<sup>30,31</sup>

Workers report that a significant number of Gajah Tunggal workers are migrants from Central Java, East Java, and Sumatra.<sup>32</sup> The workers observed that because they live so far from their homes, many Gajah Tunggal workers live in rented rooms in Pasir Jaya, a village close to the Gajah Tunggal industrial complex.<sup>33</sup>

Pasir Jaya is a dense settlement with houses lined up close together. The width of the alleys in the complex is approximately 1 to 2 meters, and a small river divides Pasir Jaya from Gajah Tunggal. The river water is black and smelly and stagnant. Workers described the smell that comes out of the river as much more pungent (see pictures 1 and 2 below) during the dry season. The sewers similarly reek.<sup>34</sup>

Most of the men who have families live alone, or they live together with their co-workers in the same room. Their families usually stay in their hometowns to reduce costs and so they can live in a better environment.<sup>35</sup>

Rental prices per month are approximately 15% of the minimum wage, with rooms measuring 3x4 m or 4x4 m. Room conditions, in general, are poor with bad air circulation, lots of mosquitoes and not enough sunlight (see picture 3 below). Most of the rented rooms are also close to a foul-smelling sewer, and some are close to the garbage dump.<sup>36</sup>

<sup>22</sup> Giti group. (2023). World Economic Forum. Retrieved January 27, 2023, from <https://www.weforum.org/organizations/giti-group/>.

<sup>23</sup> <https://www.giti.com/news/details/u/gitis-milestones-road-to-success>. For examples in retail, see Mitra Adiperkasa (MAPI), <https://www.map.co.id/>, or for examples in real estate, see Tuan Sing, <https://www.tuansing.com/>.

<sup>24</sup> <https://www.giti.com/news/details/u/cherie-nursalim-appointed-as-indonesia-special-advisor-on-climate> and <https://www.gt-tires.com/indonesia/corporate.asp?menuid=3&classification=12&subid=151&language=1>.

<sup>25</sup> "A G20 for the Global Good," Cherie Nursalim for Global Action, 1/20/22, <https://sdg-action.org/a-g20-for-the-global-good/>.

<sup>26</sup> "Secretary Blinken's Meeting with Indonesian Coordinating Minister for Maritime and Investment Affairs Pandjaitan and Minister of Trade Lufi" <https://www.state.gov/secretary-blinkens-meeting-with-indonesian-coordinating-minister-for-maritime-and-investment-affairs-pandjaitan-and-minister-of-trade-lufi/>, 12/14/2021. For further information on Panjaitan, see "Indonesia has a deal to get off coal. But it's building new coal plants," 2/7/23, <https://www.npr.org/2023/02/07/1155186919/indonesia-agreed-to-transition-to-renewable-energy-but-its-unclear-if-ill-happen>; "Indonesian government actively blocking efforts to reform palm oil industry," 5/16/19, <https://www.greenpeace.org/international/press-release/22030/indonesian-government-actively-blocking-efforts-to-reform-palm-oil-industry/>; and "Luhut Binsar Panjaitan's Report of Haris Azhar and Fatia Maulidiyanti is a Serious Threat to Democracy and the Work of Human Rights Defenders," 9/23/21, [https://kontras.org/en/2021/09/23/luhut-binsar-panjaitans-report-of-haris-azhar-and-fatia-maulidiyanti-is-a-serious-threat-to-democracy-and-the-work-of-human-rights-defenders/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=luhut-binsar-panjaitans-report-of-har](https://kontras.org/en/2021/09/23/luhut-binsar-panjaitans-report-of-haris-azhar-and-fatia-maulidiyanti-is-a-serious-threat-to-democracy-and-the-work-of-human-rights-defenders/?utm_source=rss&utm_medium=rss&utm_campaign=luhut-binsar-panjaitans-report-of-har).

<sup>27</sup> <https://sdgs.un.org/goals#goals>, accessed 10/19/2022.

<sup>28</sup> <https://www.worldfuturecouncil.org/p/cherie-nursalim/>.

<sup>29</sup> <https://www.unitedindiversity.org/information/35/who-we-are/en>.

<sup>30</sup> PT Gajah Tunggal 2021 Annual Report, p. 74.

<sup>31</sup> The plants include A, B, C, D, E, F, M, R, and Filamendo Sakli. Offering Memorandum for Secured Notes, p. 120. [https://links.sgx.com/FileOpen/PT%20GAJAH%20TUNGGA%20TBK%20-%20Final%20Offering%20Memorandum%20\(16%20June%202021\).ashx?App=Prospectus&FileID=52518](https://links.sgx.com/FileOpen/PT%20GAJAH%20TUNGGA%20TBK%20-%20Final%20Offering%20Memorandum%20(16%20June%202021).ashx?App=Prospectus&FileID=52518).

<sup>32</sup> Interview with D and B, December 29, 2021.

<sup>33</sup> Interview with D and B, December 29, 2021.

<sup>34</sup> Observations made on November 9, 2021.

<sup>35</sup> Interview with D, December 24, 2021.

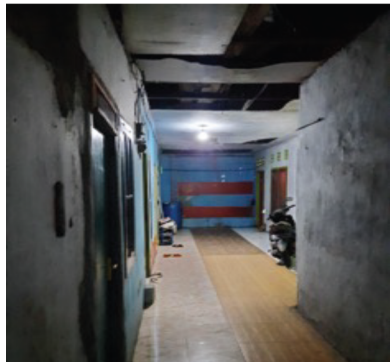
<sup>36</sup> Observations made on November 9, 2021.



1. POOR DRAINAGE NEAR A WORKER'S RENTED ROOM  
Source: Researcher documentation, December 2021.



2. POOR DRAINAGE NEAR A WORKER'S RENTED ROOM  
Source: Researcher documentation, December 2021.



3. WORKERS' RENTED ROOMS  
Source: Researcher documentation, December 2021.



Many of the workers get their food from stalls and mini markets. The food is not fresh, and the stalls are usually near a foul-smelling sewer. At night, rats come out to fill the food stalls.<sup>37</sup>

There is no state-owned drinking water company in Pasir Jaya, which means residents must buy drinking water. The water used for bathing and washing comes from wells drilled as deep as 16 to 18 meters. This well water tastes salty. One drilled well is used for four to six houses, and workers must pay a fee to the owner of the well every month.<sup>38</sup>

### Significant number of workers earning less than provincial minimum wage

Workers at Gajah Tunggal fall into one of four categories: daily permanent workers, monthly permanent workers, interns, and outsourced workers. Labor law in Indonesia establishes these categories,<sup>39</sup> and the Gajah Tunggal CBA establishes wages<sup>40</sup> and allowances<sup>41</sup> for each.

Conversations with Gajah Tunggal workers revealed that daily permanent workers are likely getting paid less than the provincial minimum wage,<sup>42</sup> and the company incorrectly classifies many outside the categories established by labor law in Indonesia. Thus, misclassified workers who should be monthly permanent workers with higher pay and more security<sup>43</sup> instead remain as daily permanent workers. It also appears that they sometimes work more than their allotted days without full compensation for those days.<sup>44</sup>

In the Decree of Ministry of Manpower 100/2004, daily employment (daily work) is defined as certain jobs which are changing in terms of time and volume of work, and wages are based on attendance.<sup>45</sup>

Daily work is supposed to be conducted no more than 21 days in one month.<sup>46</sup> When workers exceed 21 days for three consecutive months or more, the daily work agreement should be annulled and must be changed to a permanent monthly work agreement.<sup>47</sup> This fails to happen at Gajah Tunggal.

Instead, wages are calculated daily and whenever workers miss a day of work, the day's absence is deducted from their pay, reducing their monthly wages below the minimum wage standard. Additionally, when they work more than 21 days (which should not be allowed for daily permanent workers) they still only get paid the standard monthly minimum wage. These practices result in many workers being significantly underpaid.<sup>48</sup>

Interns at Gajah Tunggal are particularly vulnerable to underpayment. In 2020, Gajah Tunggal began an internship program called Peserta Program Pemagangan.<sup>49</sup> Only high school graduates between the ages of 18 to 20 can apply and those who pass the selection process will get a one-year contract as an intern. Based on interviews with workers from Plants A and B, there are at least 100 intern workers in each plant.<sup>50</sup> However, researchers were unable to find any official record on the total number of interns across all the plants.

The working hours and types of work performed by interns are the same as for permanent workers in the production lines. Interns have to work seven to eight hours a day, five days a week, 21 to 24 days a month. However, the wages they receive, 2.5 million Indonesian Rupiah (IDR) or 170 U.S. dollars (USD),<sup>51</sup> are half of the wages of permanent workers, leaving them well under Tangerang City's

<sup>37</sup> Observations made on November 17, 2021.

<sup>38</sup> Observations made on November 17, 2021.

<sup>39</sup> Manpower Law No. 13/2003 concerning Manpower, <https://www.ilo.org/dyn/travail/docs/760/indonesian+Labour+Law+-+Act+13+of+2003.pdf>.

<sup>40</sup> Collective Bargaining Agreement between Pengurus Unit Kerja Serikat Pekerja Kimia Energi Dan Pertambangan and Gajah Tunggal 2020-2022, Article 21-25.

<sup>41</sup> Ibid, CBA 2020-2022, Article 20(2), Article 21(3), and Article 38(1,2,6).

<sup>42</sup> Interview with D and B, December 29, 2021.

<sup>43</sup> Ibid, CBA 2020-2022, Article 21.

<sup>44</sup> Interview with D and B, December 29, 2021.

<sup>45</sup> Decree of Ministry of Manpower 100/2004 Concerning Provisions On The Implementation of Certain Time Work Agreement. Article 1(2) and Article 10. [https://www.jobexpect.com/assets/docs/Manpower-Decree-100-Year-2004\\_English.pdf](https://www.jobexpect.com/assets/docs/Manpower-Decree-100-Year-2004_English.pdf).

<sup>46</sup> Decree of Ministry of Manpower 100/2004 Concerning Provisions On The Implementation of Certain Time Work Agreement. Article 10(2). [https://www.jobexpect.com/assets/docs/Manpower-Decree-100-Year-2004\\_English.pdf](https://www.jobexpect.com/assets/docs/Manpower-Decree-100-Year-2004_English.pdf).

<sup>47</sup> Decree of Ministry of Manpower 100/2004 Concerning Provisions On The Implementation of Certain Time Work Agreement. Article 10(3). [https://www.jobexpect.com/assets/docs/Manpower-Decree-100-Year-2004\\_English.pdf](https://www.jobexpect.com/assets/docs/Manpower-Decree-100-Year-2004_English.pdf).

<sup>48</sup> Manpower Law No. 13/2003 concerning Manpower, Article 89, Article 90. <https://www.ilo.org/dyn/travail/docs/760/Indonesian+Labour+Law+-+Act+13+of+2003.pdf>.

<sup>49</sup> <https://career.gt-tires.com/vacancies/factory-tan-gerang>, accessed 2/9/2021.

<sup>50</sup> The research did not identify the number of interns working in other plants.

<sup>51</sup> Interview with M and K November 14, 2021. Interview with H,F,N, January 3, 2022. Interview with R, November 19, 2021.

<sup>52</sup> <https://decentworkcheck.org/labour-laws-per-country/minimum-wages-indonesia/provincial-and-regencies-minimum-wage-in-banten>, accessed 2/10/23.

minimum wage of 4,262 million IDR.<sup>52</sup> Paying sub-minimum wages to interns while offering them short-term contracts makes these jobs precarious for interns.

Lastly, the requirement for daily permanent workers and interns to work 24 days a month strongly indicates that Gajah Tunggal does not appear to be respecting workers' rights to badly needed days off.

### Unsafe working conditions

Lax health and safety training puts Gajah Tunggal workers at risk on the job. The Gajah Tunggal workers interviewed also described working conditions that appear to be either illegal or violations of their contract, and are, in all events, a danger to plant employees.

Workers reported that Occupational Safety and Health (OSH) training is only held during the probation period, leaving significant gaps in workers' understanding of essential processes and protocols.

Additionally, management does not provide training and information for workers on how to handle chemicals or their components, like the often-used solvents special boiling point (SBP) Toluene and Propylene.<sup>53</sup> Without access to vital information about these chemicals and their risks via accurate labeling and Safety Data Sheets, workers remain vulnerable to chemical exposure and other dangers.

A worker was even reported to have accidentally consumed SBP liquid that was placed in a water bottle because the color and the smell of SBP were similar to water.<sup>54</sup>

A failure to create processes for container labeling is clearly a hazard that compounds the dangerous and potentially deadly lack of training.

### No health insurance for interns

In interviews, workers said Gajah Tunggal does not register interns in the Indonesia National Health Insurance System, or any other insurance program, leaving them vulnerable if they get injured on the job.<sup>55,56</sup> Indonesia's BPJS Agency (Badan Penyelenggara Jaminan Sosial) administers the national health care, inclusive of "private sector workers who work for an employer and receive a salary or wage at a business entity."<sup>57</sup> Manpower Act 7 of 2021 requires all workers and laborers to be registered in the system, and those "who work for large and medium enterprises, shall be registered with the health insurance, JKK [work injury benefit], old age benefit, pension benefit, and JKM [death benefit] programs."<sup>58</sup>

The Indonesia National Health Insurance System is a national system where employed people receive a higher level of care, "first class" or "class I," than unemployed or indigent patients who receive class III. While it is not an egalitarian model of health care delivery, the program is the access point for workers, their spouses, and children to receive class I service.<sup>59</sup> As the Manpower Act requires registration, workers from many classes of employers are entitled to this health insurance coverage.

Furthermore, hospital care in Indonesia is provided based on a tiered system tied to employment status or indigence. Workers reported that Gajah Tunggal employees were insured under BPJS, Indonesia's universal health care program, for Class I service and paid monthly premiums of 100,000 IDR through deductions from their pay.<sup>60,61</sup>

<sup>53</sup> Interview with R, November 19, 2021.

<sup>54</sup> Interview with R, November 19, 2021.

<sup>55</sup> Interview with S, L, Y, December 2021 and January 2022.

<sup>56</sup> This practice violates the Regulations of Manpower 6/2020 Article 13e and 16e, which states that every apprentice must be registered by the company in the social security program. [https://jdih.kemnaker.go.id/asset/data\\_puue/Permenaker\\_6\\_2020\\_eng.pdf](https://jdih.kemnaker.go.id/asset/data_puue/Permenaker_6_2020_eng.pdf) Further ILO Convention 121, the Employment Benefits Convention, sets a standard for insurance coverage for apprentices or interns. [https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO:P12100\\_ILO\\_CODE:C121](https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO:P12100_ILO_CODE:C121).

<sup>57</sup> Manpower Act 7 of 2021, Article 2(3). <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/111571/139101/F-2057408716/IDN111571%20ENG.pdf>.

<sup>58</sup> Manpower Act 7 of 2021, Article 2(3). <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/111571/139101/F-2057408716/IDN111571%20ENG.pdf>.

<sup>59</sup> <https://www.bpjs-kesehatan.go.id/bpjs/index.php/pages/detail/2014/11SemarangBustani>.

<sup>60</sup> Interview with S, December 2021. Interview with D, December 2021. Interview with S and W, December 2021.

<sup>61</sup> Interview with H, F, and N, January 2022. Interview with L, January 2022. Interview with Y, December 2021.

<sup>62</sup> Interview with S and W, December 2021.



By failing to register interns for the Indonesia National Health Insurance System, Gajah Tunggal is excluding a set of workers from healthcare coverage, exposing them to the challenges of being uninsured. The sub-minimum wages paid to interns would make the IDR 100,000 deduction a burden to them, but this underscores the need for all workers to be paid living wages for their work.

For other Gajah Tunggal employees, the company fulfills the registration requirement and extends the option to enroll in a private health insurance plan. This option would present an additional cost or payroll deduction to employees who elect it.<sup>62</sup>

It appears that Gajah Tunggal also fails to register its interns in the national social security program,<sup>63</sup> which provides benefits such as accident insurance, death benefits, or job loss insurance.<sup>64</sup> This puts workers and their families in jeopardy when it comes to workplace accidents, occupational disease, and layoff.

From workers' reports, the company fails to protect workers from injury.<sup>65</sup>

This is especially concerning because interns are not included in the occupational safety and health training offered to other employees during orientation and may ultimately need these extra protections.<sup>66</sup>

### Exploiting workers during the pandemic

In mid-2020, when the pandemic started to hit Indonesia, Gajah Tunggal's management made the decision to limit operations, cut workers' wages, and furlough some workers. In interviews, workers confirmed that they were laid off and their pay was reduced.<sup>67</sup> Gajah Tunggal reported to bondholders that the company also made wage reductions for the month of June 2020 and for certain senior management personnel in May 2020.<sup>68</sup>

According to Indonesian labor law, all wage reductions must be written into the collective bargaining agreement, even though in a few cases they may proceed without consent from the workers.<sup>69</sup> However, working hours during a pandemic are not one of these exceptions, and any wage policy requires written agreement and must be negotiated with the consent of the workers according to the collective bargaining agreement.<sup>70</sup> From interviews, it appears that the company implemented this policy unilaterally, depriving workers of the opportunity to discuss the changes with management or mitigate the impact of lost wages.

During the pandemic, Gajah Tunggal also failed to provide adequate personal protective equipment (PPE) to its workers. The company claimed that it had taken serious steps to protect the health and safety of workers<sup>71</sup> and even donated nearly 6 million masks to the government of Indonesia<sup>72</sup> through United in Diversity,<sup>73</sup> Giti Group Vice Chair Cherie Nursalim's nongovernmental organization.<sup>74</sup>

Workers, however, told a different story.

They said that the number of masks they received each month was different and inconsistent. Some workers stated that the company gave them a single box of masks containing only 50 pieces.<sup>75</sup> Others said they only received two to three washable cloth masks, leaving workers vulnerable to infection and forced to navigate pandemic risks on their own.<sup>76</sup>

<sup>62</sup> Interview with R, December 2021.

<sup>63</sup> Interview with S and W, December 2021.

<sup>64</sup> National Social Security Program of Indonesia (Dewan Jaminan Sosial Nasional), <https://djsn.go.id/>, accessed 10/20/2022.

<sup>65</sup> Decree of Minister of Manpower 7/2021, Article 1(2), "Worker/Laborer shall be any person who works by receiving wages or other forms of remuneration," <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/111571/139101/F-2057408716/IDN111571%20ENG.pdf>.

<sup>66</sup> Interview With Y, December 2021.

<sup>67</sup> Interview with A, November 10, 2021.

<sup>68</sup> Final Offering Memo Memorandum, Gajah Tunggal, 6/16/2021, [https://www.google.com/url?q=https://links.sgx.com/FileOpen/PT%2520GAJAH%2520TUNG-GAL%2520TBK%2520-%2520Final%2520Offering%2520Memorandum%2520\(16%2520June%25202021\).ashx?App%3DProspectus%26FileID%3D52518&sa=D&source=docs&ust=1657785118278907&usq=AOvWaw3uzV8vPpO-CQP2-53Vo-4p, p. 8](https://www.google.com/url?q=https://links.sgx.com/FileOpen/PT%2520GAJAH%2520TUNG-GAL%2520TBK%2520-%2520Final%2520Offering%2520Memorandum%2520(16%2520June%25202021).ashx?App%3DProspectus%26FileID%3D52518&sa=D&source=docs&ust=1657785118278907&usq=AOvWaw3uzV8vPpO-CQP2-53Vo-4p, p. 8).

<sup>69</sup> Government Regulation Number 8/1981. <https://bphn.go.id/data/documents/vcv.pdf> and Government Regulation Number 36/2021 [https://jdih.kemnaker.go.id/asset/data\\_puue/2021PPENG36.pdf](https://jdih.kemnaker.go.id/asset/data_puue/2021PPENG36.pdf).

<sup>70</sup> Gajah Tunggal CBA 2020 - 2022, Article 20(1) and Article 20(2).

<sup>71</sup> <https://tangerangonline.id/2020/09/08/tim-sat-gas-covid-19-kabupaten-tangerang-kunjungi-pli-gajah-tunggal/>.

<sup>72</sup> <https://www.gt-tires.com/indonesia/corporate.asp?menuid=3&classification=21&subid=68&language=1>.

<sup>73</sup> <https://www.unitedindiversity.org/post/86/gajah-tunggal-group-donates-6-million-masks-to-uid-facing-covid-19/en>.

<sup>74</sup> <https://www.unitedindiversity.org/information/425/coronavirus-or-covid-19/en>.

<sup>75</sup> Interview with D, S, December 2021 and January, 2022.

<sup>76</sup> Interview with D, S, December 2021 and January, 2022. This appears to be both a violation of guidelines in the Ministry of Health Circular Letter Number HK.02.02/I/385/2020 and Decree of the Minister of Health number HK.01.07/MENKES/328/2020, which state that masks are considered basic and general personal protective equipment (PPE) both in the home and work environment. [https://www.iccc.or.id/wp-content/uploads/2020/08/Minister-of-Health-Decree-HK.01.07\\_MENKES\\_328\\_2020-SSEK-Translation.pdf](https://www.iccc.or.id/wp-content/uploads/2020/08/Minister-of-Health-Decree-HK.01.07_MENKES_328_2020-SSEK-Translation.pdf) and <https://setkab.go.id/en/health-minister-is-sues-guidelines-on-covid-19-prevention-at-workplaces/>.

## Gajah Tunggal management undemocratically controls the workers' union

Simply having a union at a workplace is not enough to guarantee that workers have a voice or representation on the job if the company engages in acts of interference against union democracy. In many countries, management is able to set up company-controlled, or management-dominated unions where workers do not have freedom to establish and run their own organizations. In these cases, workers have no real means of addressing issues such as low wages, dangerous working conditions, and exploitation.<sup>77</sup>

Based on interviews, this appears to be the case at Gajah Tunggal.

Gajah Tunggal workers belong to PUK SP KEP SPSI, a local of the All-Indonesian Workers Union (FSP KEP SPSI), a union that historically has close ties with management and the repressive Suharto government.<sup>78</sup> Workers interviewed did not have much trust in the union because it was “management controlled,” as workers described it.<sup>79</sup> Some consider the existence of their union nothing more than a formality to comply with Indonesian labor law.<sup>80</sup>

According to workers, all of their union officials are directly or indirectly selected by management. Management selects union representatives on each production line called the Bakor. These representatives then choose the union chairman, who then appoints union officers.<sup>81</sup>

This makes a mockery of basic notions of workplace democracy. The company controls who is selected to lead the workers' union, and ordinary workers are excluded from holding office or even having voting rights unless they have close ties with management.

This also affects the negotiation process. Workers are not involved in bargaining and heard nothing about the bargaining process for their collective bargaining agreement.<sup>82</sup> Workers reported that a CBA was agreed to without their feedback taken into consideration.<sup>83</sup> Workers had no printed, physical copy of their CBA, a means for improving popular understanding of their contractual rights and benefits. To access the text of the CBA, workers must use a smartphone application to view a digital copy. Instead of providing a check on management, the union instead functions as a rubber stamp for corporate policy.

Management's interference in the union also has detrimental effects on workers' participation in civil society. Based on information from different union leaders in Tangerang, whenever unions or civil society groups organized demonstrations, SPSI Gajah Tunggal was actually tasked with preventing workers and their members from participating.<sup>84</sup> This not only deprives workers of a voice inside their workplace but stifles their involvement in shaping government policy surrounding labor issues.

## Failing to respect the rights of women at work

There is no official record of the workforce's gender composition at Gajah Tunggal, but based on interviews with workers, only a few workers in the production line are women. Instead, most of the women workers are assigned to the office and packing divisions.<sup>85</sup>

Of the women working in the production line, most are concentrated in Plant B, especially at the splicing and packaging department. This is because only Plant B still uses hand packing, while the other plants use machines.<sup>86</sup>

<sup>77</sup> This problem was addressed in the negotiations for the U.S.-Mexico-Canada Agreement (USMCA) which now protects the right of Mexican workers to organize, form, and join the union of their choice; prohibits employer interference in union activities, discrimination, or coercion against workers; and provides for the exercise of a personal, free, and secret vote of workers for union elections and agreements. <https://csrreports.congress.gov/product/pdf/IF/IF11308>.

<sup>78</sup> Human Rights Watch, Indonesia: Charges and Rebuttals Over Labor Rights Practices Analysis of Submissions to the U.S. Trade Representative" January 1993, Pp. 3. <https://www.hrw.org/reports/pdfs/I/indonesia/indonesi931.pdf>.

<sup>79</sup> Interview with R, November 19, 2021. Interview with S and W, December 25, 2021. Interview with B and D, December 29, 2021. Interview with D, December 24, 2021.

<sup>80</sup> Interview with D, R, November and December, 2021; Interview with D, December 24, 2021.

<sup>81</sup> Interview with R, November 19, 2021. Interview with D, January 2022.

<sup>82</sup> Interview with D, January 2022. Interview with R, November 19, 2021.

<sup>83</sup> Interview with B, L, November 2021 and January 2022.

<sup>84</sup> Interview with M and K, November 14, 2021.

<sup>85</sup> Interview with R and A (both in Plant D), December 19, 2021.

<sup>86</sup> Interview with S, December 25, 2021.

On its face, the failure to employ women in other departments and placing them only in these areas appears to be occupational segregation by gender. Occupational segregation describes the overrepresentation or underrepresentation of a demographic group in a particular job classification or category.<sup>87</sup> Occupational segregation is a major source of the wage gap across studies and countries.<sup>88</sup> It also tends to impair equality of opportunity in the workplace, relegating demographically similar workers to less desirable jobs and classifications. These are employer practices that suppress pay by crowding similar workers into similar classifications, as distinct from the societal barriers that influence gender or race composition within an occupation.<sup>89</sup>

Additionally, women workers reported having difficulty taking the maternity leave to which they are entitled by Indonesian law and the CBA.<sup>90,91</sup> Based on interviews, workers said that the company often violates the established policy, shortchanging workers before and after they give birth.<sup>92</sup>

Women workers in Indonesia<sup>93</sup> and other Southeast Asian nations like Japan, South Korea, and Taiwan are permitted to take some amount of paid or unpaid leave when they are menstruating.<sup>94</sup> At Gajah Tunggal, menstrual leave is also included in the CBA.<sup>95</sup>

However, it is difficult for women workers to actually take menstrual leave because of the cumbersome requirements, like submitting a report to the company physician.<sup>96</sup> Further, when a woman takes menstrual leave, her production target will not be reduced, forcing her co-workers to work extra in order to meet the target.<sup>97</sup>

Whether Gajah Tunggal is systematically discriminating against women, or whether its disregard for women's workplace protections and apparent segregation of women workers in certain jobs dissuade women from working at the facility, it is clear that the company struggles with gender equity for workers.

## Conclusion and recommendations

Gajah Tunggal is arguably the largest and most politically prominent tire manufacturer in Indonesia, and problems there like unsanitary living conditions, unsafe working conditions, and gender discrimination merit additional attention as the United States seeks to build economic, diplomatic, and civil society relationships in the region.

Further, if the United States plans to formalize these relationships through the IPEF and other avenues, it will also be essential to determine if Gajah Tunggal is unique in its willingness to skirt local labor laws, or if there is a more widespread problem endemic to Indonesian manufacturing.

This is especially important given that the U.S. trade deficit in goods with Indonesia hit a record \$24.7 billion in 2022.<sup>98</sup>

One way to ensure workers' rights are respected is to build a Rapid Response Mechanism into the GSP program and other trade-related actions like the IPEF.<sup>99</sup> First put into place in the USMCA trade agreement, this mechanism allows stakeholders to flag facility-specific labor violations and seek redress. This not only leads to real consequences for firms that abuse workers, but also provides a reliable form of accountability and oversight that empowers workers to continue making positive changes in their workplaces.

<sup>87</sup> <https://www.americanprogress.org/article/occupational-segregation-in-america/>.

<sup>88</sup> Yunisvita, Y., Teguh, M., Chodijah, R., Imelda, I., & Kurniawan, A. (2021). Labor Market Structure in Indonesia: Segregation or Integration of Occupations? *Jurnal Ekonomi Pembangunan: Kajian Masalah Ekonomi Dan Pembangunan*, 22(1), 42–53. [https://www.researchgate.net/publication/359765870\\_Labor\\_Market\\_Structure\\_in\\_Indonesia\\_Segregation\\_or\\_Integration\\_of\\_Occupations](https://www.researchgate.net/publication/359765870_Labor_Market_Structure_in_Indonesia_Segregation_or_Integration_of_Occupations).

<sup>89</sup> Hegewisch, A., & Hartmann, H. (2014). Occupational segregation and the gender wage gap: A job half done. Institute for Women's policy research. <https://iwpr.org/wp-content/uploads/2020/08/C419.pdf>.

<sup>90</sup> Indonesia Manpower Act of 2003, Article 82, available from <https://www.ilo.org/dyn/travail/docs/760/Indonesian+Labour+Law+-+Act+13+of+2003.pdf>.

<sup>91</sup> CBA 2020-2022, Chapter V Article 17 to 18.

<sup>92</sup> Interview with S, December 2021. Interview with Y (in Plant B), December 2021. Interview with S and W, December 25, 2021.

<sup>93</sup> Indonesia Manpower Act of 2003, Article 81, available from <https://www.ilo.org/dyn/travail/docs/760/Indonesian+Labour+Law+-+Act+13+of+2003.pdf>.

<sup>94</sup> “Explained: What is menstrual leave and which countries allow it?”, FirstPost, <https://www.firstpost.com/world/explained-what-is-menstrual-leave-and-which-countries-allow-it-10666791.html>, accessed 9/18/2022.

<sup>95</sup> CBA 2020-2022, Article 18.

<sup>96</sup> Interview with S, December 25, 2021. Interview with R, November 19, 2021.

<sup>97</sup> Interview with S, December 25, 2021. Interview with R, November 19, 2021.

<sup>98</sup> <https://www.census.gov/foreign-trade/balance/c5600.html>, accessed 8/16/2023.

<sup>99</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/august/united-states-announces-successful-resolution-rapid-response-labor-mechanism-matter-auto-parts>, accessed 10/18/2022.

Reforming the Generalized System of Preferences (GSP) program to improve labor rights and expanding the import sensitivity list to include tire product, will also ensure any tariff reductions to firms that use the program go back into the salaries of affected workers.

Finally, the host of concerns over labor relations that researchers identified while living among workers in Indonesia find echoes in its U.S. operation, Giti Tire.<sup>100</sup>

Much like their Indonesian counterparts, workers in South Carolina also report unsafe working conditions, lack of adequate time off, gender and racial discrimination, occupational segregation, and other concerns under Enki Tan and Cherie Nursalim's management.<sup>101</sup>

If the U.S. truly hopes to have a worker-centered trade policy, it will be necessary to improve workers' rights both in Indonesia and at home. This includes holding corporations and their leaders accountable for paying fair wages, providing adequate time for rest, ensuring safe working conditions, and allowing workers to form free, independent labor unions.

<sup>100</sup> [https://www.usw.org/assets/pdfs/organizing/WorkersRightsBoardReport\\_2022.pdf](https://www.usw.org/assets/pdfs/organizing/WorkersRightsBoardReport_2022.pdf), accessed 10/18/2022.

<sup>101</sup> [https://m.usw.org/assets/pdfs/organizing/WorkersRightsBoardReport\\_2022.pdf](https://m.usw.org/assets/pdfs/organizing/WorkersRightsBoardReport_2022.pdf).

Mr. HOUSEMAN. And, you know, the pictures of the living conditions—and the rent, where these people pay over a third of their income,—to make tires that can be imported into the United States—it is abysmal. And our ability to influence that requires better labor and environmental standards in our programs.

Ms. SANCHEZ. Thank you.

Mr. Gresser, I am going to do this very quickly, because my time is running short. But you, obviously, know the GSP program very well, considering that you used to administer it under the USTR. And so, you know that the program in its current form doesn't adequately reflect how U.S. trade policy has evolved over time.

And I understand your hesitation when Ms. DelBene asked you about the 35-percent-content rule, that we not just willy-nilly say we need to up it to a specific number.

So, I am curious to know your thoughts on,—how do you think that our committee can work with stakeholders and the administration to see that the program is renewed but upgraded, as well, to perhaps a higher minimum content?

Mr. GRESSER. Well, the committee has—

Chairman SMITH of Nebraska. Briefly.

Mr. GRESSER. Do I have a little bit of time?

Chairman SMITH of Nebraska. Yeah, if you could be very brief.

Mr. GRESSER. Okay.

The committee has a very good degree of access to the U.S. International Trade Commission, which is renowned for the sophistication of its modeling and analytical capacity. And, just as a suggestion, it may be useful to talk to them and see whether a change in the value-add rule would be more likely to increase shifts to GSP countries or be more likely to deter people from using it and whether that type of shift would be different for large, middle-income countries as against least-developed countries and islands. And that might provide a bit of a structure to think about whether changing the rule of origin is going to be a useful thing and, if so, how it might be useful.

Ms. SANCHEZ. I appreciate the advice.

I yield back.

Chairman SMITH of Nebraska. Thank you.

I now recognize a previous chair of this subcommittee, Mr. Buchanan, who has done a great deal of work on GSP as well.

Mr. Buchanan, you are recognized for 5 minutes.

Mr. BUCHANAN. Thank you, Mr. Chairman.

And I thank all our witnesses. It has been a good discussion.

As a business guy for 30 years before I got here, I want to visit with you for a little bit. But before I do, in Florida alone, \$285 million of extra tariffs on businesses and a lot of jobs.

Mr. Spronk, I want to touch base on a couple of things you said. What is the economic impact of GSP to your industry, the ag industry, the pork industry, as you know it?

Mr. SPRONK. Thank you for the question.

As I said earlier, you know, if you look at the trade that we have currently going on right now, it is worth \$61 per animal, looking back, in 2022. This year, the first 7 months, it is actually up to \$64.

And so, any time that we can create new markets for agricultural products—and it is not just about pork; it is also about our corn and soybean farmers that we actually utilize as feed, that it is very important to them, that we are indirectly exporting to them.

Mr. BUCHANAN. Can you put it in more of a global—what is the big dollar amount in terms of impacting industry in a negative way and, ideally, jobs, you know, if we got this worked out?

Mr. SPRONK. As I said in my testimony, we actually had over \$12 billion that we export worldwide. And I think we started back in 1995 when we became an exporter. It is through the development of markets and, actually, from free-trade agreements, lowering tariffs and non-tariff trade barriers.

GSP is a great program whereby we can have that reciprocal trade. I mentioned Thailand; I mentioned the Philippines. Those are two countries that we don't currently have free-trade agreements with. Any time that we can actually export more product, it comes back to benefit on the farm directly, in that, right now, currently, about 36 percent of the value of our cutout is due to trade.

Mr. BUCHANAN. Yeah. Let me—

Mr. SPRONK. And so, any time we can have new markets, it is very beneficial.

Mr. BUCHANAN. Yeah. We are all really limited, but let me go back to your point on FTAs. And it is a little off the subject, but FTAs is something we talk about. We don't do anything, this Congress, or, really, the last 3 or 4 years.

And, you mentioned, 20 countries have FTA agreements. Some people think that it was something that was useful in the past but not useful today. But what is your thought about FTAs and additional markets? How would that impact your industry?

Mr. SPRONK. We can very clearly show you graphs where we started out with NAFTA, which is now USMCA. We talk about free-trade agreements with Columbia, Panama, South Korea. Every time we lower trade barriers, every time we have lessened those tariffs that are on our product, we increase our sales. It has been exponential from 1995, when we became a net exporter of products.

And so, give us a level playing field, give us a rules-based trading system, and we will export more product here. But we also need to diversify. We need some of those new countries—Thailand, the Philippines, Vietnam—that we don't have free-trade agreements with. These are excellent ways that we could actually create new markets.

Mr. BUCHANAN. Let me ask—Mr. Garza, let me ask you. You had hit your three points. Explain what you meant by “dependability.”

Running a business, you know, you want to know what it is going to cost you, one way or the other, to produce a product. And that is such a big number. You said, I think, \$1.7 billion, the tariffs, as it relates to your industry.

But explain to everybody what you mean by “dependability” and why this is so important.

Mr. GARZA. Yes, absolutely. Thank you for that question, Mr. Buchanan.

When I say “dependability,” I am putting on my hat as an operations and process engineer and supply-chain professional.

So, for us to take a very technical product, a lifesaving product or a product that is used to climb a mountain, there is a tremendous amount of requirements—requirements for the product, for the materials, for the factories.

So, for us to be able to—when I say “dependability,” what I mean is, we need to know that, if we move a product to a different country, a different source, we don’t have to second-guess that 3 years later, that we made that right move, if that makes sense.

Mr. BUCHANAN. Yeah.

Mr. GARZA. And for us to be moving product or chasing—chasing a better cost—

Mr. BUCHANAN. Well, let me ask you this.

Mr. GARZA. Sure.

Mr. BUCHANAN. You said—your third point was CNL. What does that mean, “CNL”?

Mr. GARZA. CNL? Of course I know what that means. It is here.

Mr. BUCHANAN. I understand a PNL—

Mr. GARZA. No, no, no.

Mr. BUCHANAN [continuing]. But I am talking about the CNL.

Mr. GARZA. CNL. Um—

Mr. BUCHANAN. Well, why don’t you give—

Mr. GARZA. Competitive need limits.

Mr. BUCHANAN. Okay. Okay. Yeah, give me that—I need that definition, just to better understand.

Mr. GARZA. Competitive need limits. So, basically, what that means, Mr. Buchanan, is—basically, it is a ceiling of how much can be imported from a certain beneficiary country, if you will.

Mr. BUCHANAN. Thank you.

Mr. GARZA. Once you hit that ceiling, it is basically, that GSP benefit is gone.

Mr. BUCHANAN. Thank you.

And I yield back.

Chairman SMITH of Nebraska. Thank you, Mr. Buchanan.

We will now proceed to two-to-one questions, pursuant to typical committee process.

Mr. LaHood, you are recognized for 5 minutes.

Mr. LAHOOD. Thank you, Mr. Chairman, for having this important subcommittee hearing today.

I want to thank our witnesses for your valuable testimony here today and the conversation. I welcome the opportunity to visit about renewing GSP, as has been mentioned, one of our oldest and largest trade agreements.

To put things into context, since the last GSP lapsed in December of 2020, U.S. companies have paid more than \$2.6 billion in new tariffs. These tariffs pose a sizable barrier for small and medium-size businesses that are looking, obviously, to diversify their supply chains and move production away from China.

At the same time, the current market-access provisions in GSP do not reflect the realities of the 21st-century economy, as has been alluded to by many of you. I believe we should take a hard look at updating GSP criteria, to include provisions to protect U.S. businesses from unfair trading practices like data restrictions, localization, and other digital trading barriers.

Mr. Cory, I appreciated your comments expressing frustration with the current administration's lack of a trade policy, particularly in the Indo-Pacific region and with the IPEF.

I would like to first discuss with you unfair digital trading barriers and how GSP can potentially rebalance the scales. As you mention in your written testimony, despite countries such as Indonesia and Brazil and Pakistan ramping up data controls and digital trade barriers, like mandatory data localization, enforced local data storage, these countries would enjoy tariff-free access to U.S. markets under the previous GSP criteria.

Because of these digital controls, many small and medium-size manufacturers are priced out of the same markets as their local competitors. With that, what are the consequences to these small and medium-size enterprises based in the U.S. if such trade imbalances continue unchecked?

Mr. CORY. Thank you for the question, Representative LaHood. Appreciate your strong advocacy on a strong U.S. digital trade agenda.

The short answer is that SMEs—I mean, digital technologies and the internet have changed the nature of trade, in essentially removing the impact that geography has. And so it provides enormous opportunity for individuals and SMEs to access customers and markets to not only survive but grow.

But they tend to rely—obviously, they are very cost-conscious, and they tend to rely on centralized IT services for them to operate around the world. And so, when they run into these digital barriers in Pakistan, Indonesia, and elsewhere, they essentially—they can't enter. They can't, sort of, take advantage of these technologies, even though they, sort of, physically can now with them. And so it essentially pushes them out.

And so this great benefit we see from digital technologies in trade is essentially removed. And, in the absence of the U.S. having either a trade agreement with these countries or an updated GSP, U.S. officials are hamstrung in how effectively they can push back.

And, over time, this job of rolling these barriers back only gets harder. And so, the sooner we have new trade agreements and updated GSP criteria to address digital barriers, the sooner SMEs and startups and individual traders can have certainty that they have guaranteed market access to these new growing, emerging digital economies.

Mr. LAHOOD. Thank you for that.

And just as a followup to that, if we do not put forward stronger digital trade provisions, talk about the competitive advantage we continue to cede to China in this space.

Mr. CORY. Yeah. Most definitely happening.

Indonesia is a great example, whereby Chinese cloud firms have gone into Indonesia and explicitly told the Indonesian officials that "we are completely fine with data localization and other restrictions" because it is what they are used to operating in in China. And they are doing that explicitly to disadvantage U.S. tech firms, because they recognize that U.S. firms obviously operate differently.

And so there is this global competition in and around these regulations. And, if the U.S. firms can't rely on the U.S. Government



to help them push back on these types of restrictions, U.S. firms are going to lose out. And that will continue to happen in more and more countries as they also consider China-like data localization restrictions.

Mr. LAHOOD. Thank you, sir.

I yield back.

Chairman SMITH of Nebraska. The gentleman yields.

Next, I will recognize Mr. Beyer for 5 minutes.

Mr. BEYER. Mr. Chairman, thank you very much for holding this hearing—and Ranking Member. I am grateful, because it has been so many years since we have talked about GSP, and it is wonderful to finally sit down and really examine it.

Mr. Houseman, your testimony was fascinating. I just came from a Joint Economic Committee hearing on retraining workers for the green-energy environment. And one of the things that came up yet again was TAA, Trade Adjustment Assistance. And you argue that we should do GSP with TAA again.

How do we—one of the things I know that Chairman Blumenauer worked with and struggled with in the last thing is, how do we make TAA effective, that it actually really does retrain workers, especially when they are 50 or 55 years old?

Mr. HOUSEMAN. Sure. I mean, look, I came out of the TAA program. I got a master's in public administration from the program. And I have helped certify over 12,000 workers into the program. And I am looking now—this committee has almost 60,000 workers with petitions waiting at the DOL. These are in their States. And I look at every one—every one of these committee members has people that are waiting to see the ability to get some job-training benefits.

It is “earn while you learn.” It is the ability to go to school, make a small stipend to keep your home, have some healthcare benefits with the HCTC credit so that you can maintain your kids' healthcare. These are all programs that have been strongly—they show effectiveness when you have the ability to go and complete a technical degree.

I have seen nurses, helicopter pilots—all of them come through the TAA program. It is not always a rifle shot, but when it does work, it works great.

And I really don't—I can't emphasize enough, you have almost 60,000 workers in the States of this committee just waiting to find out if they can even get benefits or not.

Mr. BEYER. Thank you.

You also made the suggestion that we take the environmental and labor provisions in USMCA and incorporate that to these GSP countries.

And we love to brag on USMCA. It was bipartisan, and we got it done during the Trump administration. You know, we worked really well together on it. And we continue to brag that these are the strongest labor and environmental provisions in the history of mankind. Why not include them in GSP?

Mr. HOUSEMAN. I honestly think it is just this question of, like, the policy will. I think this committee has a lot of strength.

I have been able to work now in here for a number of years, and this idea that you guys could address “sustained and recurring”

violations and adjust this “affecting trade” issue. You know, one killed trade unionist affects a lot more than just trade.

And the idea that—you look at the Guatemala case, where the AFL-CIO put forward a petition, and it took 9 years before an arbitration panel. That is a lot of time for a regular working person to not know if they have rights or not.

And so I think these sorts of changes and modernization of the GSP program are necessary.

Mr. BEYER. Mr. Houseman, you also argued for raising the content from 35 percent up to 60 percent, you know, making the China argument, the Russia argument.

But I thought that you had an interesting twist, too, which is that American content which is exported to one of these GSP countries should be included in that percentage.

Mr. HOUSEMAN. Yeah. I mean, this is the idea, right, is that we want to export more of our goods and see that—we see that diverse supply chain.

I think about USW workers that make the Gorilla Glass on an iPhone. They make that in Kentucky, and then they ship it across to the factories globally, right?

There is this opportunity. We want as much manufacturing here as possible, but we want to ensure that, if we are exporting, and when we are exporting, that we are exporting as much American content as possible too.

Mr. BEYER. I have one last question for you. You suggest that we add pneumatic tires to the sensitive import list. Why did you pick on that one product?

Mr. HOUSEMAN. So, in previous years, tires have been a major export through the GSP preference program. We represent about 20,000 tire workers. We have fought AD/CVD cases now against—we have won 12 cases against 6 countries.

And this idea that we would then have to now—Congress has the statutory ability to add an item. Like, steel has been part of the import-sensitive list now since, more or less, the beginning the GSP program.

To add pneumatic tires is going to defend an industry with just that 4-percent margin that employs over 100,000 manufacturing workers in the United States. And I think it just makes sense. Why would we pad the profit margin of a Chinese SOE another 4 percent?

Mr. BEYER. Great. Thank you very much.

Mr. Chairman, I yield back.

Chairman SMITH of Nebraska. Thank you.

I now recognize Mrs. Miller for 5 minutes.

Mrs. MILLER. Thank you, Chairman Smith, for holding this very important hearing today.

GSP is one of the most necessary trade programs the United States has developed, and it is essential for providing fairly priced imports for American producers and consumers as well as helping developing countries grow their economies to one day stand on their own.

This program plays an essential role in spreading America's influence around the globe. The Biden administration's lack of focus on trade has severely weakened our standing among once-key trad-

ing partners, therefore cracking the door open for the Chinese Communist Party to take our place and exert their dangerous ideology.

It is essential that we ensure that the GSP program is working properly in order to accomplish our goals and not undermine American producers of certain products, just like you said. We must be careful to not overburden the program with more government red tape.

Businesses just want certainty. And we must work to ensure as much of it as possible so that they can make safe investments and can trust their government not to pull the rug out from under them.

Unnecessary oversight and continued uncertainty will have the unfortunate consequence of raising prices for American consumers, and this is not the outcome that we seek.

Mr. Gresser, thank you for joining us today.

Having worked under both the Trump and Obama administrations, I am really interested in hearing your insights of the impact of GSP on the lives of workers in developing countries and the need for certainty when companies are making investment decisions.

Mr. GRESSER. Thank you. That is a great question.

The impact somewhat differs by country, but it is generally quite positive. A program like GSP encourages some investment and some production in smaller and poorer countries. To the extent it does that, it draws workers out of informal sector and rural work into jobs that are more likely to be wage-paying, more likely to be covered by social security, limited hours, and workplace health and safety laws.

I was quite interested, for example, to read the International Labor Organization's World Employment and Social Outlook report for the beginning of this year. They say that sectors with global-supply-chain integration with wealthy countries such as the United States tend to have a larger share of wage and salary employment, a lower incidence of informality, and a lower proportion of low-paid employment, and, hence, in principle, a higher quality of employment. So it is generally a positive thing for them.

It gives you, also, as an administration, the opportunity to work on really problematic cases. The case of Uzbek cotton forced labor is a good example. The case of reforming the Georgian national workplace health and safety law is a good example. So it does give you a lot of opportunities both to create in general a better employment environment and to solve really serious and difficult questions.

I would also say, finally, that the eligibility criteria are important, and it is important to enforce them, but they are not an unalloyed good.

One case that was really, you know, kind of unsettling to me was—not in the GSP, but in the AGOA context—an effort to reform the garment industry in Swaziland during the Obama administration did not succeed. The benefits for Swaziland were withdrawn, and the industry then collapsed and all the workers lost their jobs, so they are worse off than before.

So I think enforcement is important and the criteria are an integral part of the program. But we should look hard for the worst

cases to focus on, and not feel that the more cases we file, the better everyone will be.

So there are a lot of judgment calls involved, but I think, in general, this is a success story for workers.

Mrs. MILLER. Well, one of the great effects of GSP is the impact on the lives of the people that are employed in the developing countries, often women. I have seen firsthand the impact of these investments in countries that can have workers who are women that have fewer options.

I would like to submit for the record some data that I have seen on products like sweaters that are overwhelmingly produced in China that should be included in GSP. Women tend to make these products, and I am very supportive of pro-women GSP.

[The information follows:]

# Generalized System of Preferences (GSP) Modernization

September 2023

# Outdated GSP policy helps China, hurts American jobs and consumers

In addition to renewing GSP, Congress should consider adding specific apparel products where China is the #1 supplier. These products have been statutorily ineligible for GSP since 1974.

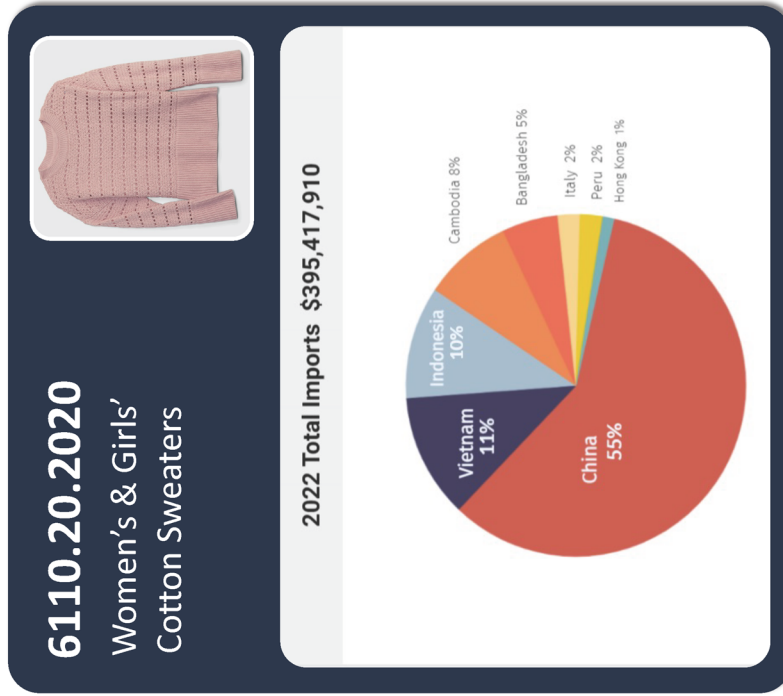
A modernized GSP would be a **powerful development tool, drive faster diversification away from China, and provide a stronger incentive for GSP countries to adhere to the eligibility criteria**. GSP countries are direct competitors with China.

In 2021, the U.S. imported more than \$31 billion in textiles/apparel and \$11 billion in footwear from China, making China the #1 source of clothing and shoes in American closets.

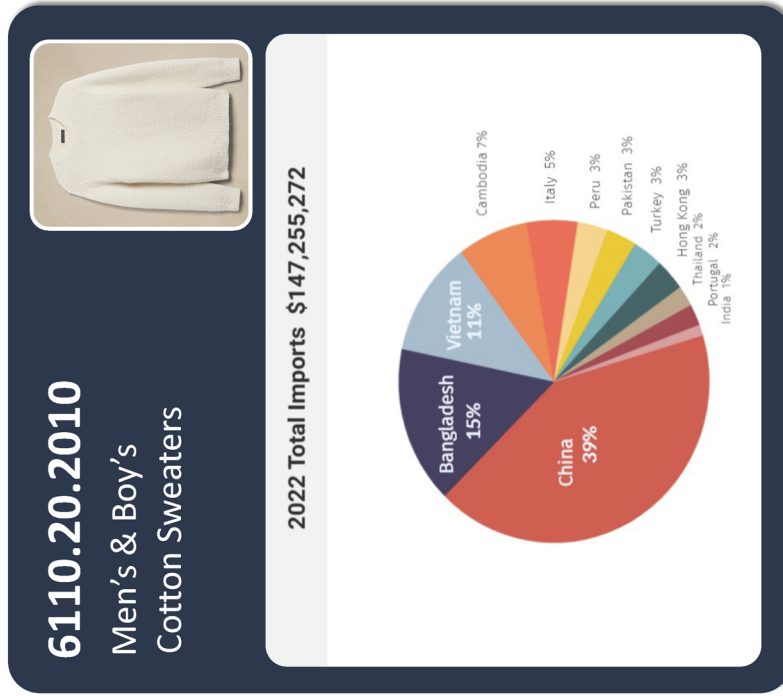
**China is not eligible for GSP, and ending the GSP prohibition on apparel and footwear would result in more diversified supply chains** with favored US trading allies for the apparel industry.

Modernizing GSP could be simple and straightforward:

- Remove the legal exclusion that bars specific apparel HTS from being eligible for GSP.
- **Include the yarn-forward rule of origin for apparel** to allow only yarns from US FTA, preference and TIFA partners (not China).
- Include guardrails to protect (thus exclude from GSP) products in existing supply chains in Central America, the Caribbean and Africa.



Country	Imports 2022	Share of 6110.11.0015
China	\$ 215,828,900	55%
Vietnam	\$ 43,354,412	11%
Bangladesh	\$ 20,373,196	10%
Italy	\$ 8,720,769	8%
Hong Kong	\$ 5,603,957	5%
India	\$ 4,849,072	2%
Turkey	\$ 3,417,877	2%
Taiwan	\$ 2,591,743	1%
Portugal	\$ 2,421,857	1%
Japan	\$ 395,418	1%
Bulgaria	\$ 321,986	1%
Romania	\$ 272,234	1%
France	\$ 246,478	1%
Macau	\$ 221,066	0%
Lithuania	\$ 162,783	0%
United Kingdom	\$ 125,005	0%
Spain	\$ 115,222	0%
Switzerland	\$ 80,472	0%
Germany	\$ 74,209	0%
Poland	\$ 69,713	0%
Belgium	\$ 42,132	0%
Ireland	\$ 38,614	0%
Greece	\$ 23,589	0%
Colombia	\$ 14,503	0%
Czechia	\$ 11,774	0%
Slovenia	\$ 11,595	0%
Netherlands	\$ 11,194	0%
Hungary	\$ 10,604	0%
Denmark	\$ 6,778	0%
Sweden	\$ 4,334	0%
Austria	\$ 4,147	0%
Brunei	\$ 3,555	0%
New Zealand	\$ 3,114	0%
Croatia	\$ 2,498	0%
Finland	\$ 2,296	0%
Cameroon	\$ 2,038	0%
United Arab Em	\$ 1,556	0%
Guadeloupe	\$ 1,384	0%
Indonesia	\$ 41,154,121	11%
Cambodia	\$ 32,255,609	10%
Pakistan	\$ 1,648,953	8%
Thailand	\$ 368,180	5%
Ecuador	\$ 105,961	2%
Burma	\$ 104,541	2%
Mauritius	\$ 71,543	1%
Moldova	\$ 63,882	1%
Albania	\$ 37,465	1%
Tunisia	\$ 27,133	1%
Egypt	\$ 23,210	1%
Bolivia	\$ 22,907	1%
Nepal	\$ 16,364	0%
Philippines	\$ 12,931	0%
Ukraine	\$ 12,849	0%
Ethiopia	\$ 12,771	0%
Sri Lanka	\$ 5,337	0%
Argentina	\$ 3,844	0%
Serbia	\$ 2,938	0%
Mongolia	\$ 2,778	0%
Brazil	\$ 2,504	0%
Suriname	\$ 2,153	0%
North Macedonia	\$ 2,009	0%
<b>GSP Total</b>	<b>\$ 75,961,043</b>	
<b>CAFTA</b>		
Honduras	\$ 54,216	0%
Guatemala	\$ 20,862	0%
Nicaragua	\$ 7,090	0%
El Salvador	\$ 2,027	0%
<b>CAFTA Total</b>	<b>\$ 630,145</b>	
<b>AGOA</b>		
Madagascar	\$ 119,358	0%
Nigeria	\$ 6,000	0%
<b>AGOA Total</b>	<b>\$ 290,417</b>	

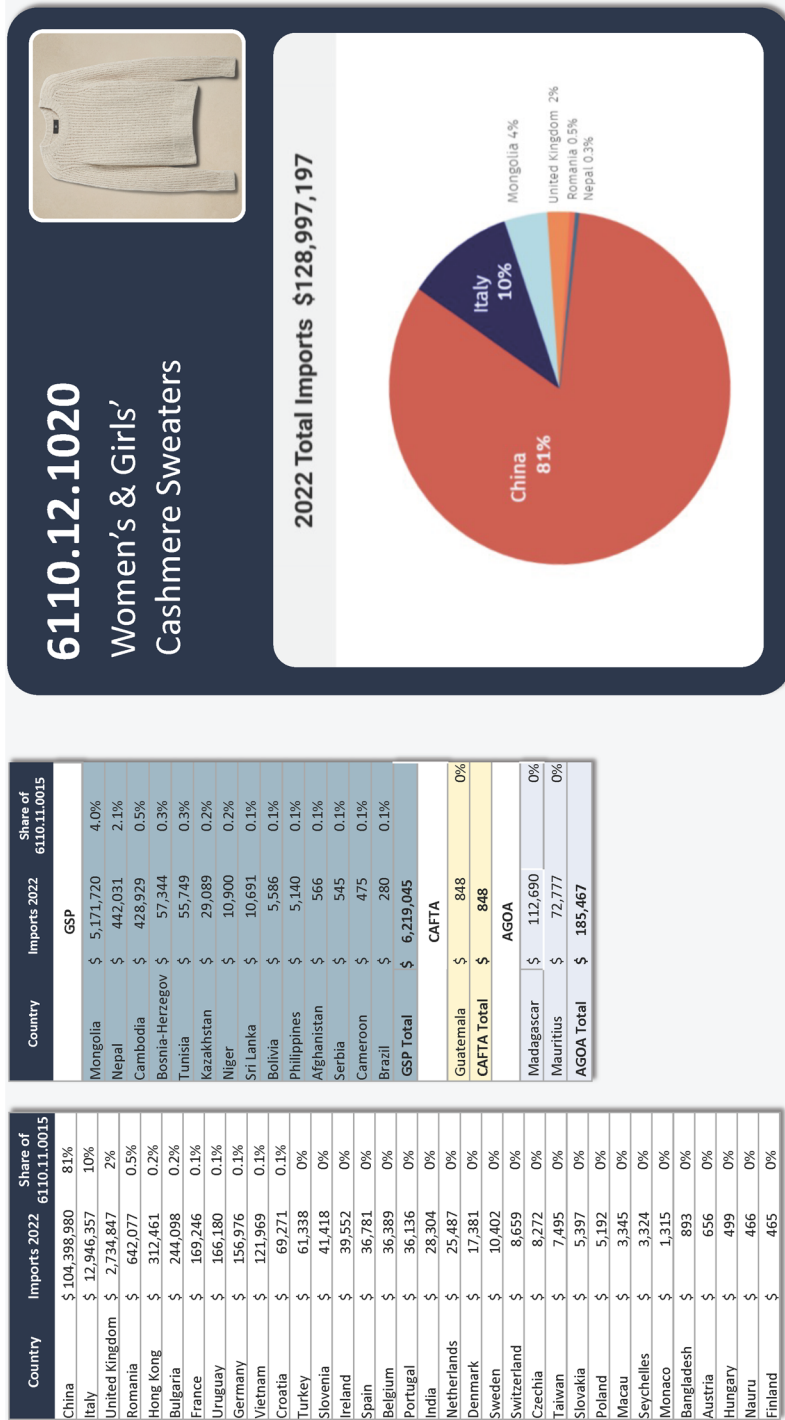


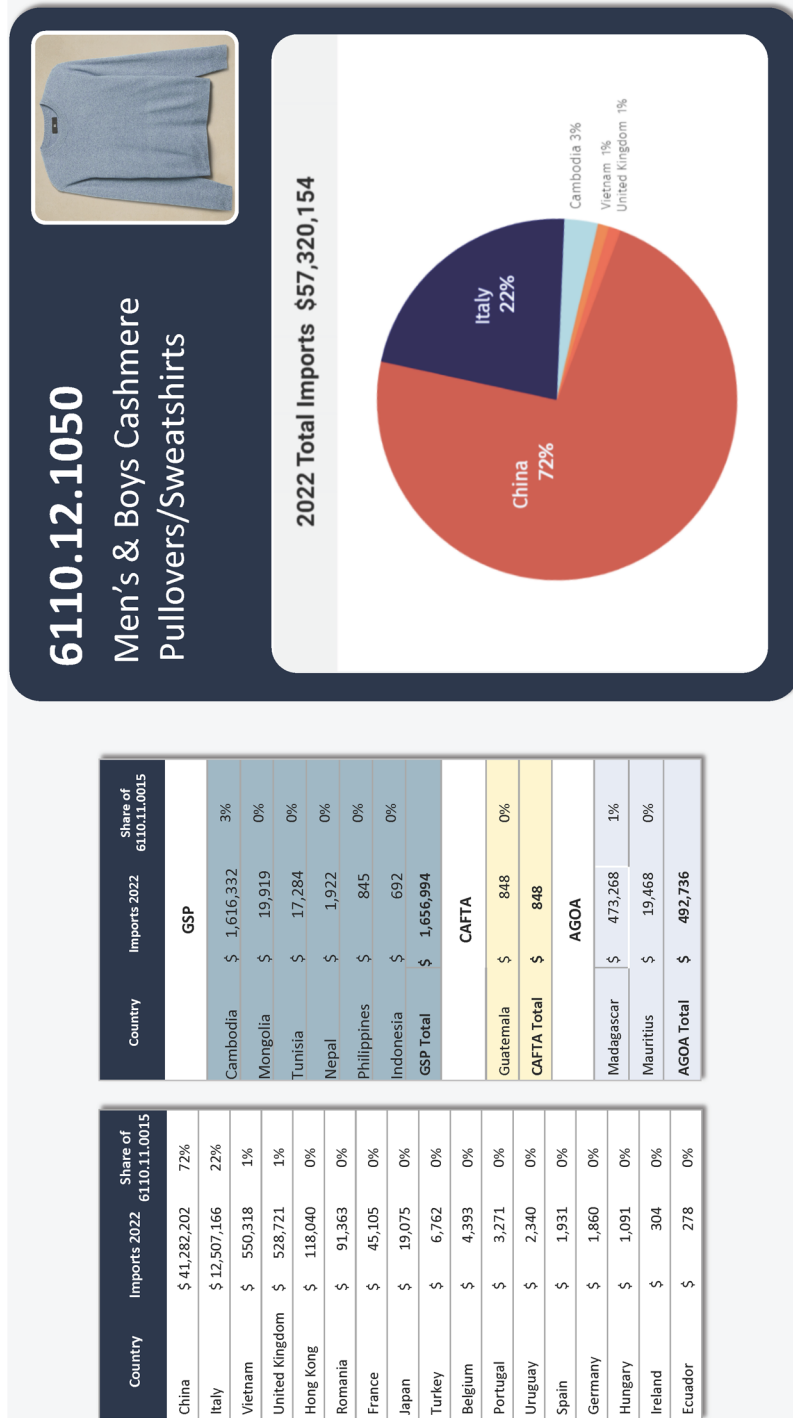
Country	Imports 2022	Share of 6110.11.0015
China	\$ 58,044,061	39%
Bangladesh	\$ 21,439,486	15%
Vietnam	\$ 16,127,580	11%
Italy	\$ 7,355,495	5%
Turkey	\$ 4,344,735	3%
Hong Kong	\$ 4,062,603	3%
Portugal	\$ 2,248,717	2%
India	\$ 1,896,000	1%
Bulgaria	\$ 996,417	1%
Japan	\$ 538,549	0%
Macau	\$ 432,376	0%
Lithuania	\$ 177,834	0%
United Kingdom	\$ 171,769	0%
Taiwan	\$ 167,666	0%
Romania	\$ 160,501	0%
France	\$ 96,709	0%
Poland	\$ 55,891	0%
Germany	\$ 41,052	0%
Spain	\$ 40,538	0%
Greece	\$ 36,037	0%
Switzerland	\$ 27,864	0%
Colombia	\$ 18,326	0%
Hungary	\$ 13,539	0%
Netherlands	\$ 13,481	0%
Belgium	\$ 12,987	0%
Croatia	\$ 12,617	0%
Uruguay	\$ 6,798	0%
Brunei	\$ 4,613	0%
Denmark	\$ 3,970	0%
Czechia	\$ 3,621	0%
Australia	\$ 3,178	0%
Austria	\$ 2,914	0%
Ireland	\$ 2,798	0%
Finland	\$ 2,376	0%
Latvia	\$ 1,472	0%
Malaysia	\$ 1,189	0%
Singapore	\$ 1,146	0%
Sweden	\$ 1,110	0%

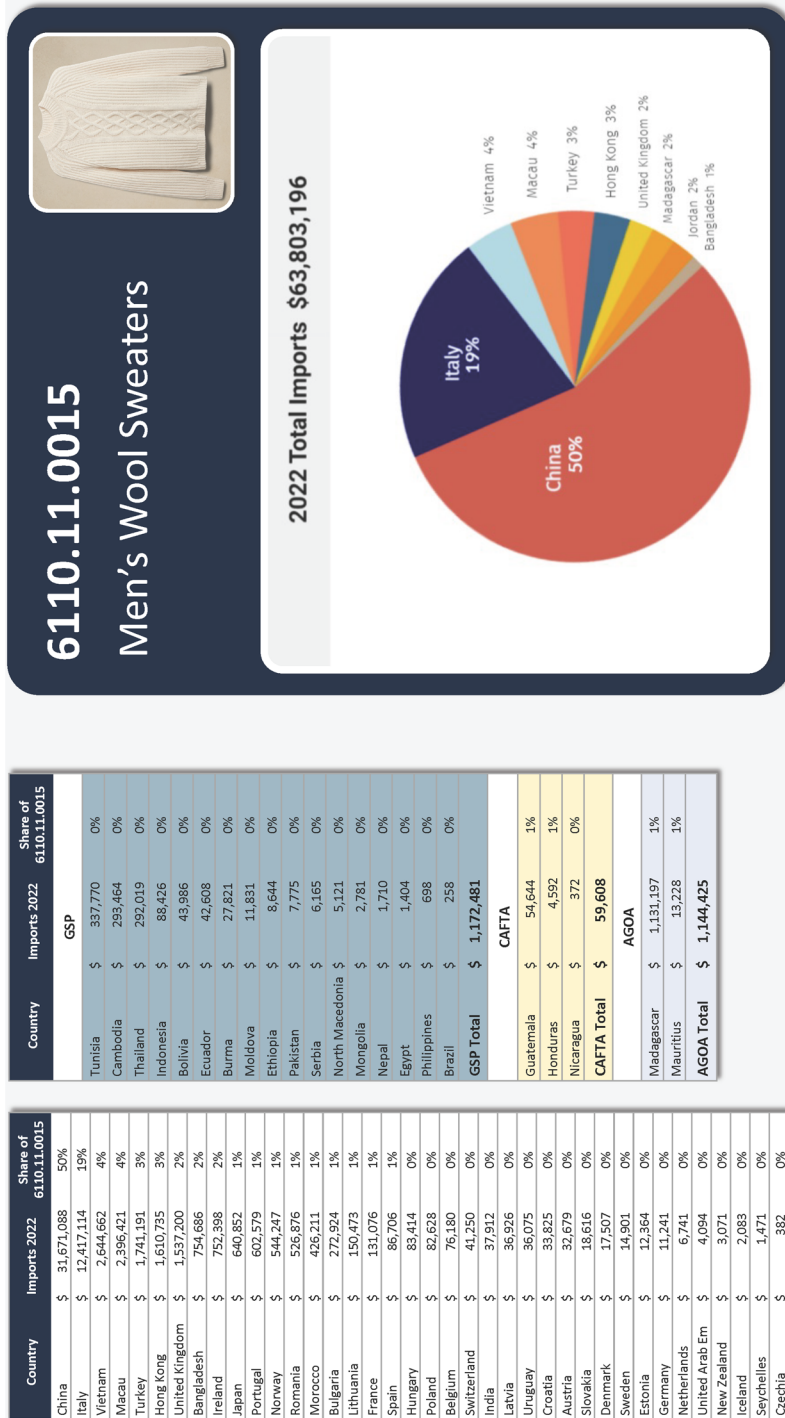
  

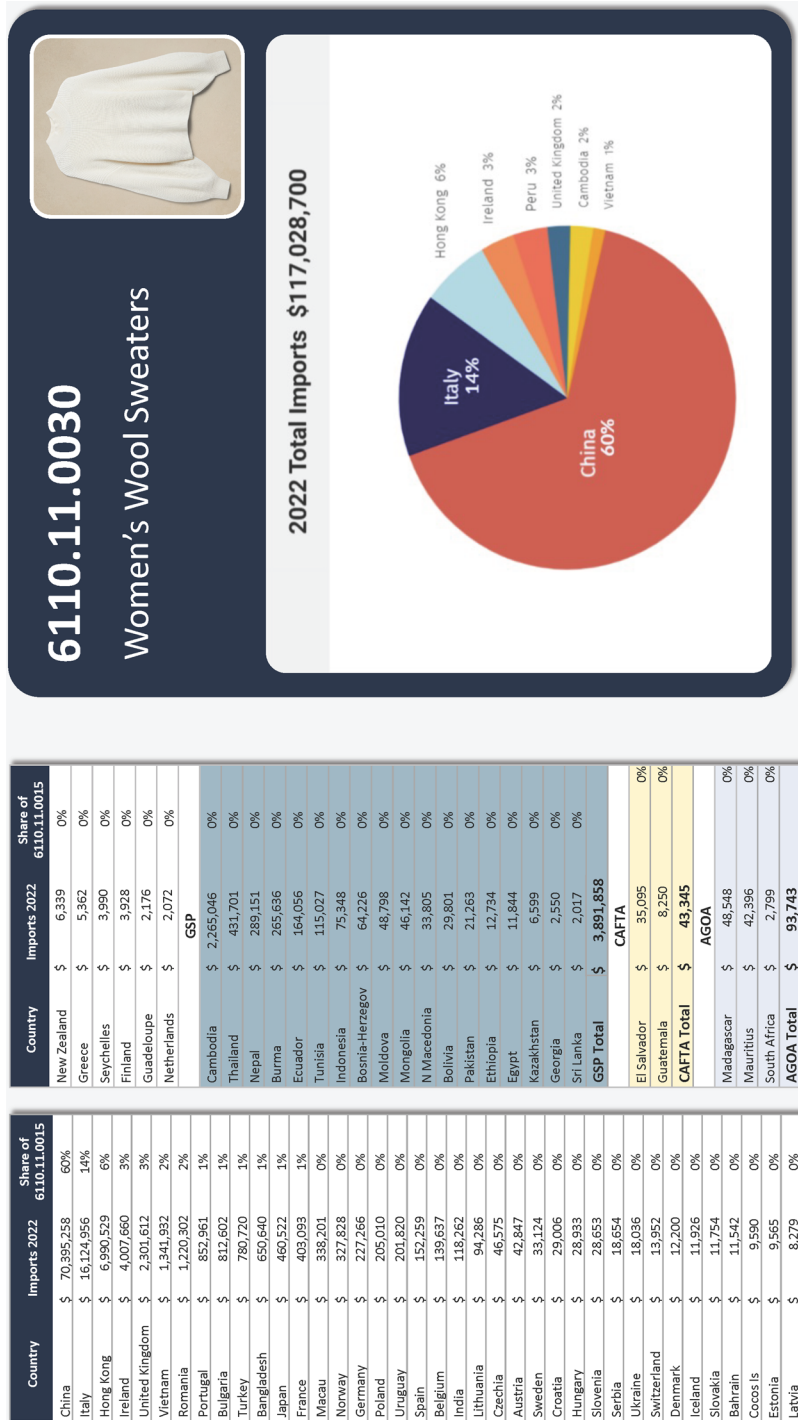
Country	Imports 2022	Share of 6110.11.0015
Barbados	\$ 509	0%
United Arab Em	\$ 360	0%
Micronesia	\$ 332	0%
<b>GSP</b>		
Cambodia	\$ 9,912,824	7%
Pakistan	\$ 4,538,287	3%
Thailand	\$ 2,832,261	2%
Indonesia	\$ 1,380,217	1%
Burma	\$ 292,810	0%
Sri Lanka	\$ 268,912	0%
Tunisia	\$ 226,783	0%
Egypt	\$ 35,483	0%
Albania	\$ 33,042	0%
Argentina	\$ 28,700	0%
Nepal	\$ 22,713	0%
Brazil	\$ 13,607	0%
Moldova	\$ 9,763	0%
Philippines	\$ 6,952	0%
Serbia	\$ 1,727	0%
Ecuador	\$ 1,710	0%
Samoa	\$ 1,678	0%
Ukraine	\$ 1,072	0%
Ethiopia	\$ 496	0%
Mongolia	\$ 293	0%
<b>GSP Total</b>	<b>\$ 19,609,330</b>	
<b>CAFTA</b>		
Guatemala	\$ 615,185	0%
Honduras	\$ 7,900	0%
El Salvador	\$ 6,021	0%
Dominican Rep	\$ 1,039	0%
<b>CAFTA Total</b>	<b>\$ 630,145</b>	
<b>AGOA</b>		
Madagascar	\$ 231,499	0%
Mauritius	\$ 58,918	0%
<b>AGOA Total</b>	<b>\$ 290,417</b>	











Share of 610.11.0015		Share of 610.11.0015	
Country	Imports 2022	Country	Imports 2022
China	\$231,031,669	Cambodia	\$18,123,480
Bangladesh	\$25,709,526	Burma	\$4,952,715
Vietnam	\$15,985,307	Indonesia	\$1,958,092
Turkey	\$6,554,644	Thailand	\$468,127
Italy	\$4,229,784	Egypt	\$243,758
Taiwan	\$2,390,862	Ecuador	\$97,244
India	\$1,079,583	Philippines	\$84,988
Hong Kong	\$87,956	Pakistan	\$81,192
United Kingdom	\$758,723	Mongolia	\$50,863
Japan	\$662,733	Ukraine	\$35,043
Portugal	\$523,411	Tunisia	\$18,493
Romania	\$377,035	Moldova	\$16,278
France	\$315,360	North Macedonia	\$12,610
Colombia	\$302,663	Bolivia	\$8,812
Bulgaria	\$91,962	Sri Lanka	\$7,270
Lithuania	\$82,352	Albania	\$6,284
Spain	\$80,135	Georgia	\$1,905
Uruguay	\$72,545	Serbia	\$1,890
Croatia	\$66,780	Nepal	\$1,815
Slovenia	\$43,199	Argentina	\$431
Singapore	\$40,487	Bosnia-Herzegov	\$262
Hungary	\$39,988	GSP Total	\$ 26,171,752
Belgium	\$31,359	CAFTA	
Poland	\$25,908	Guatemala	\$156,196
Germany	\$22,265	El Salvador	\$76,359
Austria	\$10,600	Honduras	\$14,198
Greece	\$5,462	Dominican Rep	\$7,029
Latvia	\$5,217	Nicaragua	\$3,267
Slovakia	\$3,339	CAFTA Total	\$ 257,049
Denmark	\$2,951	AGOA	
Australia	\$2,270	Madagascar	\$247,647
Czechia	\$2,088	Mauritius	\$110,999
Netherlands	\$1,289	South Africa	\$288
Switzerland	\$866	AGOA Total	\$ 358,934

## CDP Sweater Definition

Customs defines a sweater as having “9 stitches or less per 2 centimeters in measurement”

Sweater classifications are defined using the 8-digit HTS code. Then assigned an additional 2-digit subcategory code.

6110.20.20

xx

— Subcategory

Sweaters, Pullovers, Sweatshirts, Vests & Similar Articles

HTS-10	Product Description	CHINA	CAFTA	AGOA
6110.20.2005	BOYS' OR GIRLS' GARMENTS IMPORTED AS PARTS OF PLAYSUITS, KNITTED OR CROCHETED OF COTTON, CONTAINING <36% BY WT OF FLAX FIBERS	\$ 170,804	\$ 1,440	0
6110.20.2010	MEN'S OTHER SWEATERS, OF COTTON, KNITTED OR CROCHETED, CONTAINING LESS THAN 36% BY WEIGHT OF FLAX FIBERS	\$ 58,044,061	\$ 630,145	\$ 290,417
6110.20.2015	BOYS' OTHER SWEATERS, OF COTTON, KNITTED OR CROCHETED, CONTAINING LESS THAN 36% BY WEIGHT OF FLAX FIBERS	\$ 9,297,725	\$ 50,837	\$ 4,205
6110.20.2020	WOMEN'S OTHER SWEATERS, OF COTTON, KNITTED OR CROCHETED, CONTAINING LESS THAN 36% BY WEIGHT OF FLAX FIBERS	\$ 215,828,900	\$ 84,195	\$ 196,901
6110.20.2025	GIRLS' OTHER SWEATERS, OF COTTON, KNITTED OR CROCHETED, CONTAINING LESS THAN 36% BY WEIGHT OF FLAX FIBERS	\$ 10,267,565	\$ 534,798	\$ 1,599
6110.20.2030	MEN'S OR BOYS' OTHER VESTS, OTHER THAN SWEATER VESTS, OF COTTON, KNITTED OR CROCHETED, CONTAINING LESS THAN 36% BY WEIGHT OF FLAX FIBERS	\$ 3,196,790	\$ 361,873	0
6110.20.2035	WOMEN'S OR GIRLS' OTHER VESTS, OTHER THAN SWEATER VESTS, OF COTTON, KNITTED OR CROCHETED, CONTAINING LESS THAN 36% BY WEIGHT OF FLAX FIBERS	\$ 4,618,668	\$ 339,860	\$ 33,631
6110.20.2041	MEN'S SWEATSHIRTS, KNITTED OR CROCHETED OF COTTON: CONTAINING < 36% BY WT OF FLAX FIBERS	\$ 191,223,134	\$ 245,690,199	\$ 11,329,825
6110.20.2044	BOYS' SWEATSHIRTS, KNITTED OR CROCHETED OF COTTON: CONTAINING < 36% BY WT OF FLAX FIBERS	\$ 19,234,850	\$ 16,881,031	\$ 46,342
6110.20.2046	WOMEN'S SWEATSHIRTS, KNITTED OR CROCHETED OF COTTON: CONTAINING < 36% BY WT OF FLAX FIBERS	\$ 115,370,498	\$ 77,004,775	\$ 2,226,681
6110.20.2049	GIRLS' SWEATSHIRTS, KNITTED OR CROCHETED OF COTTON: CONTAINING < 36% BY WT OF FLAX FIBERS	\$ 12,865,953	\$ 27,308,654	\$ 1,240
6110.20.2067	MEN'S OR BOYS' PULLOVERS AND SIMILAR ARTICLES OF COTTON KNIT TO SHAPE, CONTAINING LESS THAN 36 PERCENT BY WEIGHT OF FLAX FIBERS	\$ 10,923,523	\$ 330,071	\$ 3,000
6110.20.2069	MEN'S OR BOYS' PULLOVERS & SIM. ART. OF COTTON CONTAINING < 36 % BY WEIGHT OF FLAX FIBERS KNITTED OR CROCHETED, BUT NOT KNIT TO SHAPE	\$ 253,238,801	\$ 876,109,491	\$ 17,953,952
6110.20.2077	WOMEN'S OR GIRLS' PULLOVERS & SIMILAR ARTICLES OF COTTON KNIT TO SHAPE, CONTAINING LESS THAN 36 PERCENT BY WEIGHT OF FLAX FIBERS	\$ 28,454,274	\$ 40,069	0
6110.20.2079	WOMEN'S OR GIRLS' PULLOVERS & SIM. ART. OF COTTON CONTAINING LESS THAN 36% BY WEIGHT OF FLAX FIBERS KNITTED/CROCHETED, BUT NOT KNIT TO SHAPE	\$ 407,830,080	\$ 556,991,805	\$ 14,792,060
		\$ 1,340,563,626	\$ 1,802,359,243	\$ 46,879,853

\* NOT a Sweater\*

Mrs. MILLER. Can you describe how more extensive reporting requirements could make the GSP program less effective?

Mr. GRESSER. In my testimony, that was a reference to a—you know, there have been several proposals to add new criteria and several proposals to add, for the USTR, reporting rules and new—you know, new reporting language.

It is, I think I mentioned, important that administrations provide the public record of their decisions and rationales, but the number of people who work on GSP full-time is quite small. Typically, it is two-and-a-half or two-and-a-third full-time employees. And the more time they are spending on product eligibility petitions and enforcement and on explaining the benefits to countries, the more the program is going to succeed. The more time they are spending on writing reports, it takes a bit of their time away from the day-to-day work that they need to be doing.

Mrs. MILLER. Thank you.

I yield back.

Chairman SMITH of Nebraska. Thank you.

I now recognize Mr. Murphy for 5 minutes.

Mr. MURPHY. Thank you, Mr. Chairman. I am actually going to be brief, just in the interest of time.

As the chairman noted earlier, maybe, that we went to Asia, and I just want to make a statement, Mr. Spronk. I am in the number-two pork-producing district in the country. It is a huge deal with Thailand, and I spoke kind of vigorously with them. I am hoping that some of our efforts are going to open up their markets. This one-sixth of being able to remove should have been, you know, five-tenths, but—anyway, thank you very much. It is a really important issue for my district and overall.

With this, I am going to yield the rest of my time to the great man from the State of Florida, Mr. Steube.

Mr. STEUBE. I thank the gentleman for yielding.

And I will just carry off of that, Mr. Spronk, and go to you, for your service on the National Pork Producers Council has afforded you insight into the unfair ag trade practices that countries seeking to utilize the generous provisions of GSP have levied against us.

Please share how the GSP has not been successful at preemptively holding countries like India and Thailand—Mr. Murphy just mentioned that—accountable for effectively preventing the import of U.S. pork to their countries.

Mr. SPRONK. Thailand is a prime example of that. We actually did petition. It actually was in the—that we found them to not be allowing our product to come in. Because of the expiration, we no longer have a leverage over Thailand to be able to allow our products in. And so I think we have lost a very important tool that—we already had proven that Thailand was being restrictive to our products coming back in. So that is a prime example.

We have used India in the past here. We actually leveraged to attain market access for U.S. products. The U.S. Government is able to successfully negotiate. We are working on bringing product into India here, coming up.

And so GSP has proven itself both in India and Thailand to be very effective, using the leverage to be able to allow our product to come back in.

And, as I stated earlier here, agriculture is still a product. Lower tariffs, lower non-tariff trade barriers—that is all we ask in trade—and we will grow our trade export volume.

Mr. STEUBE. So it would require us to redo GSP to get those type of things in India and Thailand, is basically what you are saying?

Mr. SPRONK. Vehemently so.

Mr. STEUBE. Okay.

And how can the GSP be augmented to maintain American dominance in ag exports to beneficiary countries?

Mr. SPRONK. Very simple: stronger enforcement mechanisms and, actually, more quickly responding so that it doesn't take so long to be able to do that enforcement. So those two things are very important to us.

Mr. STEUBE. And can you elaborate with respect to other competitors in the global pork market?

Mr. SPRONK. You don't have to look very far. When we go in—I just was in Asia last week. We actually saw European product in freezers.

The EU does use GSP. And so, any time that we are at an unfair advantage to our competitors—the EU, the 27 countries rolled up. They are twice as large as us. They are our main competitor. They are the number-one exporter in the world, with all those countries rolled up. And so they have advantages that we don't, so it puts us on an uneven footing here.

And so, by allowing GSP to be renegotiated here, it would put us on an equal playing field, which is all that we ask.

Mr. STEUBE. Is there anything specific that you have wanted to respond to so far that you haven't had the opportunity to, that I haven't asked?

Mr. SPRONK. I think you have covered it very well. Thank you.

Mr. STEUBE. Okay.

Mr. Cory, I join many of my colleagues in raising concerns with China's malicious engagement in intellectual property theft and privacy invasion.

While GSP serves to promote economic development and raise standards in developing parts of the world, some beneficiary countries have adopted many of the same digital trade barriers used by China with respect to data privacy and intellectual property rights.

How can the U.S. leverage GSP enforcement mechanisms to protect American companies' intellectual property and data, while also increasing market access in beneficiary countries?

Mr. CORY. A great question, Representative Steube.

The combination of GSP criteria with IP and services and digital trade, I think, together, provide U.S. officials with the key, explicit points they can use when they go in there, as they are trying to address these barriers, whether they be digital- or agricultural-related.

But they need those tools. In the absence of GSP, U.S. officials have far limited options in terms of engagement and pressure to get them to reconsider these approaches. And, without there being clear costs to these GSP countries' enacting these types of restrictions, then the more likely they are to succumb to copying and pasting the type of policies that we see in China. And, overall, it



undermines, sort of, broader U.S. engagement on privacy, cybersecurity, secure critical infrastructure, and such.

So, again, GSP, an updated GSP, is a critical tool in the toolkit the U.S. can use to try and fight back against Chinese-style economic, tech, and other, sort of, human-rights-related concerns.

Mr. STEUBE. Thank you.

My time has expired. Actually, Mr. Murphy's time has expired. I yield back to Mr. Murphy, who is not here, whose time has expired.

Chairman SMITH of Nebraska. Thank you.

Mr. Blumenauer, you are recognized for 5 minutes.

Mr. BLUMENAUER. Thank you, Mr. Chairman. I am sorry for the detour to the Budget Committee.

Mr. Gresser, your latest email hit perfectly timed for the hearing. And I really appreciate your long-term interest and thoughtful approach and appreciate your being on the witness stand today.

I wondered if you could make an observation about the GSP proposal that we had advanced in the previous Congress and reintroduced and how it aligned with the USMCA provisions that were adopted overwhelmingly by this committee and this Congress.

Mr. GRESSER. Thank you very much for the kind comment. I am quite grateful.

In terms—I mean, I see GSP as a small program. It is about 11 percent of imports from the countries. You know, USMCA, in principle, is 100 percent of imports from our two largest trading partners—or two or three. So I think it is a somewhat different context.

And the GSP countries are very diverse, ranging from small island countries in least-developed states with——

Mr. BLUMENAUER. Let me reframe——

Mr. GRESSER. Okay.

Mr. BLUMENAUER [continuing]. The question. I appreciate that there are differences——

Mr. GRESSER. Okay. Yeah.

Mr. BLUMENAUER [continuing]. In terms of the GSP target countries and North America.

I am asking, how congruent are the provisions we had with USMCA with the GSP legislation that we advanced?

Mr. GRESSER. Okay. To my understanding, I think they align fairly closely. You know, I do think that there is not—I don't really see it as essential to align them. They are two quite different programs——

Mr. BLUMENAUER. I wasn't asking——

Mr. GRESSER. Okay. Yes.

Mr. BLUMENAUER [continuing]. The merits of it.

Mr. GRESSER. Okay. Yes. I take——

Mr. BLUMENAUER. I was asking whether or not what we put in the GSP legislation aligned rather directly with what we approved overwhelmingly with the USMCA.

Mr. GRESSER. I think they do align fairly closely.

Mr. BLUMENAUER. Thank you.

And, Mr. Chairman, that is a point that I think is important. We advanced a GSP proposal that is completely congruent with what this committee had passed before.

There are issues in terms of environment and labor rights and transparency and whatnot. But we did that, and offered it up, as a way to break the gridlock with GSP. And I am sad that something that has been approved by virtually everybody on this—I think everybody on this committee—was not good enough and, instead, people wanted to hold GSP hostage. We don't.

It was an effort to try and move past the impasse and find an area of common agreement so we wouldn't be caught up with this and that we might be able to go forward with other issues. I appreciate the references, for example, to digital trade. I think, Mr. Chairman, there is interest in diving in and doing more, and I am open to that.

But I just want to make clear that we have a viable GSP proposal that is consistent with what everybody on this committee already approved. And, if it is important, it would seem to me that we should move forward with it.

Mr. Houseman, I wondered if you could—you referenced in your testimony loopholes in terms of GSP's labor and environmental criteria, and particularly "sustained and recurring" and "affecting trade." Would you elaborate on the impact of that approach as opposed to what we did, for example, with USMCA?

Mr. HOUSEMAN. Yes, Ranking Member Blumenauer.

I look at the sophistication of some of the countries that we are going to provide a benefit for, like Thailand, Indonesia, Brazil, Cambodia, the Philippines. And, you know, with the Philippines, we have mentioned here; Indonesia, the omnibus law that has undermined the labor rights in that country—the ability for us to highlight that this is a sustained and recurring event.

And the idea that we are going to have to also prove that this affects trade, when we know that \$15 billion—just in nickel, \$15 billion of investment, primarily from the People's Republic of China, has gone into that country. And I have met with some of the Indonesian miners, and the horror stories that they tell of how they are treated. And this idea of, in an economy where we really need to advance this momentum on EVs, et cetera—but the idea that that isn't going to be affecting trade. It is really bad.

Mr. BLUMENAUER. My time has expired. Thank you.

Thank you for your patience.

Chairman SMITH of Nebraska. Thank you.

I now recognize Mrs. Fischbach for 5 minutes.

Mrs. FISCHBACH. Thank you, Mr. Chair.

And I appreciate that you guys are hanging in there, because it has been kind of a crazy day and lots of people running all variety of places.

But, Mr. Spronk, I want to especially welcome you. You are one of my constituents. And I appreciate you coming all the way out here to talk to us about very important issues, I mean, serious issues.

And I just wanted to—Mr. Steube, you know, kind of started down the road that I wanted to ask about, and so I have kind of, I guess, maybe you could call them followup questions.

The Asia-Pacific region is historically a large beneficiary of the GSP status. And, on top of that, and specific to you and pork, that

region also happens to be a big area of opportunity for the U.S. pork exports.

Can you speak to the opportunity cost for U.S. pork every year that GSP remains lapsed?

Mr. SPRONK. It is not very difficult to identify the opportunity for us in agriculture, and specifically pork, in the ability to export to Asian countries. Large populations; cultural propensity to eat pork; lack of self-sufficiency domestically; and, actually, as you know about, African swine fever in, you know, several of the Asian countries. And so there is a demand within those countries here that is very important to us.

And I think one of things to recognize is that, while we are very competitive, typically when we go into a country—Colombia is an example. When we got our free-trade agreement, low teens on the per-capita consumption. We actually worked in-country with their local producers, and today it is double that.

And so it is not only that we come in and overtake the domestic production; actually, we create the opportunities for increased demand and an increase in safe, affordable protein to come into those countries.

So, every time that we have a lack of execution of the GSP, into Thailand, into the Philippines, into other GSP countries, it does limit our ability to be able to export into those countries and then increase our exports.

Mrs. FISCHBACH. And you mentioned several other countries in your testimony where GSP could be leveraged to address unjustified tariff barriers. Ecuador, Jamaica, and South Africa were ones that you listed in your written testimony.

And I just want to provide you an opportunity to maybe expand on those thoughts and talk a little bit about that, why GSP might provide a tool to address them.

Mr. SPRONK. Well, very clearly, as I talked about earlier, we are looking to diversification. We want to broaden our palate with the countries that we can export our product to. We want to be able to differentiate our product from our competitors.

Any time that we can grow a new market, any time we can open up a new market, while it might start at lower levels of exports for our country, we know that, once we get access, lower tariffs, lower non-tariff trade barriers, our products continue to be wanted by those countries and we continue to grow exports in those countries. Our track record in our top countries that we export here just continue to add value and volume in there.

So, while we hesitate here on GSP and opening those countries to us, that is not allowing us that opportunity to lay that foundation, to lay it brick by brick, so that we can actually export more to those countries—specifically, as you talk about, the Asian countries.

Mrs. FISCHBACH. Well, thank you very much.

And I just—you know, one-third of what we produce in western Minnesota is exported, and so it is so important that we have the opportunity for that export market access. And so I appreciate you being here. And it is something that we are working on and continuing, because I understand the importance of it. And I appre-

ciate you being here to talk to us and all of the efforts of so many of the groups, you know, the ag groups, in our area.

So, with that, Mr. Chair, I yield back.

Chairman SMITH of Nebraska. Thank you, Mrs. Fischbach.

I now recognize Mr. Kildee for 5 minutes.

Mr. KILDEE. Well, first of all, thank you, Mr. Chairman, for holding this important hearing and for the work that you and I have been able to do together over the past few years on issues regarding trade. I look forward to continuing that.

Before I go on, I often mention that I am from Flint, Michigan, but I do want to acknowledge the former mayor and a longtime friend of mine, Dayne Walling, who was the mayor of the city of Flint.

Welcome, Dayne. Good to see you.

Have I mentioned that I am from Flint?

Chairman SMITH of Nebraska. No. No. I am shocked.

Mr. KILDEE. Yeah.

So, look, I do support the efforts that this hearing is intended to focus on. Having a more forward-thinking and proactive trade agenda is something that I very much support. Our Constitution, in fact, is very clear, as we have noted on this committee, that Congress has the authority to regulate international commerce, and I believe that we have to, in this committee, lean in on that responsibility.

In the last Congress, led by Mr. Neal and Mr. Blumenauer, we did introduce legislation to update and reauthorize numerous trade-related programs. We have legislation that would do that, including GSP but also, importantly, Trade Adjustment Assistance. And I will get to that in a minute. It is another important program that of course has expired.

Our legislation seeks to support U.S. workers and increase American economic competitiveness. That is the goal of our work. That ought to be goal of trade. Our bill would also seek to address reducing or suspending tariffs on specific imports.

And I strongly believe that there is a bipartisan majority, Democrats and Republicans, that can carve a new path forward to promote fair trade for our constituents and the people that would benefit from that.

I was very proud to work with the past administration, even with former President Trump, on the U.S.-Mexico-Canada Agreement because it included a newer, stronger enforcement mechanism that holds our trading partners accountable. And I have been proud to work with you, Mr. Chairman, on ensuring that that agreement lives up to its commitments and the promise that it holds, including for our farmers.

The GSP program offers preferential trade benefits to other developing countries. And I believe that updates are absolutely necessary to the GSP program, including incorporating stronger environmental, labor, and human-rights standards to make them work better. These changes would be similar to provisions of USMCA and the African Growth and Opportunity Act, or AGOA, that have helped support American workers and workers around the world.

And I noted, Mr. Spronk, in your comments, very specifically mentioning the need for stronger enforcement. None of these poli-

cies or trade agreements are worth anything unless we have a mechanism for enforcement.

Improving the quality of life for workers around the globe is both a moral and economic responsibility, but we also have to focus on expired domestic programs like Trade Adjustment Assistance that helps those workers, like people in my own district, that have been hurt by past trade deals.

So, I wonder, in the 2 minutes or so remaining, Mr. Houseman, if you would mind commenting on how workers who have been impacted by trade agreements could be benefited by Trade Adjustment Assistance legislation as we make this adjustment, particularly in the light of the need for stronger trade agreements in the first place. If you could just comment briefly on trade adjustment and how that might impact those workers.

Mr. HOUSEMAN. Sure. Thank you, Congressman.

Listen, the TAA program—this idea that, all because we didn't enter into a new free-trade agreement, that jobs aren't lost—I have 500 workers in Ohio and New York who are losing their jobs because of Mexican parent companies moving that production to Mexico, and they are moving equipment down there. Under normal circumstances, with a reauthorized TAA program, those people would be able to get job-training benefits so that they could get back into the workforce faster.

This is something that is sustained and recurring, for lack of a better word. I mean, this is an event that continues to happen. And there are winners or losers when Congress chooses to lower and adjust tariff barriers. And I think that that is something that is key to why we think TAA should move with GSP.

It is a very straightforward program. It provides a good benefit. I have seen the benefit that it provides. And when you talk to a community college that does those training programs and sees that ability to see Federal funds come in to help train those workers to become those mechanics, become that next generation of worker—and when you are 50 years old, after spending 20-plus years at a plant, that opportunity to kind of retool is absolutely necessary.

So we strongly believe that this committee, who has jurisdiction on the issue, can move it forward. And we can talk about these broader issues related to trade promotion authority another time, and we can maybe—you know, that is—anyway. But, yes, thanks.

Mr. KILDEE. Well done. I appreciate that.

And I thank the panel for your testimony, and I thank the chairman for holding this important hearing.

I yield back.

Chairman SMITH of Nebraska. Thank you.

Mr. Panetta, you are recognized for 5 minutes.

Mr. PANETTA. Thank you, Mr. Chairman.

And I echo the sentiments of my colleague from Flint, Michigan, in regards to our appreciation to all of you for being here.

And, Mr. Chairman, thank you for holding this important hearing, but obviously one that, I believe, is overdue. GSP has been expired for nearly 3 years now, and it is a lapse that really is undermining the goals of the program, once again, in my opinion.

As a result, I think what we are seeing are businesses which have incurred unexpected duty costs and consumers have faced

higher prices, businesses have slowed investments in GSP countries given the uncertainty of reauthorization, and production of GSP-eligible goods have moved to China in spite of 301 tariffs meant to do the opposite. We have lost an important leverage point to ensure a beneficiary is providing fair access to markets and protecting U.S. intellectual property. And, most importantly, however, developing nations have been deprived of benefits that can help grow their economies, lift workers out of poverty, and improve conditions for workers.

So, the first priority should be reauthorizing GSP, for which there is bipartisan support, I am proud to say. Now, obviously, I am supportive of making improvements to the program, but we should not let potential disagreements on these policies stop us from reauthorizing this very critical and important program. And we need to keep the needs of developing nations that benefit from that program, I believe, at the center of the discussion.

Now, GSP, I think as we can agree, exists to foster economic growth in developing countries. So, while benefits to consumers and U.S. businesses are a bonus, the success of the program should be measured by the economic outcomes of those countries.

Mr. Gresser, in what ways has the GSP program kickstarted industries in GSP countries?

And then a second question is—and you can tie it in, please—have workers in those countries fared especially—how have they fared, those employed by manufacturing GSP-eligible goods?

Mr. GRESSER. Thank you for that question and for that very eloquent statement.

A couple of examples. Cambodia is a good study in the benefits workers can draw from participation in trade. Phnom Penh is full of young women workers who have come in from rural areas, where there are very few opportunities. Typically, there, the boys will inherit the farm and get jobs in their army or whatever and the girls sit around and wait. By taking a job in a factory—and the last time we checked, there were probably 35,000 young women working because of the travel-goods eligibility.

What I was told by World Bank people was, having one daughter in a factory raises a rural family's food security from 6 months to 2 years, and having two raises it from 2 years to "we have now enough money to buy irrigation equipment and start raising food to sell."

And the women in these factories, they are now able to save money, to start their own businesses, to go into marriages with a lot of capital and equity. So it is very useful for young women workers. And I think that applies in quite a lot of countries.

Mr. PANETTA. Okay. Great.

Mr. GRESSER. With the expiration—I was studying Solomon Islands, a small island country—they have lost their tuna exports to the United States. Whatever workers were involved in that, they are probably struggling right now. So there is both a value to having it and a cost to not.

Mr. PANETTA. Great. Thank you.

Now, obviously, GSP—unfortunately, I should say—also has a history of lapsing and is currently, like I said, in a 3-year lapse.

And that makes it hard to plan, I think we can all agree. However, we have also seen the need to update GSP at the same time.

So, I guess, Mr. Gresser, how can we have that balance? And what I mean by that is, how can we balance the need for businesses to have certainly but also the appropriate expiration dates that provide an opportunity to update the program? Where can we find that balance? If you can try to hit on that.

Mr. GRESSER. It is a great question, not one that I have a ton of expertise on. But renewals of a year and a half or 3 years are quite short. Almost as soon as you get back up on line, you begin to thinking about, how do we get this up on line again?

So the African Growth and Opportunity Act and the Haiti program are, you know, 10- and 15-year reauthorizations. GSP probably doesn't need to be that long, but 5 years, I think, would be kind of a minimum.

Mr. PANETTA. Okay. Great. Thank you. Appreciate it.

Thank you, gentlemen.

And, Mr. Chairman, thank you. I yield back.

Chairman SMITH of Nebraska. Thank you.

Dr. Wenstrup, you are recognized for 5 minutes.

Mr. WENSTRUP. Well, thank you, Mr. Chairman. I appreciate that the committee is holding this hearing today.

And I just want to say, I strongly support efforts to renew the Generalized System of Preferences and other trade programs.

Last Congress, the Senate acted on a bipartisan basis to renew this critical trade program for 6 years with reasonable reforms to the program's eligibility criteria. I know Ways and Means Republicans unanimously supported that effort. Some have insisted on holding up GSP and other trade programs that would have reduced tariffs, eased inflation, and helped continue our efforts to diversify supply chains away from China towards more reliable trading partners.

So I hope that the productive discussion that was had today will lead to the House passing a strong, bipartisan bill to renew GSP as soon as we possibly can.

I would like to note that, while GSP is our oldest and largest trade preference program, it is certainly not our only one. In 2020, I was proud to work with Congresswoman Sewell to enact bipartisan legislation to renew the Caribbean Basin Trade Partnership Act for 10 years. This program provides duty-free access to the U.S. market to our Caribbean neighbors and, most notably, Haiti.

From 2010 to 2016, in successive bills known as the HOPE Act, HOPE II, and the HELP Act, Congress extended further preferences to Haiti to aid the poorest nation in our hemisphere as it struggles and has struggled with economic downturns and the horrific 2010 earthquake.

So HOPE/HELP, as a program, as it is now known, expires in exactly 2 years, in September 2025. And I think it is critical that we renew HOPE/HELP now before it expires, as we unfortunately saw with other preference programs like GSP.

That is why, today, I did introduce the HELP Extension Act of 2023, which would extend the HOPE/HELP preferences for 10 years, through September of 2035.

By extending the HOPE/HELP program, the United States can send an important message of support to our friends and neighbors in Haiti, who are dealing with a horrific humanitarian crisis as a result of gang violence and political instability.

This legislation is also important for our economy, as it will continue the work Congress is doing to provide incentives to near-shore our supply chains and diversify away from adversarial trading partners like China.

So I look forward to working with our colleagues on this committee to build bipartisan support for renewing and building on this important trade program.

And I just want to thank all of you for being here today and for us to be able to have this important discussion.

And, with that, Mr. Chairman, I yield back.

Chairman SMITH of Nebraska. Thank you, Dr. Wenstrup.

I now recognize Mr. Schneider for 5 minutes.

Mr. SCHNEIDER. Thank you. It has been one of those days. I have been “next” more times today than I can remember. But I want to thank the witnesses for your patience today.

Mr. Garza, not a question, I just want to share: I told my son that you were on the panel, and he was very excited. He buys his mountain-climbing, his skiing, his ice-climbing—he says he has made your company very profitable.

Mr. GARZA. We appreciate his business.

Mr. SCHNEIDER. But, more importantly—and you touched on it, how, I think—the point you made about supply chains, you used Lego blocks. But the idea that it is just not possible to—I am going to stick with the chain metaphor—you can’t move a link in and out willy-nilly.

Mr. GARZA. Right.

Mr. SCHNEIDER. It takes time. And there has been a burden.

This is also one of those cases where everything has been said, not everyone has said it, but I will say it again: GSP is our oldest program. There is a, for lack of a better term, altruistic aspect to it, giving countries that are struggling a chance to lift themselves up. All of you have touched on the impact it has when it is working well and the adverse impact it has when it breaks down.

We have support on both sides of the aisle, as Dr. Wenstrup mentioned before and others have. We need to address this and work to bring it back and reform it, make it more reliable and more responsive to our needs, which is, I guess, where my question is going.

And I will start with you, Mr. Gresser. It is not just that we are helping other countries. This helps us. And, as we are at the end of the conversation today, could you reiterate the benefits, why it is in our interests as a nation to have GSP in place and stable, not just to the benefit of the countries that we are trading with?

Mr. GRESSER. There are a number of values to it.

It helps us build relationships with countries that often are not on the front pages.

It provides some useful cost savings for a lot of American businesses who are buying GSP products.

It provides an opportunity for us to pursue goals such as improving labor standards, such as market access, such as intellectual



property rights. I do endorse the idea of having an environmental criterion. I think that is something we could also pursue through it.

So, whether you are thinking about a bit of benefit for the U.S. economy, a bit of diplomatic activity and benefit, or a bit of help for important U.S. priorities, GSP is a useful tool and kind of a proven one.

Mr. SCHNEIDER. Right. It is something that benefits us. And thank you.

And, Mr. Spronk, you talked about how it is affecting pork producers. The return on our investment, can you put that into context, as we close out here?

Mr. SPRONK. You know, it is very simple to state. There again, from beginning of my career to date here, you know, the value that we have received as a portion of our cutout, or what we receive for those primals, has increased every time we have a new free-trade agreement. You know, last year, it was at \$61 per head. The first 7 months of this year, it is \$64.

Every time we increase volume, we actually increase the value back to not only pork producers but also create markets for our corn and soybean producers.

So we just can very closely correlate, every time we have new free-trade agreements, every time we lower those tariff barriers, we actually add more product, because we are that competitive as U.S. producers.

Mr. SCHNEIDER. So, if I summarize, it is a win-win, and the wins keep getting bigger?

Mr. SPRONK. Very much so. I would agree with that wholeheartedly. We understand, you know, the value of having—lowering tariff barriers, lowering tariffs really impacts our ability to be able to move those products.

And, actually, we have a product—most of the time in those Asian countries, they are moving their income levels up to middle-class. So they are wanting more protein in their diet. I was just recently in Asia, and they are doing home meal replacements with American beef and pork. That is center of the plate there. And so they actually want our product to be able to move in at lower tariff barriers.

And so, there again, give us a level and fair playing field, we will increase our exports—

Mr. SCHNEIDER. Great. Thank you.

Mr. SPRONK [continuing]. And the value back to America.

Mr. SCHNEIDER. Thank you.

And I would go down the whole row if I had more time.

But I will close with this. This is about helping our country, helping our workers, helping our agricultural producers. It is about supply chains. And it is bipartisan. I think that is one of the most important things we should emphasize, especially in this moment.

I am proud, with my colleague Representative Steel from California, we introduced the Medical Supply Chain Resiliency Act that would give the President more ability to manage that. We can tackle a lot of the challenges we face when we work together.

And so, Mr. Chairman, Mr. Ranking Member, thank you for having this hearing. Thank you for letting me join this subcommittee

today to address it. I learned quite a bit. And I look forward to working together to try to get this over the finish line.

Chairman SMITH of Nebraska. Thank you. I appreciate that.

Mr. Blumenauer, as well. I appreciate the dialogue that we have had. It is certainly timely.

The input from our panel here I appreciate as well.

I know that there have been, you know, proposals made. I acknowledge that. I think there has been interest along the way of advancing this. And, sadly, it has lapsed for, now, almost 3 years.

I think that it is important to note—I mean, reflecting on my own concerns—that, you know, previously, there was some language that was ambiguous, hard to enforce, that I think ultimately could maybe even set the program back a bit. And I think, you know, to take some of the standards and go beyond even USMCA, which has that type of approach that has had so much support, I think, was particularly problematic. But I am glad that we can have this discussion.

And, you know, Mr. Houseman, I have to say that your concerns, I hear those. And, I think, a lot of those concerns we could address in future trade agreements—straight-up trade agreements that are enforceable, that have high standards, are rules-based, and involve some market access.

And, you know, I think, across our economy, it is so important to note that the U.S. footprint around the world—ultimately, you know, we want U.S. companies to succeed. Even more so, we want U.S. consumers to thrive, with good policy, a growing economy, growing opportunity. And a growing economy and opportunity, that is the rising tide that lifts all ships.

And, you know, I do worry that more and more trade restrictions, just adding on more restrictions, one after another, it is really a race to the bottom. And that turns what would otherwise be a win-win scenario, as described here a minute ago, into a lose-lose. And we definitely want to avoid a lose-lose scenario where, you know, consumers don't buy goods because they are too expensive and no one else can sell them anyway because of various restrictions.

So I think this has been a good dialogue, a good discussion, one that we can move forward with, I think, with open minds and the urge to get things done here. Anxious to continue to work on the Miscellaneous Tariff Bill as well. Those have traditionally—with GSP, MTB has traveled together. And, ultimately, though, it is about strengthening our domestic companies and our consumers.

So let's continue to keep the dialogue going, and I look forward to further input along the way.

Please be advised that members will have 2 weeks to submit written questions to be answered later in writing. Those questions and your answers, from the panel, will be made part of the formal hearing record.

Chairman SMITH of Nebraska. With that, the subcommittee stands adjourned.

[Whereupon, at 4:35 p.m., the subcommittee was adjourned.]

**MEMBER QUESTIONS FOR THE RECORD**

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**Question from Representative Darin LaHood to Ed Gresser, Progressive Policy Institute:**

*In recent years, U.S.-based enterprises have looked to diversify their supply chains from China by working with friendlier nations and trading partners – many of which have qualified for GSP in the past. Without access to alternative and cost-effective imports, we may be missing out in adding to provide alternatives to producing in China. Now, three years since the expiration of GSP, I'm concerned that these companies are having conversations of returning to China for input products.*

\* *Can you speak to how the United States' inaction on GSP benefits China's position in the global economy?*

The lapse of GSP has two ongoing effects on China's competitive position. First, by elevating tariff rates on eligible goods from GSP beneficiaries, it makes these countries' products less competitive in the U.S., on general and against similar Chinese products. And second, since many GSP-eligible goods are industrial inputs, including (for example) insulated wiring, plywood, unworked tiles, small AC motors, air conditioner parts, and so on. Higher tariff rates on these products raise costs for some U.S. manufacturers and other users of industrial inputs such as farmers and construction firms, making these firms less competitive both vis-à-vis imports in the U.S. market from China and other countries, and also less successful in competing as exporters.



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**Questions from Representative Bradley Schneider to Ed Gresser, Progressive Policy Institute:**

*The Generalized System of Preferences (GSP) program, our oldest preferences program, has been a pivotal tool of international relations, global economic security, and diplomacy since 1974. By offering duty-free market access to developing countries, GSP enables these countries to diversify their economies and rely less on foreign aid. I am disappointed that Congress allowed this program to lapse on December 31, 2020, and am in favor of swift reauthorization. Not only is this program important for the developing countries that take advantage of it, but it is critical for our supply chain resiliency and relationships with our allies as we hope to bolster U.S. competitiveness in the face of China.*

*As we look to reauthorize the program, I have the following questions for Mr. Gresser about reauthorizing and modernizing the program:*

- (1) *How does reauthorizing the GSP program make the U.S. more competitive against China?*

Reauthorizing GSP in practice reduces the cost of purchasing a large array of goods from the 119 GSP beneficiary countries. These products include many industrial inputs, consumer goods, and natural resource products. Examples of industrial inputs include air conditioning parts purchased by manufacturers and HVAC repair shops with an MFN tariff of 1.4%; plywood used by wood products manufacturers and building contractors, with an MFN tariff up to 8%; lamps and light fittings, with MFN rates often at 3.5%; and insulated electrical conductors used in machinery manufacturing in a tariff range from 3.5% to 5.3%, and so on. Waiving tariffs on these goods reduces U.S. production costs, contributing to the competitiveness of American producers against Chinese (and other foreign) producers both in selling to U.S. customers and in exporting to buyers abroad.

- (2) *Given that we want the U.S. to be better positioned to compete with China, and therefore, want to reduce China's dominant market share of many products, should we consider adding products to the GSP program that aren't made in the USA and where China is the top supplier? What might be some of the economic benefits to the U.S.? And what might be the economic benefits to GSP countries?*

The GSP system currently excludes two types of products.

*Excluded industries:* The first are those on a list of eight "sensitive goods". This list dates to the early years of the implementation of the GSP program in the mid-1970s. USTR's "GSP Guidebook" notes that it contains "most textiles and apparel articles, watches, footwear, work gloves, and leather apparel ... [and] import-sensitive steel, glass, and electronic articles". These are essentially products viewed as labor-intensive and import-sensitive in the 1970s. Some are no longer made in the United States at all (for example many types of shoes and clothing), and many are dominated by China (such as electronics). Overall, GSP beneficiaries appear to have supplied about \$42 billion worth of these goods to the U.S. in 2022, and China \$114 billion worth.

The list has changed little in the past 50 years. The main exception is Congress' authorization of "travel goods" such as luggage and hand-bags as GSP-eligible in 2015. USTR implemented this over 2015-2017, through a process including line-by-line review for current import sensitivity, public comment opportunity, and a public hearing under the auspices of the Trade Policy Staff Committee. As my testimony noted, the addition of travel good lines has highly successful in encouraging trade with GSP beneficiary countries, and beginning in 2017 encouraged substantial shifting of sourcing away from China. It may be appropriate for Congress to review this list and determine whether others could be removed.

*Competitive Need Limits:* The second group is a more complex arrangement of goods which have not been judged 'import-sensitive', but have been removed from GSP eligibility from particular beneficiary countries under the "Competitive Need Limit" (CNL) system. The CNL system creates a 'ceiling', under which a country's GSP eligibility for particular goods (at HTS-8 tariff level) ends if its exports of that product make up more than 50% of U.S. imports, or rise above \$210 million in total import value. This dollar-value threshold rises by \$5 million per year, or roughly by 2%. For example, during the last year of GSP authorization in 2020, Brazilian electric generating sets, taro root from Ecuador, and the chemical methyl ter-butyl ether from Argentina were all removed from eligibility on the CNL basis. The value of these CNL exclusions is likely about \$11 billion.

Especially if one of Congress' principal goals in reauthorizing GSP is to encourage diversification of sourcing, I see a reasonable argument for abolishing this system. If Congress wishes to preserve it, I would strongly advise setting a much higher dollar-value threshold, and raising annually by a level comparable to average overall import growth. This, along with restoration of eligibility for products now ineligible due to CNLs, would make GSP significantly more effective as an incentive for sourcing.

(3) *What are some products that you think could be worthy of consideration?*

As noted above, I think the CNL system is unnecessarily restrictive and if it is to be kept, its dollar-value 'threshold' should be significantly raised. Legislation in the last Congress introduced by former Representative Stephanie Murphy and the late Representative Jackie Walorski may be a good place to start. With respect to the excluded-product list, the addition of travel goods since 2015 has been very successful. Eligibility for other consumer goods, for example shoes, with the same reviews for sensitivity and public comment opportunities, could bring similar results.

Question for the Record House Ways and Means Committee Subcommittee on Trade hearing entitled, *Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China* on September 20, 2023.

**Questions for the Record: Ways and Means Trade Subcommittee Hearing on Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China**

Mr. Randall Spronk: During the hearing, I submitted some data for the record showing some products that are currently ineligible for GSP but that I think should be considered for inclusion. In your testimony, you say that the GSP program is “an essential trade enforcement tool that gives U.S. trade negotiators leverage to address market access concerns.” As the Committee considers what GSP should look like and for how long to renew it, do you think the leverage provided by GSP would be strengthened if more products were added that GSP countries produce? For example, some of the top export categories from GSP countries are apparel and footwear, which are statutorily precluded from being included in GSP. Meanwhile, some of these products aren’t made in the USA and China is the top supplier—for example, sweaters, scarves, gloves, pajamas and swimwear. If the Committee added these specific products to GSP, would it increase the incentive for GSP countries to provide more market access for U.S. exports such as pork?

Mr. Randy Spronk, National Pork Producers Council witness answer:

I’m not in a position to support inclusion of any specific product addition, but the more trade GSP covers for a country like Thailand, and the more exporters in GSP countries that value continued eligibility, the more leverage we have in negotiations over things like market access for U.S. pork. There are certain rules in GSP, such as “competitive need limitations” or “CNLs,” that simultaneously could raise costs for U.S. pork producers while reducing the number of Thai stakeholders in maintaining GSP eligibility. That would be a lose-lose situation for us. Congress should give careful consideration on how to maximize GSP coverage for non-sensitive items, whether through additions of new products like sweaters or changes to how other products lose or regain duty-free treatment.

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March 28, 2024

1. Mr. Fabian Garza, as you know, Competitive Needs Limits restrict imports under GSP based on the value or quantity of goods that enter our nation duty-free. I believe reforming the Competitive Needs Limit threshold by lifting the caps would be an easy way for Congress to encourage American businesses to establish permanent supply chains outside the regulatory reach of a major adversary and peer competitor. This is an important priority of mine, and I am actively working on legislation to do so. How would doing so positively impact your business?

*Congressman Moore, Thank you for your question. Retroactive renewal of the Generalized System of Preferences ("GSP") is an urgent priority for many U.S. industries, but without accompanying reform of Competitive Need Limitations ("CNLs"), certain key products are at risk of losing benefits shortly after GSP reauthorization. Lifting the CNL threshold allows Black Diamond as well as the greater Outdoor Industry Association to have confidence in the investments that companies are making to diversify supply chains away from China. The CNL threshold, which stood at \$205 million dollars in 2022, only represents 8% of the total U.S. imports of key products in the sporting industry, such as backpacks and sports bags, for that year. With China still the largest supplier of all imports of these products, there is a substantial opportunity for more growth and diversification in this product category. Yet, the artificially low CNL rate guarantees that companies such as Black Diamond's allies and sourcing partners in Indonesia, the Philippines and others will not be able to truly grow competitive industries when they are cut off at such a low level. Indonesia has already exceeded the CNL in certain categories and the Philippines is rapidly approaching the threshold. Removing GSP eligibility for backpacks from Indonesia and the Philippines, which prior to 2016 were mostly produced in China, will reinstate the 17.6% normal duty rate. This will render the total product costs from these countries higher than China, reversing the progress that has been made in recent years. This harms our business and is the opposite of GSP's goal of promoting economic growth in developing countries.*

*If we truly want to move our supply chains out of China in these key product areas, which are core products in the sporting industry, lifting the CNL threshold is critical in doing so. We support a reasonable threshold, with the option to increase the threshold yearly, by 6.5%. This is in line with natural import growth, and more accurately reflects the market. Moreover, this will provide stability and long-term growth in the movement away from China.*

*I also want to emphasize that maintaining domestic manufacturing facilities in the United States and creating quality U.S. jobs is a priority for Black Diamond. In the reality of complex supply chains, it is not a zero-sum game of imports vs. domestically manufactured products, but many of us do rely on imports for certain inputs into our manufacturing in the United*



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*States. High duties on those inputs increases the costs for us, for our customers, and the overall burden of those extra costs are paid by U.S. businesses like ours, and U.S. consumers. GSP along with the reform of CNL has real life impact on companies, like Black Diamond, that utilize the program, and therefore consumers.*

2. Mr. Garza, when I worked in management consulting, I learned that businesses need to plan far into the future in order to drive sustainable growth and plan for contingencies. As you look to the future of Black Diamond, why is it specifically important to your company that we provide certainty around GSP? How is today's uncertainty around reauthorization making it harder for you to plan ahead?

*Congressman Moore, thank you for your question. Your experience in management consulting indeed shines through in your understanding of the long-term planning requisite for sustainable business growth and contingency preparation.*

*In 2006, Black Diamond initiated manufacturing endeavors in Zhuhai, China. However, recognizing the strategic importance of diversifying our operations and amplifying U.S. manufacturing, we pivoted in 2015 to extend our global footprint. A pivotal instrument in this strategic realignment was Generalized System of Preferences (GSP).*

*GSP facilitated our engagement with lesser-developed countries, fostering mutually beneficial partnerships. As of now, our import portfolio spans over 20 nations, with a notable emphasis on GSP-eligible products originating from Cambodia, the Philippines, and Pakistan. This diversification, moving away from a China-centric sourcing hub to a more geographically dispersed supply chain model, necessitated a substantial financial outlay, augmenting our operational costs by millions of dollars.*

*GSP served as a mitigating tool to offset these escalated expenditures. The recent lapse in GSP, however, coupled with the surging freight costs exacerbated by the pandemic's ripple effects, has imparted a significant financial strain. This strain is felt not merely on our bottom line but resonates across the outdoor industry. The added duty and freight costs due to the movement of cargo from an array of countries have resulted in formidable financial challenges.*

*Certainty, as you pointed out, is a linchpin for efficacious business planning. The recurrent lapses in GSP deter us from fully leveraging this program to its potential, making forward planning markedly more challenging than it ought to be. This uncertainty thwarts our efforts to maintain a 95% service level against committed orders, a key objective from a supply chain standpoint, as outlined in our company's broader operational framework.*

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3. Mr. Garza, other US allies and trading partners have tariff relief regimes very similar to GSP, such as the European Union, which has a three-tier system that applies similar benefits to 67 countries. Are you faced with the possibility of falling behind any major international competitors who currently have better access to GSP markets than you do?

*Thank you for the follow-up question which indeed delves into a significant aspect of the global trade dynamics impacting our industry. The Generalized System of Preferences (GSP) and its analogs in other regions are instrumental in fostering a conducive trade environment that aids companies like Black Diamond Equipment in sourcing high-quality products at competitive costs.*

*It's accurate to hypothesize that the presence of more favorable tariff relief regimes, akin to GSP in other regions like the European Union (EU), does pose a competitive concern. The EU's three-tier system, extending similar benefits to 67 countries, is a testament to the broader global acknowledgment of the value inherent in such tariff relief regimes. The comparative advantage that such frameworks offer to companies primarily operating or significantly invested in those regions is indeed tangible. EU companies, which have predictable and timely duty savings, enables them to pour more money into research, advertising, etc. which give them a competitive advantage in the global marketplace over U.S. companies.*

*We have observed that certain brands and competitors, have oriented more towards the EU market rather than the United States for specific products. The higher costs in the U.S., exacerbated by the expiration of GSP and Miscellaneous Tariff Bill (MTBs), play a significant role in this strategic orientation. This divergence not only reflects a competitive imbalance but also adversely impacts U.S. consumers who are thereby denied access to the latest technology and outdoor equipment available in other markets.*

*This scenario underscores a vital market distortion that goes against the spirit of fostering a competitive, innovative, and consumer-friendly market landscape. As a company that prides itself on being at the forefront of engineering the future of mountain sports with innovative and trusted gear, the restrictive trade environment in the U.S. due to the intermittent nature of GSP reauthorization, poses a significant challenge.*

*Considering the above, a more predictable and enduring GSP framework would be instrumental in leveling the playing field, not just for Black Diamond Equipment, but for the entire U.S. outdoor industry, ensuring that we remain competitive on the global stage, and continue to deliver exceptional value to our consumers.*

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4. Mr. Garza, in the absence of GSP renewal, how has Black Diamond's trading relationship with China changed? Have high tariffs from legacy GSP countries made your organization consider returning to the Chinese market?

*The absence of Generalized System of Preferences (GSP) renewal indeed reverberates through our trading relationships, notably with China.*

*The original transition from China was a strategic decision aimed at diversifying our global manufacturing footprint and reducing dependency on a single country. GSP played a substantial role in facilitating this transition by offering a more favorable duty structure when engaging with lesser developed countries. However, the non-renewal of GSP, coupled with the enduring high tariffs from legacy GSP countries, casts a shadow over our decision to depart from China and may lead us to reconsider that decision.*

*The existing trade conditions compel us to re-evaluate the financial and operational feasibility of our current sourcing strategy. Without the reauthorization of GSP and absent relief is provided from Section 301 tariffs input products, the scales of cost-effectiveness may tip. This scenario could necessitate a re-examination of sourcing strategies, including the potential reconsideration of re-engaging with suppliers in China.*

*It is crucial to emphasize that any re-evaluation of our sourcing strategy must be undertaken with a high degree of prudence, considering the rigorous quality standards synonymous with Black Diamond Equipment. The endeavor of establishing new supply chains, especially for technical products, is far from a trivial task. It demands a significant allocation of resources and an extended time frame which underscore the importance of a stable and favorable trade environment.*

5. Mr. Garza, are there any new developing markets where you have been looking to set up product sourcing relationships but have been unable to do so due to GSP's expiration?

*Thank you for your inquiry into the potential expansion of our sourcing networks into new developing markets. The expiration of the Generalized System of Preferences (GSP) indeed has had a palpable effect on our explorations into diversifying our sourcing relationships further.*

*One notable market that has been on our radar is India. However, our efforts to establish product sourcing relationships there have been hampered due to its removal from the GSP a couple of years before the program's expiration. This removal posed a substantial hindrance given the higher tariffs we'd incur, which contravenes the cost-effectiveness and strategic financial management that are integral to our operational framework. We note the considerable concessions that India has granted to the United States, particularly for agriculture products, so we are hopeful the Biden Administration will reinstate India in the GSP program if/when Congresses reauthorizes it.*

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**Congress of the United States**  
**House of Representatives**  
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COMMITTEES  
WAYS AND MEANS  
SUBCOMMITTEE ON HEALTH  
SUBCOMMITTEE ON SOCIAL SECURITY  
SUBCOMMITTEE ON WORK AND WELFARE  
BUDGET  
BLAKEMOORE.HOUSE.GOV

6. Mr. Garza, why is CNL reform so important for the broader recreation economy?

*Congressman Moore, Thank you for your question. Retroactive renewal of the Generalized System of Preferences ("GSP") is an urgent priority for many U.S. industries, but without accompanying reform of Competitive Need Limitations ("CNLs"), certain key products will lose duty-free benefits shortly after GSP reauthorization. Lifting the CNL threshold allows the Outdoor Industry Association to have confidence in the investments that companies are making to diversify supply chains away from China. This revision would better support the broader recreation industry in diversifying supply chains away from China. The current model, wherein the CNLs' dollar threshold grows by a consistent \$5 million annually, fails to align with the escalating value of imports, especially in the realm of travel goods. For context, in 1996, this increment reflected a 6.7% rise, but by 2023, it has diminished to just 2.53%. Such a configuration deviates from the original intent of the legislation and inadvertently stunts the expansion potential of domestic sectors by imposing growth constraints at unduly low thresholds.*

*For our industry, challenges arise concerning the 8-digit HTS classification for backpacks. Since the inclusion of travel goods in the GSP program by Congress in 2016—a monumental step for the outdoor industry—we have witnessed a significant shift of production away from China. This transition gained momentum in 2017, when Ambassador Lighthizer extended duty-free benefits for travel goods to all GSP beneficiary nations, including the likes of the Philippines and Indonesia. Nonetheless, establishing a robust domestic industry is a long-term endeavor. Even with the rapid production surge in GSP beneficiary countries such as Cambodia, Indonesia, and the Philippines, China remains a predominant player in this segment.*

*In 2022, the CNL threshold was set at \$205 million. Surprisingly, this only constituted 8% of the total U.S. imports of items including backpacks and sports bags for that particular year. Despite China's dominant position as the leading supplier for these products, there exists a significant potential to further diversify and grow within this product sector. However, the constrained rate ensures nations like our partners in Indonesia, the Philippines, and others are unable to fully cultivate competitive industries due to these low-level cutoffs. Indonesia has already surpassed the CNL for this category, and the Philippines is swiftly nearing the limit. If the objective is genuinely to diversify our supply chains from China for these pivotal products, it would be prudent to leverage existing resources, such as GSP, to facilitate this transition.*

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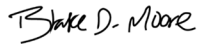
**Congress of the United States**  
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COMMITTEES  
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*The outdoor industry proposes a reasonable threshold, with the option to increase the threshold yearly, by 6.5%. This is in line with natural import growth, and more accurately reflects the market. Moreover, this will grant USTR the authority to waive the threshold if the situation warrants.*

*For example, HTS subheading 4412.31.45 is a very narrow HTS classification that was developed to avoid capturing products made in the U.S. Since Indonesia is virtually the only supplier of this lauan wood, this product will always be above the 50% threshold. Thus, the 50% threshold has created a catch-22 for GSP eligible products. Given the great disparity of goods classified under individual eight-digit HTS subheadings, and the fact that there are now relatively few GSP-eligible countries, we believe Congress should eliminate the 50% threshold. If Congress maintains the threshold, then USTR must have the authority to waive the threshold if the situation warrants.*

Sincerely,



Blake Moore  
Member of Congress



Fabian Garza  
VP of Operations  
Black Diamond Equipment

**PUBLIC SUBMISSIONS FOR THE RECORD**

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September 19, 2023

The Honorable Adrian Smith  
 Subcommittee on Trade Chairman  
 United States House Committee on Ways &  
 Means  
 1100 Longworth House Office Building  
 Washington, DC 20515

The Honorable Earl Blumenauer  
 Subcommittee on Trade Ranking Member  
 United States House Committee on Ways &  
 Means  
 1100 Longworth House Office Building  
 Washington, DC 20515

Re: Trade Subcommittee Hearing on Reforming the Generalized System of Preferences to  
 Safeguard U.S. Supply Chains and Combat China

Dear Subcommittee Chairman Smith and Subcommittee Ranking Member Blumenauer,

On behalf of the United States Footwear Manufacturers Association (USFMA), I thank you for holding the Trade Subcommittee hearing titled, "Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China." Reforming and reexamining the Generalized System of Preferences (GSP) is crucial to the domestic footwear industry.

While GSP has plays an important role in promoting global economic development and fostering international trade, it is also important to ensure that the program aligns with our national interests and supports industries that are strategically significant to our country's economic and security concerns. USFMA strongly supports increased eligibility criteria that will hold potential GSP beneficiaries accountable for labor, environmental and human rights standards. Ultimately, GSP countries should be moving to the same content, labor, and sustainability standards we expect of Free Trade Agreement (FTA) partners.

By strengthening GSP eligibility criteria, we can ensure that American industries like footwear manufacturing, remain competitive and continue to provide high-quality products and good paying jobs while reducing our vulnerability to supply chain disruptions and unfair trade practices.

Additionally, we encourage the committee to review the impacts of the uniquely low regional value content (RVC) requirements in GSP. The benefits of preference programs should be retained by the participating countries making structural investments and reforms to meet the eligibility criteria. Many supply chains can satisfy the 35% RVC requirement with entirely foreign components from countries ineligible for GSP and merely assembling the final products in the beneficiary countries. Non-market economies, like China, and other countries that do not embrace the values required of GSP beneficiary countries can reap 65% of the benefits of the program. As your Committee and Congress work to reauthorize preference programs, we should ensure the benefits flow to the intended recipients, not bad actor states.

Over the last several years, some members of USFMA were able to make significant investments in domestic capacity and production levels, including two new footwear manufacturing facilities, however, others are still struggling to compete globally. Textile manufacturing is still considered a declining industry and while these investments in new manufacturing facilities have been a

<https://www.usfma.org/>

200 Massachusetts Ave NW, Suite 510 Washington, DC 20001



benefit, any GSP legislation taken up by your committees can have a profound impact on domestic footwear manufacturing and the recent gains.

The supply chain for domestically made footwear supports critical industries in PPE and medical supplies. Footwear is a commercially viable industry that supports demand for yarns, fabrics, and foams required for PPE and other medical devices between demand. Investments that have already been and continue to be made in new capabilities because of a worker centric trade policy will provide a critical foundation for future emergency needs. The domestic footwear industry is also vital for military readiness, supplying the nation's service members with high quality Barry Amendment complaint footwear. Protecting domestic footwear manufacturing also protects our nation's national security and readiness.

We urge you to carefully consider the impact on domestic footwear manufacturers during the hearing and to support measures that will reform the Generalized System of Preferences to better safeguard U.S. supply chains and combat challenges posed by China.

Thank you for your dedication to the well-being of our country and its domestic industries. USFMA looks forward to working together to promote domestic footwear manufacturing and the broader American economy.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. McCann".

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William McCann  
Executive Director USFMA





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T: 202.688.5145  
cpa@prosperousamerica.org

September 19, 2023

The Honorable Adrian Smith  
Chairman  
Ways and Means Trade Subcommittee  
United States House of Representatives  
Washington, DC 20515

The Honorable Earl Blumenauer  
Ranking Member  
Ways and Means Trade Subcommittee  
United States House of Representatives  
Washington, DC 20515

**Re: Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China**

Dear Chairman Smith and Ranking Member Blumenauer,

The Coalition for a Prosperous America (CPA) is a nonprofit organization representing the interests of 4.1 million households engaged in domestic production through our agricultural, manufacturing and labor members.

CPA strongly disagrees with the assertion that renewing the Generalized System of Preferences (GSP) will safeguard U.S. supply chains or combat China. In fact, given the shockingly lax thirty-five percent 'value' criteria that facilitates transshipping, renewing GSP will delight China. This is discussed below in Part I. In Part II, CPA discusses GSP's weak rule of origin criteria in particular. And in Part III, CPA recommends that the Subcommittee take up the issue of China's Most Favored Nation status as well as ending the de minimis loophole as the best means to combat China and safeguard supply chains.

**Part I – Why Renewing GSP Will Not Help Fight China**

**Roughly half of U.S. Normal Trade Relations tariffs are set to zero, and the overwhelming remainder are immaterial to decisions on sourcing. Waiving them will not incentivize anyone to leave China.**

In calendar year 2020, the last year in which GSP was in place, imports claiming the GSP tariff waiver preference accounted for less than 1 percent of all imports.<sup>1</sup> Why does a program that waives tariffs for 119 countries see so little use? Even among these 119 countries, GSP is trivial: nearly ninety percent of all imports from GSP beneficiary countries do not seek GSP duty-free status.

The reason for the extremely limited use is because the United States is already effectively a duty-free market to the entire world. The United States has already eliminated Normal Trade Relations tariffs to zero on roughly half of all import categories.<sup>2</sup> And for the other half, our average applied tariff is 3.3 percent.<sup>3</sup>

The reality is that despite an extraordinary wide coverage of 119 countries and eligibility for almost all products, the program's use is highly concentrated. 76 percent of all GSP imports come from five GSP beneficiary countries: Thailand, Indonesia, Brazil, Cambodia, and the Philippines.<sup>4</sup>

When our Normal Trade Relations tariff is zero, there is literally no incentive to file the one-page document (certificate of origin) to claim GSP status. Concern for all GSP criteria go out the window.

#### **Why waiving a 3.3 percent tariff is meaningless for moving supply chains**

When we do have a tariff, the economics are plain: that tariff is likely in the range of two to four percent, which seldom, if ever, is sufficiently material to warrant shifting supply chains from a non-GSP country to a GSP-beneficiary country. In fact, it may be worth it to pay the tariff simply to avoid having to worry about meeting GSP eligibility requirements, despite already sourcing from a GSP beneficiary country.

It should be noted that this is not only a GSP-issue, but an issue for all U.S. preferential tariff arrangements. For example, in the USITC's "2021 Year in Trade" (the most recent at the time of this submission), USITC stated that only \$417 billion out of the \$2.8 trillion total U.S. imports – 14.7% – were entered pursuant to our free trade agreements.

<sup>1</sup> USITC's Year in Trade – 2020, "Trade Preference Programs", pg. 17, *available at* <https://www.usitc.gov/publications/332/pub5228.pdf>

<sup>2</sup> Under World Trade Organization (WTO) rules, tariff commitments ("bindings") are made at the six-digit Harmonized Tariff System (HTS) level. There are roughly 5,600 separate groups of goods identified by a 6-digit code. The United States applies duty-free treatment to 47.5 percent of these six-digit goods categories. *See* WTO World Tariff Profiles 2023, *available at* [https://www.wto.org/english/res\\_e/booksp\\_e/world\\_tariff\\_profiles23\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/world_tariff_profiles23_e.pdf)

<sup>3</sup> WTO World Tariff Profiles 2023, *available at* [https://www.wto.org/english/res\\_e/booksp\\_e/world\\_tariff\\_profiles23\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/world_tariff_profiles23_e.pdf)

<sup>4</sup> USITC's Year in Trade – 2020 at 18.

While 3.3 is an intuitively low number, it masks how easily ad valorem tariffs are undermined under existing customs valuation rules. ‘Ad Valorem’ tariffs are those expressed as percentages. They are quite different from ‘Specific tariffs’, which are those expressed as a fixed dollar amount based on a quantity of volume. Congress has not updated U.S. specific tariffs for inflation since 1930, so those too are now economically meaningless where we still have them left.

Our 3.3 percent average ad valorem tariff (on the remaining half of product categories that are not set to zero) should not be confused with sales taxes. While a sales tax is a percentage collected on the final retail price of an item, ad valorem tariffs are much less clear. An ad valorem’s tariff percentage is nominally imposed against the transaction price an importer paid (likely a small fraction of the final consumer price), but many rules and loopholes exist for importers to artificially depress the price to which the ad valorem tariff applies.<sup>5</sup>

**Even with a 25 percent tariff, many producers opted to continue sourcing from China, although in those instances it proved an excellent revenue tariff.**

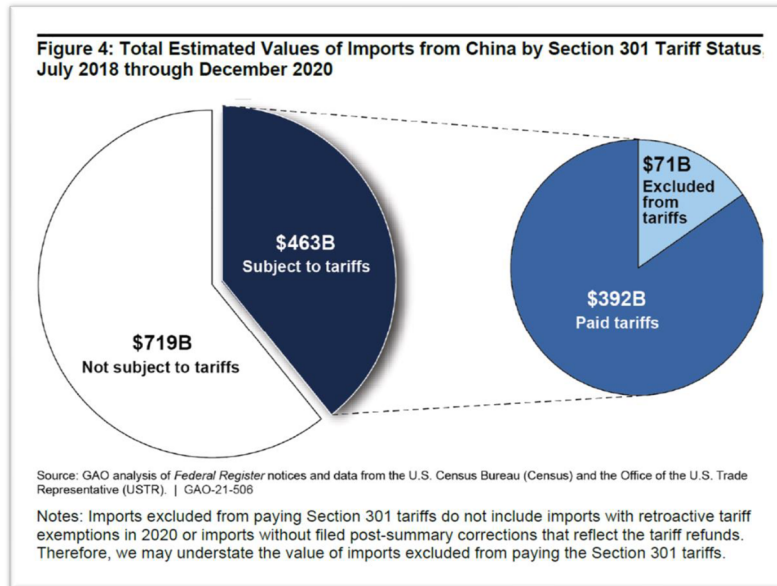
When does a tariff become meaningful for combatting China? We now have extensive evidence. The additional duties imposed on certain imports from China pursuant to Section 301 of the Trade Act of 1974 (hereinafter, “301 tariffs”) were far more effective than decades of GSP at encouraging sourcing in beneficiary developing countries.

Following the 301 tariffs imposition in the second half of 2018, the U.S. Census reports that the bilateral trade deficit (imports minus exports) did shrink from its 2018 high of \$418.2 billion down to \$342.6B in 2019, \$308.1B in 2020, \$353.5B in 2021, and \$382.9B in 2022. Likewise, total imports from China in 2022 were \$536.8B, still less than the 2018 peak of \$538.5B.

The data demonstrates clearly that many chose to move supply chains out of China. This is all the more remarkable when you consider that, according to the U.S. Government Accountability Office (GAO) the majority of imports from China between July 2018 and December 2020 were never even subject to the additional 301 tariffs, given their limited scope:

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<sup>5</sup> These loopholes include deducting “assits”, the “first sale rule”, and more.



In 2022, the *Wall Street Journal* reported that “Nearly 80% of manufacturing executives who have operations in China have either moved part of their work to the U.S. or plan to do so in the next three years, according to a survey by Kearney, a management consulting firm.”<sup>6</sup>

Looking to automobiles is instructive. The U.S. Normal Trade Relations tariff on automobiles is 2.5 percent. Under the 301 tariffs, an additional 25 percent was added, for a total duty owed of 27.5 percent. General Motors (GM) had begun importing the Buick Envision from China for sale in the United States in 2015. It continues to be built there by a Chinese state-owned enterprise, SAIC, and imported by GM. In a fierce media campaign against the 301 tariff action, the public was told that the Buick Envision would cost \$8,000 more following the additional 25 percent tariff.<sup>7</sup> GM requested a tariff waiver, but was denied.<sup>8</sup> The cost increase never happened. The

<sup>6</sup> Bob Davis and Lingling Wei, “Who Won the U.S.-China Trade War?”, *The Wall Street Journal* (May 20, 2022), available at <https://www.wsj.com/articles/who-won-the-u-s-china-trade-war-11653059611>

<sup>7</sup> Bloomberg, “A Buick SUV May Cost an Extra \$8,000 After China Tariffs”, June 16, 2018, available at <https://fortune.com/2018/06/16/buick-envision-china-tariffs/>

<sup>8</sup> Julia Horowitz, “Trump administration denies GM request to waive tariffs on Buick SUVs made in China” CNN, June 5, 2019, available at <https://www.cnn.com/2019/06/05/business/gm-buick-envision-tariff-china/index.html>

Buick Envision Preferred Trim went from \$38,645<sup>9</sup> pre-tariff to \$34,695 post-tariff, and then, yet again for the 2021 model year, it fell another \$1,700 to an MSRP of \$32,995.<sup>10</sup>

Earlier this year, Ford Motor Company (Ford) announced it would shift sourcing the Lincoln Nautilus from Canada to China.<sup>11</sup> This meant going from a zero-rate duty under USMCA to a 27.5% duty from China.

The point in sharing these examples is to convey that even an additional 25 percent duty is often insufficient at discouraging sourcing from China. And for that reason, claims that waiving a 3.3 percent average tariff for GSP beneficiary countries will meaningfully contribute to “combatting China” or securing supply chains should be disregarded outright.

Finally, on this point, it must be noted that despite not being a GSP country, Vietnam was found to be the “big winner” of divestment from China following the 301 tariffs.<sup>12</sup> More evidence that waiving a two to four percent tariff is not meaningful for shifting supply chains.

## Part II – GSP’s Unacceptably Low Rule of Origin Criteria

The rules of origin for GSP are astonishingly weak: only 35 percent of the appraised value must be from the developing country.<sup>13</sup> Getting to that 35 percent is very easy. “Research, development, design, engineering, and blueprint costs” can count to the 35%, as do the labor costs of “supervisory, quality control, and similar personnel”<sup>14</sup>.

This is incomparably weaker than USMCA’s detailed requirements.<sup>15</sup>

For example, under GSP, a Chinese firm could move basic final assembly to Cambodia, send one national to supervise the assembly operations, and on the basis of that supervisory salary, declare

<sup>9</sup> Timothy Cain, “2017 Buick Envision Preferred AWD Review”, THE TRUTH ABOUT CARS, August 15, 2017, available at <https://www.thetruthaboutcars.com/2017/08/2017-buick-envision-preferred-awd-review-buick-tri-shield-badge-premium-exists/>

<sup>10</sup> The News Wheel, “2021 Buick Envision to Cost Less than the 2020 Model”, August 28, 2020, available at <https://web.archive.org/web/20201130154347/https://thenewswheel.com/2021-buick-envision-to-cost-less-than-the-2020-model/>

<sup>11</sup> Michael Wayland, “Ford unveils new Lincoln Nautilus to be imported from China”, CNBC, April 17, 2023, available at <https://www.cnbc.com/2023/04/17/ford-lincoln-nautilus-imported-from-china.html>

<sup>12</sup> Davis and Wei

<sup>13</sup> 19 C.F.R. § 10.176 - Country of origin criteria.

<sup>14</sup> 19 C.F.R. § 10.178 - Direct costs of processing operations performed in the beneficiary developing country.

<sup>15</sup> See generally, USMCA Implementing Instructions, CBP Publication 1118-0620 (June 30, 2020), available at <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jun/USMCA%20Implementing%20Instructions%20-%202020%20Jun%2030%20%28Final%29.pdf>

the merchandise as a Product of Cambodia eligible for U.S. duty free treatment. Having such a loose threshold and criteria is also an open invitation to customs fraud.

For example, Cambodia's Sihanoukville Special Economy Zone was built by Chinese interests specifically to focus on leading GSP-eligible goods including luggage and leather goods. It became popular for tariff evasion following imposition of the 301 tariffs. In 2019, U.S. Ambassador to Cambodia Emily Zeeberg warned Cambodia that "[t]he United States will aggressively pursue allegations of duty evasion and utilize all available legal tools, to deter violators of U.S. customs and trade laws".<sup>16</sup> This warning happened after several companies were fined for illegally transshipping Chinese goods via Cambodia.<sup>17</sup>

GSP's loose criteria undermines other, more modern preferential tariff arrangements in our hemisphere including our CAFTA-DR trade agreement (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, as well as the Dominican Republic.), as well as FTAs with Chile, Peru, Colombia, and Panama.

### **Part III – Other Legislative Approaches to Strengthening Supply Chains and Combatting China**

#### China's Most Favored Nation Status

The 301 tariffs established beyond refute that the best course of action for combatting China and strengthening supply chains is to increase tariffs on China. Currently, that responsibility has rested entirely with the previous and current Presidential Administrations. The 118th Congress can assert its role by repealing China's access to U.S. Normal Trade Relations tariffs, also known as Most Favored Nation (MFN) status. CPA has prepared a Congressional guide for repealing China MFN status.<sup>18</sup>

CPA supports H.R. 4673, Rep. Jim Banks' *Ending Normal Trade Relations with China Act of 2023* to that end. This bill grants a two-year delay before repealing China's status, a fair compromise for importers to calculate whether they should stay or move.

#### Repealing the De Minimis Loophole

<sup>16</sup> Prak Chan Thul, "U.S. urges Cambodia to probe China-owned economic zone on tariff dodging", Reuters, June 28, 2019, *available at* <https://www.reuters.com/article/uk-usa-trade-china-cambodia/u-s-urges-cambodia-to-probe-china-owned-economic-zone-on-tariff-dodging-idUKKCN1TT0F1>

<sup>17</sup> Prak Chan Thul, "U.S. fines firms transshipping via Cambodia to dodge Trump's China tariffs", Reuters, June 28, 2019, *available at* <https://www.reuters.com/article/uk-usa-trade-china-cambodia/u-s-urges-cambodia-to-probe-china-owned-economic-zone-on-tariff-dodging-idUKKCN1TT0F1>

<sup>18</sup> CPA, "Repealing China's Most Favored Nation Status: A Guide", *available at* <https://prosperousamerica.org/repealing-chinas-most-favored-nation-status-a-guide/>

De minimis has been dubbed our “Free Trade agreement with China” by no less an authority than the Deputy Executive Assistant Commissioner of the Office of Trade at U.S. Customs and Border Protection, John Leonard.

De minimis undermines GSP, our FTAs, and U.S. law writ large. De minimis not only grants duty-free status to any shipment from China if the foreign vendor merely declares the “fair value” as under \$800 *in China*, it also absolves the shipment from needing an Entry Summary (CBP Form 7501), the most vital customs document.<sup>19</sup>

The top ten GSP imports – all consumer retail items – are all well suited to de minimis treatment from China. The 2021 Top GSP Products (by value)<sup>20</sup>:

1. Travel and sports bags (\$871 million)
2. Hand bags (\$724 million)
3. Rubber gloves (\$663 million)
4. Gold Necklaces (\$636 million)
5. Mattresses (\$347 million)
6. Precious metal jewelry (\$316 million)
7. Parts for air conditioning machines (\$293 million)
8. Christmas tree lights (\$279 million)
9. New pneumatic rubber tires (\$259 million)
10. Insulated electric conductors (\$258 million)

Fortunately, legislative proposals exist to close this loophole, at least for merchandise from China. Ranking Member Earl Blumenauer and Rep. Neal Dunn have introduced H.R. 4148 – The Import Security and Fairness Act. This bill would deny de minimis treatment for merchandise from China, and would do far more to strengthen supply chains with allied countries than renewing GSP.

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<sup>19</sup> CPA, “Falsehoods & Facts: The Truth About De Minimis”, available at <https://prosperousamerica.org/falsehoods-facts-the-truth-about-de-minimis/>

<sup>20</sup> USTR, GSP in Numbers 2021, available at <https://ustr.gov/sites/default/files/gsp/GSPnumbers2021.pdf>



**Written Comments**

**of**

**Harris Walker  
Director of Government Affairs  
Livent Corporation**

**Responding to the**

**House Ways and Means Committee**

**Trade Subcommittee Hearing**

**on**

**Reforming the Generalized System of Preferences to  
Safeguard U.S. Supply Chains and Combat China**

**September 20, 2023**





Submitted electronically to: [WMSubmission@mail.house.gov](mailto:WMSubmission@mail.house.gov)

October 3, 2023

Chairman Smith, Ranking Member Blumenauer, and Members of the Subcommittee:

Livent strongly supports the renewal of the Generalized System of Preferences (GSP) program. The retroactive renewal of the GSP since the program's December 2020 expiration, providing a substantial renewal term, would serve to strengthen U.S. supply chains for critical materials such as lithium, promoting U.S. competitiveness.

Livent is a fully integrated lithium company with a rich history of innovation and production of high-performance lithium compounds. The largest lithium producer in the United States, Livent is headquartered in Philadelphia, Pennsylvania with its primary research, development and innovation facilities located in Bessemer City, North Carolina.

For nearly eight decades, Livent has partnered with its customers to safely and sustainably use lithium to power the world. Livent is one of only a small number of companies with the capability, reputation, and know-how to produce high-quality finished lithium compounds that are helping meet the growing demand for lithium. Livent has one of the broadest product portfolios in the industry, powering demand for green energy, modern mobility, the mobile economy, and specialized innovations, including light alloys and lubricants.

Global demand for lithium is increasing rapidly, especially with the growth of electric vehicle (EV) production. Currently most lithium battery material processing is overseas and most predominantly in China. Over 90 percent of global lithium metal capacity, and over 80 percent of global lithium hydroxide capacity, is in China. It is critical for the Americas to expand production to develop a secure and sustainable lithium supply. With extensive lithium resources in Argentina, Chile, Canada and the United States, there is no reason to remain dependent on supply from China.

One of the key global sources of basic lithium materials is Argentina, a GSP beneficiary country. Argentina has extensive lithium reserves based on brine extraction, which produces far fewer carbon emissions than hard rock mining and remains the most sustainable method of mineral extraction. A vital supply of lithium from Argentina needs to be enhanced if American goals for vehicle electrification are to be achieved. Duty-free entry for Argentine lithium material is critical for Livent's business and U.S. clean energy goals.

Without the GSP program being in force, imports of lithium materials (e.g., lithium carbonate and lithium chloride) from Argentina are subject to a 3.7% U.S. tariff. This tariff not only adds unnecessary costs for downstream U.S. lithium manufacturing, but incentivizes the flow of lithium raw materials to China for further processing. This situation is contrary to U.S. critical mineral supply chain objectives.

In addition to providing economic incentives to developing countries, the GSP program greatly benefits the U.S. economy. The example of lithium from Argentina demonstrates the importance of the program for safeguarding supply chains for materials that are critical to U.S. national security. The renewal of the GSP program is essential for the effort to make the United States less dependent on supply of EV battery materials from China.



Sincerely,

A handwritten signature in blue ink that reads 'W. Harris Walker'. The signature is fluid and cursive, with the first name 'W.' being particularly prominent.

Harris Walker  
Director of Government Affairs



**Statement of  
CommonSpirit Health  
for the  
Committee on Ways and Means  
of the  
U.S. House of Representatives**

**“Reduced Care for Patients:  
Fallout from Flawed Implementation of Surprise Medical Billing Protections”**

**September 19, 2023**

CommonSpirit Health is pleased to share with the Committee our experience with implementation of the bipartisan No Surprises Act (NSA) legislation. CommonSpirit is one of the nation's largest Medicaid providers and provides safety net hospital services in many of our communities with 75 percent of our payer mix coming from government payers. Because Medicare and Medicaid do not reimburse for the full cost of care provided to beneficiaries, fair and sustainable reimbursement from commercial payers is critical to maintaining hospital and clinic operations, providing high-quality care, and serving our communities. We operate in states that have state-specific surprise billing rules, state-specific mediation rules, and states with no rules beyond the NSA.

CommonSpirit supports the intent of Congress' three-prong approach to protecting patients from unexpected medical bills: First, the NSA prohibits providers from sending patients certain types of balance bills for emergency services and ensures that patients' cost-sharing responsibilities are limited to what they would have paid for in-network health care. Second, the NSA requires providers to give their patients an estimate of expected out-of-pocket costs for most scheduled services. Third, once the patient is protected from unexpected bills, the provider and health plan are expected to work together to determine appropriate reimbursement without including the patient in the process. If the negotiation process fails, Congress established an independent dispute resolution (IDR) process.

Implementation of the statute, particularly related to the IDR process, has been uneven from both regulatory and operational perspectives. We appreciate the opportunity to provide feedback to the Committee, as we have previously shared similar information with the Agencies supervising the NSA — the Centers for Medicare & Medicaid Services, Department of Justice, and Department of the Treasury.

CommonSpirit Health ♦ 444 West Lake Street, Suite 2500 ♦ Chicago, IL 60606 ♦ 312-741-7000 ♦ [commonspirit.org](https://commonspirit.org)

*“Now to each one the manifestation of the Spirit is given for the common good.”*

## Patient Protections are Working

The NSA includes protections for insured patients who need emergency medical services and go either to an out-of-network emergency department (ED) or an in-network ED but see an out-of-network provider. Patients can no longer be balance billed in these circumstances and should not be receiving “surprise” medical bills. Across our system we have operationalized this change and implemented the requirements of the NSA. While the NSA allows for post-stabilization balance billing if a patient gives consent, we were concerned that patients may feel pressure or confusion to consent and so we put in place a policy to not pursue this path.

The NSA also provided patient protections by creating the “Good Faith Estimate” (GFE) that providers must give to patients who schedule services at least three days in advance. GFEs are also required upon request for individuals shopping around for the best prices from various providers. The GFE rules so far only apply to self-pay/uninsured patients, as rulemaking has been delayed for similar rules applicable to insured patients. Despite the delays in comprehensive rulemaking, we are complying with the GFE requirements as they stand today. In our physician clinics and hospitals, we have provided thousands of GFEs to self-pay/uninsured patients. While not specific to the NSA, CommonSpirit is committed to making sure patients have access to the information they need to make informed health care decisions. Many patients use our consumer-friendly price estimator tools that are readily available on our websites to determine their potential out-of-pocket costs. **The patient protections in the NSA—both to prevent unexpected bills in an emergency situation and to inform patients of their out-of-pocket costs for a scheduled service—are working.**

## Operational Challenges and Recommendations

Despite the tremendous progress we have made to protect patients from surprise bills in emergency situations, the third pillar of the NSA—creating a path for appropriate payment to providers for out-of-network emergency services rendered to insured patients—has been stymied by inadequate clarity of the policy and administrative and operational challenges. Many of these challenges have arisen from regulatory guidance that is inconsistent with the original drafting of the NSA. Primary among these challenges is the broken independent dispute resolution (IDR) process.

### Batching and Bundling Regulations

The NSA legislation specifically allows for batching together multiple claims for the same items and services between the same provider and payer into a single arbitration. Congress noted in the statute that this policy would encourage efficiency.<sup>1</sup> Despite this clear intent, however, the rules have essentially eliminated the ability of a hospital to bundle together one total patient encounter into a single dispute, instead forcing hospitals to submit each claim line as a separate case for arbitration.

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<sup>1</sup> 42 USC § 300gg–111(c)(3)

When the IDR portal opened in April 2022, the instructions on the portal allowed a party to dispute a total patient encounter, including all items and services related to the encounter, into one dispute. In September 2022, however, the Agencies changed their guidance and adopted a narrow and unworkable definition of “item or service” that essentially makes each line of a hospital outpatient claim its own item or service that must be disputed separately. This is not how hospital billing works, and the bundling rules in particular have made it cost-prohibitive to pursue the IDR process for more than half of the services provided by CommonSpirit Health to patients receiving outpatient emergency services.

In an emergency situation such as a heart attack that requires an insured patient to go to an out-of-network hospital for care, they might need an EKG, repeated blood work, visits from various specialist consults, numerous supplies, or other services. ED claims are complex and can easily exceed ten or twenty different item/service codes (as demonstrated in Exhibit 1.)

**Exhibit 1.**

Example Emergency Room Visit: One Patient Encounter				
Rev Code	Service Description	Service Code	Actual Charges	"Allowed Amount"
300	Lab Basic Metabolic	80048	\$665.00	\$332.50
300	Lab Blood Gases	82803	\$600.00	\$300.00
300	Lab CBC w/ Auto Differential	85025	\$225.00	\$112.50
300	Lab D-Dimer	85379	\$376.00	\$188.00
300	Lab Natriuretic Peptide	83880	\$247.00	\$123.50
300	Lab Troponin	84484	\$262.00	\$131.00
300	Lab Troponin	8448491	\$262.00	\$131.00
300	Venipuncture	36415	\$52.00	\$26.00
320	Xray Chest	71045	\$641.00	\$320.50
450	ED Level 5	9928525	\$3,894.00	\$1,947.00
252	N400338104902ML250	[blank]	\$123.00	\$61.50
730	EKG 12 Lead	93005	\$760.00	\$380.00
<b>ED Visit Total</b>			<b>\$8,107.00</b>	<b>\$4,053.50</b>

In the case above, if the patient’s health plan sends the hospital an inappropriately low initial payment for services already rendered (listed above as the “Allowed Amount”), we must consider arbitration. For the claim in Exhibit 1, which has 11 lines of items and services, this would be 11 separate IDR disputes. Of course, submitting an underpaid claim to the IDR entity is not free and we are forced to weigh the administrative and workforce costs associated with reviewing and disputing an underpayment, along with the associated \$350 CMS administrative fee plus additional IDR entity fees, to determine whether it is “worth it” to dispute. **(In this example, the potential costs for disputing the full claim would be up to \$3,850 in CMS administrative fees alone to contest the entirety of the \$4,000 difference between Actual Charges and the Allowed Amount.)** As a result, more than half of the billed charges of any ED encounter fall below our cost/benefit threshold and are thus not disputed for fair reimbursement. **This policy devalues the entirety of the care we provided to patients and the fair payment we should receive from health plans.**

- ❖ **Recommendation: The Agencies should revise the bundling regulations and guidance to allow for the broadest possible interpretation. Providers should be able to dispute inappropriate reimbursement for the entire scope of services provided for each patient encounter.**

As noted above, CMS increased the administrative fees associated with an arbitration from \$50 to \$350 per dispute (paid by both parties) while arbitration fees paid by the winning party to the IDR entity increased from \$100 to \$700 per dispute. As highlighted above, these fees create an inappropriate financial barrier to the IDR process and further tilt the process in payers' favor as they know that many providers will be unable to use the process due to the expense. Under a recent court decision challenging the increase, the administrative fee was once again set at \$50, but only for claims filed after August 3, 2023. (Providers who filed between January 1, 2023, and August 3, 2023, will not receive a refund for the administrative fees they have already paid for the dispute process.) CMS released a new proposal on fees on Sept. 20, 2023, lowering the administrative fees to \$150 per dispute per party and raising the upper limit for IDR entity arbitration fees. However, these fees would only apply for cases submitted after January 1, 2024. As noted below in our section on Timeliness of Payments, we have numerous claims still outstanding from this timeframe.

- ❖ **Recommendation: The Agencies should maintain the IDR administrative fee at \$50.**

#### Lack of Oversight of QPAs

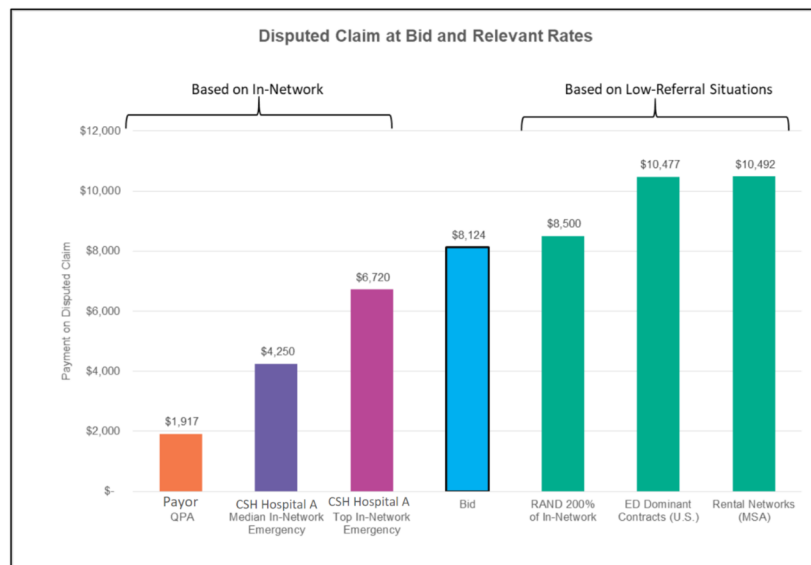
Congress created the Qualifying Payment Amount (QPA) for two purposes: 1) to calculate patient cost-sharing for emergency out-of-network services in a timely way, and 2) as one of multiple factors for consideration in arbitration disputes. While we disagree that the QPA is an appropriate metric for out-of-network payment (in-network rates are negotiated lower to account for the materially higher volume of patients referred when the provider is in network, while out-of-network rates have always been higher to account for the significantly lower volumes of patients), the NSA statute is clear in how it is to be calculated: in most cases, the QPA is the median in-network rate based on the health plan's contracts for similar items or services provided by similar providers/facilities in a similar geographic region. However, **this is not happening**.

It is urgent that the Agencies start auditing and ensuring that a QPA is calculated correctly since the Agencies continue to provide guidance to IDR entities to weigh the QPA more heavily than other factors when considering a dispute. The Agencies have been subject to repeated legal action for overweighing the QPA, but our experience is that IDR entities are still using the QPA inappropriately. When neither the provider nor the IDR entity can know whether the QPA has been calculated correctly, and yet it is a major factor in deciding a dispute, we are extremely concerned about the lack of oversight.

In Exhibit 2, we offer one real-world case as an example of the inappropriate QPAs we are seeing from payers. In this case, we saw an out-of-network patient for emergency services at an academic medical center in a moderate-cost market. We compared how much our median in-network rate would be for that case (the purple bar), the highest in-network rate we receive for that service (the pink bar) and the

generally acceptable out-of-network rates one could reasonably bill for the service (the green bars). The initial payment we received back, the orange bar, was one-quarter the amount of the lowest acceptable out-of-network amount. It was even half of what an in-network payer would reimburse us. This payer was previously in-network with Hospital A and the contracted rates were on par with other payers in the market. **There is no reasonable conclusion for this very low QPA other than it was calculated incorrectly.**

Exhibit 2.



There is no reasonable explanation for a QPA less than half of our median in-network rate for the same service, yet we have no way to know or to challenge how the payer is calculating their QPA. **Even the IDR entities have no way of knowing if a QPA is calculated appropriately since payers are not required to provide information on how they calculate their QPA to either the provider or IDR entity.** In addition, the NSA gave agencies the authority to review and enforce compliance with QPA calculation, but to date we have not seen such activity.

We believe that the only way to enable providers to engage in the IDR process on equal footing with the plans, as well as to ensure arbitrators have the information they need to make an informed decision, is to require payers to detail their QPA calculations. **Payers should be required to demonstrate to providers, regulators, and IDR entities that they are accurately calculating their QPAs.** Otherwise, only one party enters the dispute process with the knowledge of how the QPA was calculated and whether it accurately

represents a median contracted rate, while the arbitrator and provider are unable to challenge this factor, which the Agencies have consistently given outsized importance.

In addition to requiring that payers demonstrate to arbitrators and providers that the QPA adheres to federal requirements, the Agencies also should conduct rigorous review of plans' QPA calculations. More than a year into implementation, no public information has been provided to verify that such audits are occurring. Since chronic underpayments could impact access to care, we believe QPA oversight should be one of the Agencies' highest priorities.

❖ **Recommendation: The Agencies should ensure greater transparency and oversight regarding the calculation of the QPA.**

### Timeliness of Payment

Hospitals and all providers must receive timely payment to maintain operations in their communities. Unfortunately, a two-fold problem of delayed IDR decisions and bad health plan behavior is leading to extremely long delays in receiving fair—or any—payment.

After a provider treats an insured out-of-network emergency patient and submits the complete claim to the insurance company, the payer has 30 days to send a “reasonable” initial payment. **We are not receiving an initial payment within the 30-day statutory window approximately half of the time.** Across CommonSpirit, only 21 percent of the initial payments we receive are in line with the amount of payment we would expect from other payers in similar situations.

❖ **Recommendation: The Agencies should ensure plans are held accountable for failure to meet statutory deadlines for initial payment.**

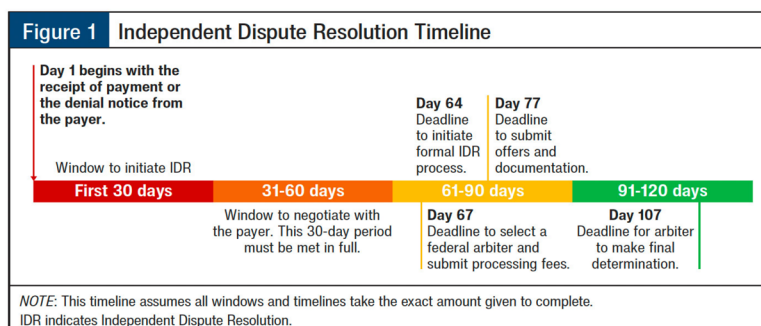
Once we receive an initial payment, the IDR clock and the timelines laid out in the NSA begin (see Exhibit 3).<sup>2</sup> The first step is opening a negotiation. In our experience, payers are not engaging in negotiations. In fact, **only three percent of our closed IDR cases have been decided through negotiation.** Under current rules, there is minimal incentive for the payer to participate in the negotiation process since they retain the funds, earning interest, throughout the process.

If negotiation fails, the provider may decide to take the case to arbitration. The NSA sets out very specific timelines that initiating parties, secondary parties, and IDR entities must meet, but only the initiating party is held accountable. If we do not initiate the IDR process, select an IDR entity, or submit an offer on time, our case is closed and we have lost our ability to seek additional payment. **IDR entities are not held to the same standard and CMS has eliminated the IDR deadline that is included in the NSA statute.**

<sup>2</sup> Graphic provided by Oncology Practice Management at <https://oncpracticemanagement.com/issues/2022/february-2022-vol-12-no-2/2781-the-no-surprises-act-what-providers-and-administrators-need-to-know>.



Exhibit 3.



The repercussions of this unfair application of deadlines are serious. Since the process began, CommonSpirit has submitted 1,488 IDR cases for arbitration. Of these:

- IDR entities missed the deadline for eligibility determination 55 percent of the time.
- Once the IDR entity determines eligibility, 30 percent of cases are not decided within the 30-day statutory window.
- As of August 21, 2023, 45 percent of our IDR cases are still on hold or “in progress.”
- Only 27 percent of all our cases submitted since the IDR portal opened in April 2022 have gone through the entire process and received a final adjudication by an IDR entity.
- **We have 411 total cases that were submitted in 2022 that have not yet received a determination, and our oldest unresolved or “on hold” dispute was submitted to the IDR entity on May 4, 2022.**

Batching and bundling rules are certainly contributing to the backlog of cases, but **IDR entities fundamentally lack experience with managed care contracting, which we believe leads to many of these delays. In our experience, arbitrators lack important contracting expertise that is relevant to the essence of payment disputes. Instead, arbitrators appear to have more experience with clinical appropriateness disputes, which require an entirely different set of knowledge and skills.**

**We believe the vast differences in our “win rates” demonstrates this lack of experience.** In general, we submit the same type of facility data with each of our IDR disputes. Of the IDR cases that CommonSpirit has won on the merits, meaning both parties were involved and submitted bids, our “win rates” vary from less than 10 percent with one IDR entity up to 85 percent with another, and there is no median rate around which the various IDR entities are congregating. If there was consistent understanding of the rules and consistent application of the regulatory guidance, we would expect a win rate to have a delta of some number on either side of a median percentage—but a 70 percent gap between entities is proof that IDR entities are ill-prepared and inexact in their application of the rules. While it is true that the IDR

entities have been plagued by starts and stops to the CMS portal, changing guidance, and legal challenges, there are fundamental problems with the expertise and qualifications of the existing IDR entities that must be addressed by the Agencies.

- ❖ **Recommendation: The Agencies should ensure IDR entities are (1) knowledgeable about managed care contracting and health care financing, (2) appropriately applying the most recent guidance to all cases, and (3) meeting statutory timelines.**

Finally, after the many delays in the arbitration process, if we are successful in a particular dispute, we are not being paid within the 30-day statutory window by the health plans. **More than 75 percent of our successful IDR cases are not receiving full payment within 30 days.** Of all the cases we have won, we have received full payment on only 18 percent. We pulled a representative sample of 26 successful IDR cases that have still not been fully paid and found that the average delay is 261 days from the date of the IDR determination. Health systems cannot continue to function if we do not receive payment for months on end for the care already provided in our emergency departments.

- ❖ **Recommendation: The Agencies should audit health plans to ensure they are making final payments within 30 days.**

In a perfect system running according to statutory timelines, providers that go through arbitration and win should receive their complete payment within 137 days of submitting their NSA-eligible claim to the health plan. Even under ideal circumstances, this is still five months from the day we delivered the service. In our lived experience, however, the timelines are much, much longer and these unpaid claims sit on our accounting books month after month. **Each of the steps along the process is slowed by ineffective or nonexistent enforcement of the NSA statute.**

These delays in payment are not sustainable. For NSA-eligible claims, we have already provided the care to an insured patient, and we must be paid fairly and timely for those services. **As the system exists today, the benefit of any IDR or payment delays always accrues to the health plans since they hold the disputed funds until a resolution is reached.** These delays interrupt hospital and provider revenue flows, which directly impacts our ability to provide care to our patients and communities. IDR process delays paired with ongoing health plan behaviors of narrowing their networks because they no longer benefit from in-network contracts, delaying initial payment, refusing to negotiate for fair payment, and failure to receive final payment upon adjudication—the burden to hospitals is compounding and it is jeopardizing our financial stability at a time when hospitals can least afford it. To wit: CommonSpirit recently announced an operating loss of \$1.3 billion in FY 2023. **The Agencies must take immediate action to use the enforcement mechanisms passed into law by Congress in the NSA.**

## CONCLUSION

Thank you for your leadership to end surprise medical billing and for working with stakeholders to protect patients while addressing this important issue. We appreciate your ongoing reviews of the NSA implementation process and look forward to continuing to work with you.

For more information regarding this testimony, please contact Alyssa Keefe, System Senior Vice President Public Policy and Advocacy via email at [alyssa.keefe@commonspirit.org](mailto:alyssa.keefe@commonspirit.org) or by phone at 703-951-7375.



CommonSpirit Health is one of the nation's largest nonprofit health systems with 150,000 employees and over 25,000 physicians and advanced practice clinicians serving individuals and communities across 23 states in more than 140 hospitals and 2,300 care sites, including myriad long-term care facilities, home health organizations, clinics, and community service organizations. As a faith-based system, CommonSpirit seeks to create healthy communities with a special focus on those individuals who are medically and/or socially vulnerable.



**Communications Workers of America**  
Claude Cummings | *President*

**Government Affairs Department**  
Dan Mauer | *Director*

**U.S. House of Representatives Ways and Means Committee**  
**Subcommittee on Trade**  
**Hearing on “Reforming the Generalized System of Preferences to Safeguard U.S. Supply**  
**Chains and Combat China”**  
**September 20, 2023**

The Honorable Adrian Smith  
Chairman  
Subcommittee on Trade  
1139 Longworth HOB  
Washington, D.C. 20515

The Honorable Earl Blumenauer  
Ranking Member  
Subcommittee on Trade  
1129 Longworth HOB  
Washington, D.C. 20515

Dear Chairman Smith and Ranking Member Blumenauer:

Thank you for the opportunity to submit written comments for the record for this hearing. I am writing to submit comments on behalf of the members and officers of the Communications Workers of America (CWA).

CWA strongly agrees that the Generalized System of Preferences (GSP) program must be substantially reformed in order to achieve the program’s goals, including to encourage development in partner countries and to strengthen our relationships around the world. However, we believe that the most effective way to do so is by passing H.R. 4276, introduced earlier this year by Ranking Member Blumenauer.

Importantly, H.R. 4276 would enact robust provisions to ensure that GSP partner countries “effectively afford” internationally recognized worker rights to workers, and that they do not “fail to enforce [their] laws, regulations, or other measures, or to fulfill [their] international environmental obligations.” These provisions are crucial. The goal of GSP is not to provide some modest assistance to less developed countries, but instead to help them build up their structures to enable them to achieve shared prosperity and strong democratic institutions. Yet, all too often, it has failed to do so, in part due to the lack of adequate labor and environmental provisions that ensure that countries treat their people and their environments in a way that builds their collective future.



**Communications Workers of America**

Claude Cummings | *President*

**Government Affairs Department**

Dan Mauer | *Director*

Moreover, H.R. 4276 does not include extraneous provisions like controversial new policies dealing with digital trade. In GSP-eligible countries, it is obviously important over time to develop appropriate policies governing digital trade. That said, imposing only one narrow slice of policies governing data localization, without addressing the numerous worker rights, human rights and other implications of digital policies going forward could likely ultimately stymie development of appropriate comprehensive digital policies, rather than advancing them.

Moreover, on a more general level, I note that GSP is not close to being the most important lapsed trade policy for American workers—that is instead the Trade Adjustment Assistance (TAA) program. Because of the lapse in TAA, workers who lose their jobs due to offshoring are not being provided benefits to help rebuild their lives, which is simply not a fair way to treat workers who are suffering for no fault of their own. H.R. 4276, again, is well-drafted and appropriately includes a reauthorization of TAA, so the Subcommittee should advance that legislation quickly.

Thank you again for the opportunity to submit these comments. If you have any questions, I am happy to provide any additional information that may be helpful.

Sincerely,

Dan Mauer  
Director of Government Affairs  
Communications Workers of America (CWA)



**Reforming the Generalized System of Preferences to  
Safeguard U.S. Supply Chains and Combat China**

House Committee on Ways & Means, Subcommittee on Trade  
September 20, 2023

The Coalition for GSP thanks the Committee for holding this important hearing and providing the opportunity to submit comments on reforms to the Generalized System of Preferences (GSP) program to safeguard U.S. supply chains and combat China. No Member of Congress would propose legislation to advantage Chinese exports and raise prices on Americans – yet failure to renew GSP has done exactly that for nearly three years.

We urge the Committee to be both swift and ambitious in its effort to renew and reform GSP. The Members of this Committee will not be alone, and it should not be partisan, as evidenced by the July 12, 2023 [letter](#) from 34 House Republicans and 32 House Democrats supporting GSP renewal to “help facilitate supply chain shifts out of China,” including “smart changes to make GSP countries more viable alternatives to China.” Furthermore, a bipartisan GSP renewal package passed the Senate with overwhelming support in the 117<sup>th</sup> Congress.

It is critical that the House and Senate work together to renew GSP and refund tariffs paid as soon as possible. Not all issues can or will be addressed, and it is important that Members of Congress not let the perfect be the enemy of the good. Too many people, in both the United States and GSP countries, are suffering from the uncertainty created by the longest lapse in GSP history. GSP has many merits because the strategic competition with China, but one Coalition member<sup>1</sup> recently summed up the predicament that many companies face:

*“We moved from China to Indonesia for GSP. Now, our Chinese competitors have an advantage over us because, even with Section 301 duties, Chinese production costs are lower than Indonesia. Since Congress has not made a clear decision, for or against GSP, we have no clue where to produce. Additionally, our margins have been negatively impacted because we cannot raise prices as fast as the duty increase.”*

We look forward to working with the Committee on commonsense changes to GSP that will help maximize its potential to achieve Congress’ multipronged goals of promoting development, securing U.S. supply chains, and combatting China.<sup>2</sup>

**About the Coalition for GSP**

The Coalition for GSP is a group of American companies and trade associations organized to educate policy makers and others about GSP’s benefits to American companies, workers, and consumers. Coalition members range from small, family-owned businesses to Fortune 500 corporations and operate in all 50 states, the District of Columbia, and Puerto Rico. We have worked with over 1,000 U.S. companies that import under GSP, providing unique insight into both the challenges and opportunities associated with the program.

**GSP expiration impacts**

GSP has a history of lapses and retroactive renewals – but expirations have never been so long or so expensive. It took Congress nearly 23 months to renew GSP after a July 31, 2013 expiration and almost 13 months to renew

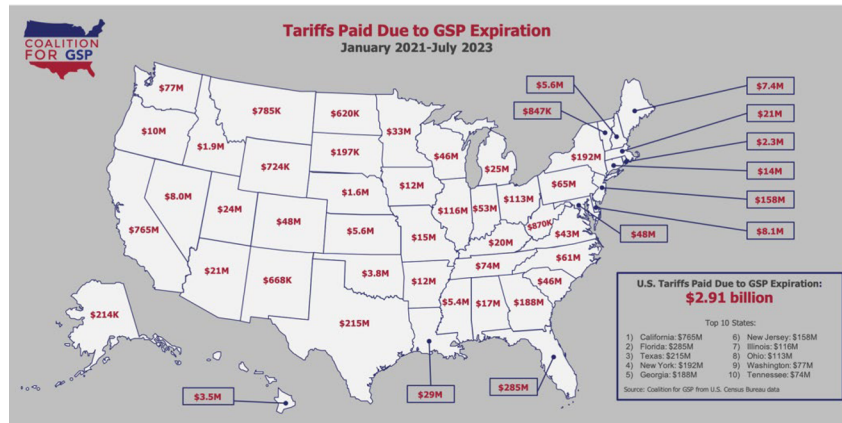
<sup>1</sup> In all cases of anonymous quotes or examples, company names and further details can be provided to Committee staff privately upon request.

<sup>2</sup> The Coalition for GSP does not have a position on China or imports from China. Comments here address GSP’s usefulness at a tool for the desire of many Members of Congress and other stakeholders to reduce reliance on GSP.

GSP after a July 31, 1995 expiration. The current lapse, already in its 34<sup>th</sup> month, threatens to be longer the two previously longest expirations *combined*. GSP's full legislative history is available [here](#).

The tariff costs of expiration are also without precedent. Through October 4, 2023, American companies likely have paid around \$3.5 billion in tariffs as a direct result of GSP expiration. This is based on \$2.9 billion in *known* tariffs paid due to GSP expiration from January 2021 to July 2023,<sup>3</sup> up to \$800 million in tariffs paid on potentially eligible products that did not claim GSP during that period, and estimates for what likely was paid from August 1 until today. By comparison, American companies paid an estimated [\\$1.3 billion in extra tariffs](#) during the August 2013 to July 2015 lapse.

The map below shows a state breakdown of the \$2.9 billion in known tariffs paid. Non-claiming imports are excluded from the data since it is impossible to know if it was an oversight (e.g., unaware of program, or potential for refunds) or intentional (e.g., not meeting the rules of origin). Needless to say, GSP expiration costs are high and impact companies in every state.



Yet as high as the direct expiration costs are, the real-world impacts are bigger than just the tariff costs. Companies must ask a lot of uncomfortable questions when GSP is expired: when will it be renewed? Should we raise prices – and how will that impact sales? Should we take out loans to maintain current pricing? Which employees must be let go? Which investments must be put on hold? Will tariffs paid definitely be refunded? There is no-size-fits-all answer.

<sup>3</sup> Official tariff costs of GSP expiration are not available from the U.S. government, which reports \$0 in tariffs paid for any product that claimed GSP despite the lapse. National estimates are created by applying the most-favored nation (MFN) rates to official data on GSP import claims, by country at the 10-digit level of the Harmonized Tariff Schedule of the United States (HTSUS), the most-detailed level available. National data are allocated to states at the 6-digit HTSUS level, the most-detailed level for states. The data are updated monthly with each new U.S. Census Bureau release. For example, if there was \$1 million in GSP claiming imports from Indonesia of Product X in January 2021, and the MFN rate is 5%, our database would show \$50,000 in tariffs paid due to GSP expiration. If Nebraska accounted for 60% of U.S. imports and Oregon 40%, then the database would show \$30,000 in tariff costs for Nebraska and \$20,000 for Oregon.

Mike's Currie Love in Boise, Idaho is an example of a small, family-owned business that has been devastated by GSP expiration. Founded by a husband-and-wife team 15 years ago, it has been their sole family income. They have paid well over \$100,000 in GSP expiration tariffs. Unable to absorb these costs, Whole Foods – their first and biggest customer – said their product would be cut from 350 stores in late 2022. Their second largest customer, Sprouts, told them in March 2023 that their product would be removed from another 350 stores. GSP renewal can refund the tariffs paid, but it cannot put their products back on store shelves or undue all the damage to their company since 2021.

Novita in Monrovia, California is another small, family-owned business that may close permanently due to GSP expiration. Having paid millions of dollars in tariffs, the 40-year old company has slashed its staff from 20 employees to just 5, with family members pitching in to try to stay afloat. Zen Distributors Group in Miami, Florida took on new debts, laid off workers, and increased its purchases from China because GSP expired. Kamali Group in Great Neck, New York imports genuine leather for automotive seats under GSP, but is getting priced out of the market by Chinese synthetic leathers.

One survey respondent reported the worst of all worlds based on Congress' objectives. It reduced its U.S. workforce "by several hundred employees throughout 2022 and 2023"; delayed planned business expansions; returned to several suppliers in China due to a lack of profit margins in GSP countries, and raised prices for many products. This is the lose-lose-lose-lose outcome that many GSP users are currently facing.

#### **A framework for thinking about support for GSP and impacts of reforms**

When thinking about potential changes to GSP, it helps to start with a simple question: why do people support GSP? As part of our conversations with Members of Congress and other stakeholders, the Coalition for GSP hears several primary reasons, many of which were discussed at length during the hearing:

- Promoting development in GSP countries;
- Providing leverage for seeking policy changes;
- Lowering costs for U.S. businesses and consumers;
- Reducing reliance on China, and
- Improving diplomatic relations with GSP countries.

Fortunately, these goals (typically) are self-reinforcing, which helps explain GSP's long history of bipartisan support. For example, reducing reliance on China leads to more development opportunities in GSP countries, greater tariff savings for U.S. businesses and consumers, more leverage in reviews, and likely better diplomatic relations as commercial ties improve. Groups that may disagree strongly on other trade issues often support GSP, even if they are supporting it for different reasons.

Importantly, the intent of changes matters less than the domino effect that follows: the 2015 travel goods expansion to promote new development opportunities started reducing reliance on China years before the 2016 election – let alone the imposition of Section 301 tariffs on China in 2018 – while creating new incentives for GSP countries to comply with eligibility criteria and lowering costs for U.S. businesses. Or it did until GSP expired.

**That explains the first fundamental truth Congress must remember: a robust GSP can achieve multiple goals, but a limited GSP will struggle to do anything very well.**

Promoting development and raising living standards. Providing leverage for seeking policy changes. Helping U.S. companies reduce reliance on China. Saving Americans money while they deal with stubbornly high inflation. Building good will with and within GSP countries. The more countries and products and trade GSP covers, the better it will achieve all those goals.



A smaller program undermines all of those goals. There is no real-world scenario where GSP benefit reductions somehow achieve significantly better policy outcomes. That is true whether a given Member of Congress' primary GSP interest is poverty alleviation, market access or labor rights leverage, China de-risking, tax cuts for Americans, or raising the United States' standing in the world.

Perhaps the biggest threat to GSP's long-term viability is a mismatch between the benefits that Congress and the Administration are willing to provide and the outcomes it hopes to achieve, particularly as it relates to eligibility criteria. GSP countries will only make difficult changes if the benefits provided by GSP outweigh the potential political and economic costs. But with the exception of the travel goods expansion in 2015, the broader trend is for GSP benefits to be taken away, particularly for high-value products, while simultaneously expecting GSP countries to meet more and higher standards. That is a recipe for frustration – and one that Congress should seek to reverse as part of renewal.

**It is also a key to the second fundamental truth Congress must remember to meet current objectives: changes that make GSP benefits harder to use – or easier to lose – ultimately help China.**

Investing in any country involves risk – and investing specifically for GSP benefits involves even greater risk. As Fabian Garza from Black Diamond Equipment responded to Chairman Jason Smith, dependability is the number one issue for maximizing GSP use. Garza summarized it nicely: *"Supply chains are not like LEGO pieces. You do not just pick them up and place them. It takes a tremendous amount of resources. It takes a tremendous amount of time."* Certainty is what companies need, but GSP's history of frequent expirations, country suspensions, and individual product losses shows GSP benefits are anything but certain.

Even with Section 301 tariffs in place since 2018, China remains the biggest, fastest, highest-quality, lowest-cost producer for many products. As one GSP Coalition member actively working to shift production from China to Indonesia emailed:

*"China has master planned the world's most efficient supply network to support [SECTOR] manufacturing. This includes a support structure of master planned regional component production of things like PCBA, motors, controlling mechanisms, power cords and other inputs. It includes favorable taxation for exported products through VAT rebates and other regional government incentives. It also includes a regional specialized workforce very adept in the assembly process. In a time of continued rising Chinese labor rates, our diversification efforts should be easier than they are but other countries remain at a disadvantage."*

That is the status quo that GSP countries must overcome – and GSP benefits are critical to offset the higher costs and other challenges associated with moving supply chains outside of China.

Unfortunately, no matter how well-intentioned or politically popular, every new eligibility criterion increases the risk of those GSP-dependent investments. And there are many new risks on the horizon already. The Senate-passed USICA and the House-passed COMPETES Act in the 117<sup>th</sup> Congress included identical new criteria related to **human rights, rule of law, political pluralism, due process, fair trial, equal protection under the law, poverty reduction, health care and education, physical infrastructure, private enterprise, capital markets, corruption, and bribery**. Both bills added **environmental** and **women's economic empowerment** provisions and strengthened the **labor rights** criterion (though the proposals differed). Finally, there is interest in new criterion to address issues like **digital trade**.

Similarly, raising the value-added thresholds may make duty-free treatment unattainable for both current and planned investments in GSP countries. China may not always be the top beneficiary, but it is the most likely given its historical dominance across many GSP-eligible products. The same GSP Coalition member quoted

above recently received its first shipment from Indonesia. It was able to certify that 36% of the value came from local content, both from labor costs and lower-value components like plastic extrusions. Its' Indonesian supplier has a multi-year plan to stand up new investments for various higher-value components, but those plans are based on GSP being renewed and the ability to claim duty-free treatment during the transition. A 60% or higher threshold would prevent duty-free treatment for many years and likely cancel the project altogether before those investments can occur.

As Mr. Garza responded to Representative Vern Buchanan, *“we need to know that if we move a product to a different country, a different source, we don't have to second guess that three years later that we made the right move.”* Many companies will struggle to look at proposed changes and feel confident about not second-guessing the decision to move in a few years.

#### **Specific GSP reform proposals to safeguard U.S. supply chains and combat China**

First and foremost, Congress must commit to renewing GSP and refunding all tariffs paid as soon as possible. Below are other ideas for how to improve GSP and that balance the benefits it affords with the growing expectations (and hopes) for GSP as a tool for achieving multiple goals at once.

***CNLs: Congress should eliminate CNLs, or at least significantly increase the thresholds and amend the rules.***

GSP's “competitive need limitations” (CNLs) are statutory thresholds that can terminate duty-free treatment based on import levels. CNLs are based on two premises: 1) that once a country hits a certain level of exports, those products are sufficiently competitive and do not need duty-free treatment to thrive, and 2) if trade shifted from the “competitive” country, it would go to other GSP beneficiaries. Both premises have been proven false, repeatedly. In the vast majority of cases, products that lost GSP due to CNLs suffered and trade moved to China or other developed countries.

For example, in one of the few academic papers on CNLs, the International Monetary Fund's Shushanik Hakobyan [found](#) *“being excluded from the GSP as a result of a CNL induces a large and significant drop in imports from affected countries, both in value and in their share in total US imports. Contrary to the policy objectives of CNLs, the excluded countries do not appear to be ‘super competitive.’ In addition, the findings suggest that much of the benefits of CNLs accrue to non-GSP countries, rather than other GSP beneficiaries.”*

USTR's last [pre-expiration GSP annual product review list](#) similarly disproves the premises. Six products exceeded a CNL threshold in 2019, and all six had their GSP benefits revoked without review (despite CNL waiver requests for several). Here were the impacts:

- For 2 of the 6 products, imports fell to \$0 in 2022. Trade shifted to Qatar, Saudi Arabia, United Arab Emirates, and China in one case, and Vietnam in the other.
- For necklace imports from Indonesia, exporters attempted to shift to other, less-popular necklace styles, but Indonesia's share of the overall category fell from 26% of U.S. imports in 2020 (while benefits were still in place) to 5% in 2022.
- The other 3 products either saw value or share of U.S. imports fall back below the CNL thresholds. Mexico, Costa Rica, Italy, Spain and Japan – not of which are GSP countries – were the primary beneficiaries depending on the product. In short, every “competitive” product actually suffered without GSP – in several cases with the U.S. market disappearing completely – and all the benefits went to non-GSP countries.

One might assume that GSP would be self-correcting and these products would get their duty-free treatment restored after the declines. They would be wrong. Less than 10 products have had GSP eligibility restored since 2007, with most of these being special cases (e.g., one-third of them were Ukrainian products that had GSP

restored after Russia invaded Crimea in 2014, and several others were products deemed “not made in the US” after Congress changed the GSP statute in 2018).

Lack of restorations is not for lack of trying: in 2020, 13 redesignation petitions covering more than 20 different product/country pairs were filed. All were rejected without review. The flawed premise – and processes – show the need for Congress to step in and eliminate or reform CNL rules.

Importantly, CNLs are not in any way related to U.S. industries’ ability to request GSP termination based on domestic harm. That is covered by a different section of the GSP statute and domestic industries can request GSP removal regardless of the value of trade. In 2020, semi-parboiled rice was removed despite just \$16 million in imports under GSP from all countries combined. CNLs are a statutory trigger that can lead to higher tariffs even when there are no U.S. producers and no one supports revocation.

Looking back at the reasons people support GSP, the current CNL rules undermine them all:

- *Development*: the vast majority of products deemed competitive saw export performance suffer, often falling to zero, only to be replaced by non-GSP countries. Less trade clearly does not promote development opportunities.
- *Leverage*: eliminating benefits for the products that countries care most about reduces their incentives to comply with eligibility criteria requests. After decades of product cuts, and almost no restorations, there are countries like Brazil where more “GSP-eligible” trade is excluded from duty-free treatment than still claims it. In practice, CNLs mean fewer stakeholders in the GSP countries that care whether GSP is lost or not.
- *China*: past CNL losses reduce viable options for companies looking to move supply out of China, while the threat of future CNL losses limit the willingness to make major investments. No company will shift large volumes based on duty-free treatment if the shift itself may end duty-free treatment. Current rules may work fine if Congress wants companies to shift \$50 million in trade for a product into a GSP country. But if Congress wants companies to shift \$300+ million in trade, levels need to be increased significantly, and if Congress wants companies to shift \$1+ billion in trade, CNLs should be eliminated altogether.
- *Savings*: U.S. companies pay hundreds of millions of dollars in tariffs annually on products that lost GSP due to CNLs. These costs tend to grow every year, as new products are added to the exclusion list but no old products get their GSP reinstated.
- *Diplomacy*: terminating GSP benefits as countries begin to thrive does not create diplomatic goodwill, especially given that benefits are not reinstated if trade falls. All countries want to develop reliable trading partners and markets, and CNLs make that make continued access to the U.S. market unreliable.

Short of eliminating CNLs, Congress could make any number of updates to minimize their harm, including:

- raising the levels significantly, since CNLs have not been updated in more than 25 years ago;
- changing the CNL’s growth rate formula from a fixed amount to a percent (e.g., the CNL grew by 6.67% from 1996 to 1997, but just 2.5% from 2021 to 2022);
- eliminating the 50% threshold which terminates benefits for many products that cannot be found in other places, including low-value imports, and
- counting only GSP-claiming imports against the cap to ensure significant investments to meet GSP rules of origin are not undermined by imports of products with minimal final assembly that cannot meet GSP qualification rules.

In either case, Congress should create a process to review and restore GSP benefits for past CNLs losses of non-controversial products as quickly as possible. The Coalition supports providing additional time to review benefits that may be considered more sensitive, for example by initiating a review under the domestic harm provisions of the GSP statute for certain products.

CNLs are an area where with clear bipartisan support for ambitious changes to keep (and restore) more duty-free treatment. In the 117<sup>th</sup> Congress, the CNL Update Act ([H.R.6171](#)) included many of the recommendations above, include raising thresholds, changing the statute to say products should get GSP back if they fall under the CNL threshold in the future, and only counting GSP-claiming imports against the caps. Over 50 House Members – including 30 Democrats and 24 Republicans – signed a [letter](#) urging the CNL Update Act’s inclusion in any trade title to what became the CHIPS Act. As Congress’ interest in helping companies reduce reliance on China has grown, the 118<sup>th</sup> Congress should be even more forward-leaning by eliminating CNLs altogether.

**Rules of origin: Congress should adopt the AGOA rules of origin (or go even further).** As Chairman Jason Smith noted, the AGOA program allows U.S. content to count toward the value-added threshold, creating both export and import opportunities for American firms. AGOA rules also allow content from any other program beneficiary country to count toward the threshold. Replicating the full AGOA rules of origin – or expanding them to include content from select other countries, such as free trade agreement partners – should improve outcomes for each of the four main justifications for GSP support:

- *Development*: encouraging more beneficiary-to-beneficiary trade would allow smaller countries to carve out niche roles in global supply chains even if they alone cannot meet thresholds for final production.
- *Leverage*: increasing the number of direct and *indirect* exporters with a stake in GSP review outcomes creates more incentives for review outcome compliance, including those selling inputs to other GSP beneficiaries before final export to the United States (e.g., if a company in GSP Country A sells parts to GSP Country B, it would need Country A to comply with GSP rules to avoid being replaced by suppliers in other GSP countries).
- *China*: recreating Chinese production advantages in each, or perhaps in any, GSP country is not a realistic goal. Yet collectively, GSP countries may provide the scale needed to justify major input and component manufacturing investments across them (e.g., key electronics in Country A, motors in Country B, other materials in Country C).
- *Savings*: allowing program-wide cumulation cannot make GSP claims less likely, unlike other potential rules of origin changes. It should increase the share of imports from GSP countries that qualify for duty-free treatment, and therefore reduce costs. At worst, it would have no impact.
- *Diplomacy*: adopting the AGOA rules would show GSP countries that the United States is interested in their collective development and participation in global trade, and not just in promoting U.S. exports (or reducing Chinese exports) to their countries.

**Rules of origin: Congress should request an ITC study before increasing any value-added threshold.**

There was considerable discussion at the hearing about raising the value-added threshold to 60% or higher, citing the current rule as a loophole that allows mostly-Chinese production to claim GSP benefits. Yet dictating that more content must come from GSP countries to qualify for duty-free treatment may not actually result in fewer indirect imports from China. Counterintuitively, it could result in *more* imports from China, both indirectly (as components) and directly (as finished goods).

As Ed Gresser from the Progressive Policy Institute responded to Representative Suzan DelBene regarding raising the value-added threshold, “***I don’t think we can really predict what the effect would be of raising that standard. A lot of the GSP countries are quite small in some places, they do not have a lot of local inputs. We need to bring it in for somewhere else. And it is not out of the question that a higher rule of origin would mean shifting back to China***” (emphasis added).

The Coalition for GSP has tried to collect information from U.S. companies about the potential impacts of raising the value-added threshold to 60%, or even lower levels like 50%. They cite a range of concerns, including:

- unavailability of key inputs in the GSP country;
- inability to count many “local” costs as qualifying content, and
- complex valuation calculations that could prevent GSP claims for unintended reasons.

In order to count as local content, foreign materials must undergo a process called double substantial transformation. According to the GSP Guidebook, it means “imported material is transformed into a new and different constituent material with a new name, character and use. Then the constituent material must be transformed in the BDC into a new and different finished article with a new name, character and use.” According to a member, it is “a feat that is extremely difficult to overcome” and therefore means GSP countries must count on direct costs of processing to meet the 35% threshold since they do not have available raw material supply.

For example, one Coalition member emailed “*the Philippines does not have the industrial infrastructure, steel mills, copper foundries, plastics formulators and etc to provide the raw materials needed to produce our parts. I think this would be the case for most GSP countries.*” Its imports are components used American industrial and commercial, medical, transportation, and other equipment manufacturers. [It also has been sourcing more from China due to GSP expiration.]

Another Coalition member emailed “*The GSP country (like Cambodia) has to add value of 35%. In our category, that is all of the labor, usually about 10%, 10% overhead, and 15% materials. It is not necessarily easy to hit that. If you increased the 35% threshold to say 60%, very few products would qualify as most materials come from other countries like China, Taiwan, Korea, Italy, etc. and just are not available in Cambodia. When we moved production from China to Cambodia back in 2017, we had to convince some material manufacturers to start up production in Cambodia to hit the 35% threshold.*”

Even many in-country costs cannot be counted toward the qualifying content. [19 CFR 10.178](#) lists costs that cannot be included in content calculations, including profits and other general costs of doing business, such as “administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.” As such, a 100% Brazilian product will have a much lower level of “Brazilian content” for GSP qualification purposes after subtracting out all of those costs, further increasing the risk of a threshold that *sounds* reasonable but in practice is quite hard to reach.

One Coalition member noted that the import price was differed greatly depending on whether 1) imported the product and sold it to customers, or 2) whether its customers imported directly from the factory, in which case the import price included the U.S. company's profits. For example, if the GSP countries' qualifying content value was \$8 and the U.S. company paid \$10 for its imports, the 80% content would have no problem meeting current or higher rules of origin threshold. However, its customers may pay \$20 for the same product, with \$10 going to the GSP country factory and \$10 going to the U.S. company. The exact same product now has just 40% GSP country content, and would be at risk of not qualifying for duty-free treatment at higher levels.

In the past, the Coalition for GSP has also heard concerns about products where commodities make up a large share of the overall value of an import. For example, if a \$2 copper wire includes include \$1 worth of copper – and the wire producer country does not have a copper industry – then the final countries' domestic content can never exceed 50%. Worse still, if the price of copper doubles but other production costs remain the same, there would now be \$2 of copper in a \$3 copper wire that can no longer meet the current 35% threshold. A higher threshold would increase the number of products that could be prevented from claiming GSP due to reasons wholly outside of their control (e.g., global commodity price surges).

In short, rules of origin can be very complicated and the risk of unintended consequences are very high. Congress should not select an arbitrary new threshold and assume it will be workable. Adopting changes such as the AGOA cumulation rules would help mitigate potential harm from higher value-added content requirements,

but real analysis should be conducted on the implications of higher requirements on key products or sectors, as well as other potential steps (e.g., phase-in periods) that Congress should consider to ensure the outcomes align with the Congress' goals.

***Program reviews: Congress should add “good actor” provisions to ensure country reviews do not harm the goals or populations the eligibility criteria are meant to help.***

There is a disconnect between tangible GSP tariff benefits, which result from contracts between U.S. importing companies and foreign exporters, and eligibility criteria compliance, which generally focus on policies and are determined through government-to-government negotiations. This creates a risk that GSP enforcement harms the individuals and businesses that are furthering eligibility criteria goals *even if* there are legitimate concerns with a GSP country government's policies and practices. Congress should consider changes to GSP review criteria to preserve duty-free treatment for products or sectors whose termination would undermine GSP's stated goals.

For example, Congress is considering adding women's economic empowerment provisions to GSP in some capacity. Many GSP importers, such as Nina Designs in Emeryville, California, are fair trade organizations that have worked for decades to empower women in developing countries. Not because GSP rules require it, or may in the future, but because the value of empowering women is one of their core beliefs. The Coalition for GSP profiled Nina Designs and how its women workers in Indonesia benefit from GSP [here](#). There are companies like Nina Designs working in GSP countries around the world, who want to do good, and are able to do more of it because of GSP treatment. Regardless of any individual government's policies or practices, women in GSP countries would be harmed if companies like Nina Designs see their GSP benefits terminated. It would be particularly disappointing to harm those women in the name of helping women.

Environment is another area where Congress is considering new GSP provisions, and where many GSP importers already go well beyond legal requirements. For example, one Coalition member sources from a sustainable forest – 1.25 trees are planted for each 1 harvested – with a carbon *negative* factory. The United States cannot match the scale or sustainability levels. Its competition often imports from countries with lower environmental standards, such as China. Yet under the current government-to-government model of eligibility compliance, the GSP importer would be treated no differently than any other company. In this case, loss of GSP for non-compliance by the government (or other industries) would worsen environmental outcomes, not improve them.

Coalition for GSP members are committed to promoting development and raising standards in GSP countries, but remain concerned they could face higher tariffs despite going beyond the requirements of the GSP statute, local laws, or even U.S. laws. GSP cannot improve outcomes by punishing good actors for the noncompliance of others. Good actor provisions would help create a race-to-the-top both *between* and *within* countries.

In the 117<sup>th</sup> Congress, the CNL Update Act also included Sense of Congress language on the importance of preserving GSP benefits for good actors. As noted, over 50 bipartisan House Members supported its inclusion in a trade package. The 118<sup>th</sup> Congress should build upon this bipartisan support and update GSP review processes to reward good practices.

***Program reviews: Congress should include the provisions from the “USICA” bill requiring reviews before punitive actions can be taken and extend the notice requirements for terminations and suspensions.***

Current GSP law does not require any public review or comment before terminating GSP for eligibility criteria concerns. Furthermore, while the statute requires at least a 60-day notice to terminate a country's overall GSP eligibility, it requires no notice for partial suspensions of benefits. Public review and notice are basic good governance issues, and the Senate bill included provisions to address these concerns.

Additionally, Congress should extend the notice requirement for termination or suspension to at least 180 days. For many GSP importers, it takes 3 to 6 months for an order placed to arrive in the United States. The 60-day notice does not allow products already ordered to arrive, let alone for companies to try to find new suppliers in other countries. As a result, the short notice can impose high tariffs costs on the U.S. importer without having any impact on the GSP country that revocation of benefits is intended to punish.

***Program reviews: Congress should increase congressional oversight by creating an approval/disapproval mechanism for country reviews.***

In the past, the Coalition for GSP has heard concerns that eligibility review decisions were pre-determined and GSP countries' efforts to resolve issues and retain eligibility were not recognized. It is not the Coalition for GSP's place to determine the veracity of the claims, but an ever-expanding list of criteria increases the risk of provisions being used as fig leaves to punish countries as opposed to good-faith effort to raise standards and bring countries into compliance. Congress could alleviate such concerns by requiring a report from the Administration outlining the reasons for future terminations or suspensions, and creating an explicit mechanism to delay or stop any decision that it believes is not warranted by the facts of the case. Knowing Congress could intervene in unwarranted decisions should encourage countries to put their best offers on the table, creating a win-win outcome where issues are resolved and GSP benefits remain in place.

***Product coverage: Congress should consider expanding GSP product coverage.***

The Coalition does not endorse and is not seeking a wholesale addition of products to GSP that would undermine efforts to renew GSP quickly, but GSP's ability to achieve many goals is limited by the long list of products on the outside looking in. There are legitimate sensitivities in both the United States and free trade agreement and other preference programs may justify keeping certain products out of GSP. However, that should not be an excuse to keep many more products – that are not produced in the United States or those other partner countries – from ever being reviewed for potential inclusion going forward.

***Country coverage: Congress should play a more active role in reinstating benefits for key trading partners, such as India.***

India's continued ineligibility undermines many companies' efforts to reduce reliance on China, while having a much bigger financial impact than any other GSP-eligible countries. Since India's GSP eligibility was terminated in 2019, American companies have paid up to \$1.8 billion in extra tariffs. Many of these are on critical inputs, such as agricultural chemicals, where the only real options are sourcing from India or China. Lack of progress is related to expiration, as it is difficult to negotiate renewed benefits for a program that does not exist. Yet Congress can make clear that its long-term vision for GSP includes countries like India, especially in light of India's progress resolving market access issues including on apples, pulses, berries, meats, and chemicals.

September 28, 2023

Trade Subcommittee of the Ways and Means Committee  
U.S. House of Representatives  
Washington, DC 20510

**RE: Trade Subcommittee Hearing on Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China**

On behalf of America's chocolate and candy companies, I write to express strong support for the reauthorization of the Generalized System of Preferences (GSP). As the House Ways & Means Trade Subcommittee analyzes GSP to safeguard U.S. supply chains, America's confectioners urge the renewal of this program.

The National Confectioners Association (NCA) is the trade organization that advances, protects, and promotes chocolate, candy, gum, and mints, and the companies that make these special treats. Confections are produced in all 50 states, creating jobs for approximately 57,000 workers in more than 1,000 manufacturing facilities across the country. Nearly 700,000 jobs in agriculture, retail, transportation, and other industries rely in part on the sale of confections for their livelihood. For every job that is created by confectionery companies, another eleven are supported in related industries.

America's candymakers rely on a global supply chain to make our products here in the United States. As you know, GSP exempts duties on imports from developing countries to help them create jobs and reduce costs for American businesses. Since GSP expired on December 31, 2020, chocolate and candy companies have been but one segment of the American businesses that have paid about \$750 million in extra taxes to make their products. These added costs have been borne by our industry during the COVID-19 pandemic and all its related challenges, including supply chain disruptions, worker shortages, rising transportation costs, and other obstacles. NCA's members are further impacted by the misguided and outdated U.S. Sugar Program, which results in sugar-using manufacturers paying twice what the rest of the world pays for sugar.

Each day of inaction on GSP costs confectionery companies and others millions of dollars, which is why I urge the swift renewal of this program to help American businesses lower costs and continue making our products right here in the United States.



Reforming the Generalized System of  
Preferences to Safeguard U.S. Supply Chains  
and Combat China

House Committee on Ways & Means  
Subcommittee on Trade  
Hearing Date: September 20, 2023

Bryan Riley  
Director, Free Trade Initiative  
National Taxpayers Union  
Submission for the Record  
October 4, 2023

I appreciate the opportunity to submit these comments on behalf of National Taxpayers Union (NTU), a non-partisan citizen group founded in 1969 to work for less burdensome taxes, more efficient, accountable government, and stronger rights for all taxpayers. More about our work as a non-profit grassroots organization is available at [www.ntu.org](http://www.ntu.org).

Trade preference programs like the Generalized System of Preferences (GSP) encourage mutually beneficial transactions between Americans and our trading partners. As an organization dedicated to the rights of taxpayers, NTU supports GSP as an alternative to costly foreign aid programs.

NTU encourages reauthorization of GSP. We also urge Congress to improve the program to better promote U.S. interests.

From 2015 to 2020, roughly 90 percent of U.S. imports from GSP countries were not eligible for GSP. Congress should expand GSP so more products from participating countries are covered.

At the hearing, Chairman Jason Smith (R-MO) asked about including U.S. content as part of each country's rule-of-origin calculations, and perhaps increasing the threshold for GSP eligibility above 35 percent. Whatever the percentage threshold for eligibility is, GSP countries should be able to include U.S. content to meet it.

In addition, GSP countries should be able to include content from other countries that have free trade agreements with the United States or that are eligible for trade preference programs in order to meet the GSP content threshold. For example, an import from Belize would not have to have 35 percent domestic Belize content to qualify for GSP, but instead 35-percent content originating from Belize, the United States, our free trade partners, or other GSP or African Growth and Opportunity Act (AGOA) countries. This would strengthen supply chains and increase the benefit of signing a free trade agreement with the United States.

Finally, NTU encourages you to remember that trade preference programs like GSP and AGOA are not unilateral giveaways that come at U.S. expense. They simply remove federal barriers to mutually beneficial trade. Every dollar someone earns from the opportunity to sell to Americans thanks to GSP or AGOA is a dollar that can be used to buy competitive U.S. exports or invest in our economy.

NTU encourages Congress to reauthorize GSP in the near term and to improve our trade preference programs to make them more effective in the future.



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 October 4, 2023

House Committee on Ways and Means  
 Subcommittee on Trade  
 U.S. House of Representatives  
 1102 Longworth House Office Building  
 Washington, DC 20515

**Subject: RVIA POST-HEARING COMMENTS - Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China.**

Dear Subcommittee Chair Smith and Ranking Member Blumenauer,

The RV Industry Association ("RVIA") is the leading trade voice for the \$140 billion RV industry, representing approximately 495 manufacturers, component, and aftermarket suppliers who together produce 98 percent of all RVs made in the United States, and approximately 61.5% percent of RVs produced worldwide. RV manufacturing is a quintessentially American industry and has a strong manufacturing presence in the United States – employing nearly 700,000 Americans in total and paying more than \$48 billion in wages. We are proud of our industry's contributions to the U.S. economy and want to continue to grow and invest in our communities and workforce in the United States. Thank you for the opportunity to submit our comments on this critical issue.

Supply chains are complicated, and vital inputs from overseas play an essential role in the final RV that we see on the road today. The Generalized System of Preferences is a crucial program for this industry, because we depend on imports of a thin, lightweight lauan plywood from Indonesia that is not available in any substantial quantity elsewhere and certainly not in the United States. The unique combination of characteristics of this wood – thin, lightweight, flexible, smooth – are perfect for RVs. Lauan enters the country duty-free under the GSP program, but otherwise has an 8 percent duty rate.

The RV industry relies on lauan for both exterior and interior structural uses. Some RVs can only use lauan for these purposes – as a result, large quantities are imported by this industry to manufacture RVs in the United States. With no domestic alternative nor sufficient substitute for lauan elsewhere, GSP's December 2020 expiration costs the industry up to \$1.5 million per month in additional tariffs on an essential input. Retroactive renewal of the GSP program is thus an utmost priority for this industry.

GSP is a development program for economically-disadvantaged countries, but also has served as an essential U.S. foreign policy tool – to help shift supply chains out of China; to hold developing countries to higher standards through the use of eligibility criteria; as an important point of leverage in market access negotiations with participating countries; and to support U.S. businesses and manufacturing operations that depend on imports under the program. As the Committee examines possible reforms to the program, ensuring those reforms help strengthen these goals is essential. The possible reforms most important to the RV industry include:

**Support U.S. RV Manufacturing by modernizing Competitive Needs Limitations (CNLs)**

We support the arguments made by Mr. Gresser and Mr. Garza during their testimonies that competitive need limitations (CNLs) under GSP are set artificially low and are in dire need of modernization. Because the dollar CNL threshold rises at a set amount (\$5 million per year) instead of a set rate, the CNL threshold level is an increasingly

smaller percentage of the overall value each year. This does not keep up with the natural rise in costs each year and is especially damaging in times of high inflation. If the goal of competitive need limitations under GSP is to ensure that truly competitive industries are removed from the program, the dollar threshold needs to be reflective of actual market conditions. We propose that, at a minimum, the dollar threshold is set at a rate as opposed to a set amount, and the base amount raised substantially. Setting the threshold rate rise at 6.5%, as proposed in legislation introduced by the late Representative Jackie Walorski and former Representative Stephanie Murphy, is a reasonable change.

Additionally, the percentage threshold (50%) is problematic for natural resource products, like lauan, that only are available in particular geographic locations. Because this particular thin, lightweight product can only be obtained in any sufficient volume in Indonesia, lauan will never fall below the percentage threshold, and for the year 2022 was more than 83% of U.S. imports. This is just one of many categories of product in which the CNL threshold being surpassed does not indicate competitiveness but rather a quirk of geography. We propose that Congress eliminate this percentage threshold altogether, or at a minimum remove it for products, like lauan, that are only available in certain geographic locations.

Lastly, any reform of CNLs under the program should include revisions to what is known as the “Super CNL” provision, which automatically revokes waivers after five years when certain thresholds are reached. Again, while the purpose of this provision is to eliminate products from the program that are already competitive, the effect is that geographically-limited natural products are impacted, regardless of whether they are competitive or not. This provision should be eliminated, or at the very least, revised to exempt natural growth products, or those products that have no domestic alternative.

#### **Bring greater certainty to U.S. businesses with a longer renewal period**

GSP has been allowed to expire numerous times since it was first enacted, and often been renewed for only a 2-3 year timeframe. This creates consistent uncertainty in the industry about whether and when GSP will be renewed, along with additional paperwork and delays. A longer renewal period, such as ten years, would bring some relief in this area. GSP was first authorized for a period of ten years, and this is the timeframe that has been used by other U.S. trade preference programs such as HOPE/HELP and AGOA. Please support longer-term GSP renewal periods, such as, at a minimum, the six-year renewal period included in the Senate version during the COMPETES/USICA conference negotiations last year.

#### **Ensure that any reform effort is not running counter to the goals of the program**

Looking outside of our industry more broadly, reforming CNL limitations and instituting a longer renewal period is beneficial not only for domestic RV manufacturing, but for other U.S. businesses and industries as well. Mr. Garza testified on the success of GSP in moving supply chains away from China in the area of travel goods, for instance, but noted that CNLs threaten this progress and hinder further growth away from China. Additionally, lack of certainty surrounding the program due to the long expiration periods and delayed renewals also perversely incentivizes businesses to look back at China because any costs they incur are more predictable. As the Committee examines how to reform the program, it is imperative that the modifications contribute to the program’s goals and limit harm to U.S. businesses and industries. Modernizing CNLs is an opportunity to do just that.

Thank you for allowing us to submit these comments on behalf of our industry. We are pleased to share our experience and are available for any follow-up questions or conversations.

Sincerely,



Samantha A. Rocci  
Senior Manager, Government Affairs  
RV Industry Association

## Luan Usages

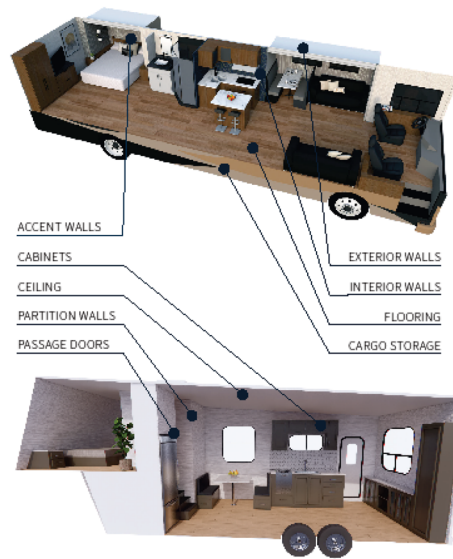
### EXTERIOR

- Walls
- Ceiling
- Cargo Storage

### INTERIOR

- Cabinets
- Walls
- Ceiling
- Partition Walls
- Passage Doors
- Accent Walls
- Flooring

## GSP RENEWAL PROCESS



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**RV**INDUSTRY  
ASSOCIATION

RVIA.ORG

October 2, 2023

United States House Committee on Ways and Means  
1139 Longworth House Office Building  
Washington, DC 20515-6348

Attention: Chairman Jason Smith and Trade Subcommittee Chairman Adrian Smith

Subject: Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China.

BACKGROUND

Triad designs and manufactures small transformer and inductors (HTS Codes, 8504.31 and 8504.32) in the Philippines. These electrical transformers are typically smaller than a baseball and are not end-products but rather are component products that are used in all types of industrial and commercial equipment that is manufactured in the United States.

Manufacturing smaller transformers and inductors is labor-intensive, albeit skilled labor. The generally lower production volumes associated with industrial and commercial equipment make it impossible for us to automate the production of the various required transformers and inductors.

We currently offer over 1200 catalog SKU's manufactured in the Philippines with an average order quantity from our US customer of 100pcs. Approximately 80% of Triad's revenue comes from United States manufacturers. Our products help these manufacturers remain competitive in the global market.

In addition to their function of stepping voltages up and down, transformers provide a critical safety function isolating the end-user from the high-voltage line. Manufacturing transformers requires training, supervision and process control. The workers in our factory, mostly women, are well trained. Many have been promoted to Line Leaders, Supervisors, Quality Engineers and Management. I visit our Philippine factory annually and, in my experience, all of our staff is very happy to work with Triad.

IMPACT

As a result of the continued GSP expiration, my company, Triad Magnetics has struggled to compete with Chinese manufactured transformers that dominate our market niche.

Over the last three years, we have lost dozens of opportunities due to pricing. In almost every case, the OEM customer we were working with chose a lower cost product manufactured in China.

Although we moved the majority of our production out of China in 2016, a percentage of our products are still manufactured there. With the loss of GSP there is little incentive to continue the effort to transfer manufacturing to our Philippine factory.

Finally, we have been forced to put a planned USA manufacturing expansion on hold due to decreased revenue and profits on our Philippine produced products. We have the permits approved and everything but not the funding or certainty because of all the tariffs paid without GSP. This expansion would increase our head count by 25% to 40 employees. The USA manufacturing is planned to support customers who require USA manufactured products, i.e. mil-aero.

HEARING COMMENTS

- 1- If I understand correctly, employing and improving the standard of living is one of the main objectives of GSP. The current 35% content requirement is already considerable and, in my opinion, sufficient to achieve this goal given the main contribution an underdeveloped or developing country can provide is labor. These countries do not have the infrastructure to provide the raw materials needed for production of advanced products. In addition to the cost of the raw materials relative to the total value of the product, there are substantial logistics costs simply to get the raw materials from their source to the manufacturing location. Increasing the local content requirements, at least based on total product value, will remove the GSP benefit for advanced products that require skilled labor, but high value imported materials, to manufacture. If the content requirement were to be increased, there should be a way to look at the human contribution to the product vs. the financial contribution when determining local content. In any event, changes to content requirements should be phased in over 3 to 5 years to allow time to attempt to develop local sources for high value materials.
- 2- Fair labor practices, equity and environmental protection are a must, but I don't know of a USA company that has not been abiding by these business tenets for years. US companies continually evaluate and monitor their suppliers to ensure ongoing compliance. Removing GSP only harms the best run and most qualified manufacturers in GSP countries, which are almost exclusively utilized by US companies.
- 3- US Manufactures need to be competitive in the global market. Many of the products covered under GSP are components of larger assemblies/equipment. OEM manufactures invest time and resources to approve and incorporate these components into their products based on the factory in which they are manufactured. Removing GSP from these component products immediately harms US original equipment manufacturers/employers as well as the consumers of their equipment, as the manufacturers have no choice but to continue production at simply a higher cost. Long-term most US manufacturers would prefer to have their components manufactured outside of China and are currently looking for competitive alternatives. The loss of GSP certainly has curtailed this effort.
- 4- As someone stated during the hearing, supply chains are not Lego blocks, they are chain-link which should not be broken apart every 2-3 years. GSP needs to be renewed for at least 5 years to allow for proper business planning and development.

Let me know if you have any questions on the importance of GSP to Triad. Thank you in advance for this consideration.

Sincerely,

Bill Dull  
 President, Triad Magnetics  
 460 Harley Knox Blvd.  
 Perris, CA 92571



U.S. Chamber of Commerce

John Murphy  
Senior Vice President  
for International Policy

September 19, 2023

The Honorable Jason Smith  
Chairman  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Richard Neal  
Ranking Member  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Adrian Smith  
Chairman  
Subcommittee on Trade  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Earl Blumenauer  
Ranking Member  
Subcommittee on Trade  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairmen Smith and Smith and Ranking Members Neal and Blumenauer:

The U.S. Chamber of Commerce applauds the House Ways and Means Subcommittee on Trade for convening a hearing on “Reforming the Generalized System of Preferences (GSP) to Safeguard U.S. Supply Chains and Combat China.” The lapse in this important trade program is now approaching three years, leading to mounting costs for U.S. small businesses and incentivizing companies to source more imports from China rather than GSP-eligible countries in the developing world. This damaging situation has already persisted for far too long, and we urge Congress to prioritize reauthorization of GSP this year.

For more than four decades, GSP has promoted market-based economic growth in developing countries by waiving tariffs on a carefully vetted list of imports from approximately 120 developing countries. GSP helps advance U.S. foreign policy objectives, promotes international development and free enterprise, and helps American families stretch their budgets by reducing prices of a variety of consumer goods. Products imported under GSP generally do not compete with U.S.-made goods in any significant way.

The impact of the lapse in GSP on U.S. small businesses is particularly galling. The typical beneficiary company employs about 20 people, and GSP saves them between \$100,000 and \$200,000 in duties — big money for many small businesses. Officials regularly signal that these duties will be reimbursed upon retroactive renewal of the program, but extending a compulsory interest-free loan to the federal government is a burdensome proposition for American small businesses.



The long lapse in GSP is also incentivizing U.S. businesses to source from China goods that they had been acquiring from GSP beneficiary countries. Many of these smaller firms in particular shifted their supply chains out of China after Section 301 tariffs were imposed on many Chinese products in 2018 and 2019. However, the end of GSP's tariff preferences for developing countries has shifted the cost calculus back to China's favor for many products.

Debate over possible changes to the program's eligibility criteria has delayed GSP's renewal. The Chamber appreciates that these criteria provide the U.S. government with leverage to encourage beneficiary countries to protect intellectual property, treat U.S. investors fairly, and improve labor practices. Members have been exploring additions to these criteria for several years.

However, setting overly strict criteria could lead foreign governments to conclude that GSP's compliance burdens outweigh its economic benefits. This would undermine the program's viability as a tool to foster trade-based economic development while also failing to advance the new criteria's goals. The Chamber encourages lawmakers to work together on any new GSP eligibility criteria under consideration and quickly reach a balanced approach that will allow the program to be reauthorized this year.

GSP has been an effective tool promoting market-based economic growth in developing countries, supporting the diversification of supply chains away from China, and expanding consumer choice. The Chamber urges Congress to renew this important program before the end of the year.

Sincerely,

A handwritten signature in black ink, appearing to read "John Murphy", with a stylized, flowing script.

John Murphy

cc: Members of the House Committee on Ways and Means

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