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U.S. TRADE PREFERENCE PROGRAMS: LESSONS FOR EUROPE FROM THE U.S. STRUGGLE TO GET IT RIGHT

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U.S. Trade Preference Programs: Lessons for Europe from the U.S. Struggle to Get It Right

Economic Policy Paper Series

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The views of the author do not necessarily reflect those of the German Marshall Fund of the United States.

Executive Summary

In December 2009, the Treaty of Lisbon entered into force in the European Union, ushering in new procedures, powers, and roles for the various EU institutions. In addition to the creation of a new, consolidated European foreign policy apparatus, the Lisbon Treaty also gave the European Parliament the mandate to approve or reject trade policy decisions, a task previously reserved for the European Council alone. This brings the European trade policymaking process closer to the more politicized American model, where Congress must ratify all trade agreements. Recent GMF work (see Hillman and Kleimann 2010) has examined the implications of the Lisbon Treaty on European trade policymaking. In this paper, Laura M. Baughman offers a pointed analysis of the U.S. experience and offers lessons that Europe might learn from the United States in the particular realm of trade preference programs — important unilateral trade programs that allow duty-free imports into the United States and Europe from eligible developing countries and aim to unleash trade's potential as a force for development.

1 Introduction

If the U.S. experience is any guide, the Treaty of Lisbon's elevation of the influence of the European Parliament in trade policy areas is likely to increase politicization of the European Union's efforts to extend trade preferences to developing countries. The politicization of the family of U.S. preference programs has resulted in programs that are not as effective at achieving their ultimate objective — sustainable development in beneficiary countries — as those seeking to use the programs would hope. The U.S. process for drafting and enacting preference programs includes unique features that have contributed heavily to this politicization. Most notably, this includes the ability of even just one member of Congress to hold up pending legislation in order to extract some concession that will benefit a constituent or appease a particular industry. Given the importance the EU attaches to being a supporter and catalyst for economic development, particularly in low-income countries, EU policymakers should keep fully in mind the lesson of the U.S. experience as they evaluate changes to the EU's trade preference schemes: politics diminishes the ability of preference programs to promote sustainable development.

This paper reviews the various U.S. preference programs, noting where politics intervened in their drafting. It details the reasons users of the programs in developing countries and the United States believe they fall short of achieving their objectives of promoting broad-based, export-led growth in developing countries. It then summarizes the recommendations of a group of U.S. companies, think tanks, nongovernmental organizations, and others for a new preference program that — absent political intervention — would get U.S. preferences back "on track" to promote sustainable development in beneficiary countries. Finally, it suggests lessons for Europe as it fleshes out the details of how the Treaty of Lisbon will instruct the interaction between the Council of Ministers, the Commission, and the European Parliament with respect to future changes to the EU's preference programs.

Politics diminishes the ability of preference programs to promote sustainable development.

2 Overview of U.S. Preference Programs

The United States maintains a number of trade preference programs, and nearly every session of Congress results in proposals for yet more. As of late 2010, beneficiary developing country (BDC) exporters and their U.S. customers had six preference programs at their disposal, all but one of which have a geographic scope: the Generalized System of Preferences (GSP), which applies to beneficiary countries around the world; the African Growth and Opportunity Act (AGOA); two Caribbean-focused preference programs (the Caribbean Basin Economic Recovery Act, CBERA, and the Caribbean Basin Trade Partnership Act, CBTPA); the Andean Trade Preferences Act/ Andean Trade Preferences and Drug Eradication Act (ATPA/ATPDEA); the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act; and West Bank/Gaza Strip Qualifying Industrial Zones preferences (QIZs).

Each of these programs has slightly or significantly different eligibility criteria, product coverage, rules of origin, and expiration dates. However, they all extend full duty-free (but not quota-free) treatment to imports of eligible products from eligible beneficiary countries, typically subject to a rule of origin stipulating that at least 35 percent of the total value of the imported product must have been generated in the beneficiary country in order to qualify for the preference. The key features of each, briefly described below, are detailed and compared in Appendix A.

Generalized System of Preferences

GSP is the longest-running and largest — at least, in terms of country coverage — U.S. preference program. First implemented in January 1976, GSP currently applies to 131 developing countries (not including China or Vietnam) and territories.[1] It extends full duty-free benefits to all products except textiles and apparel, most footwear and leather products, certain watches and parts, above-quota agricultural products subject to tariff-rate quotas, and certain electronic, steel and glass products. In addition, GSP contains several rules called "competitive need limits," or CNLs, by which individual, otherwise-eligible products[2] can lose — or regain — eligibility for preferences when the product becomes competitive enough to no longer appear to "need" the preference. GSP expires frequently, and Congress must pass legislation to renew it. In fact, GSP is set to expire on December 31, 2010 and, if past practice is any guide, is likely to be renewed by Congress for a short (one year) period only.

Caribbean Preference Programs (CBERA/ CBTPA)

U.S. preference programs for the Caribbean region have gone through several iterations since they were first proposed in 1982 and then implemented in January 1984 as the Caribbean Basin Economic Recovery Act (CBERA, also referred to as the "Caribbean Basin Initiative," or CBI). CBERA extends reduced-duty or duty-free treatment to U.S. imports from eligible countries in the Caribbean for all products except those deemed to be "import-sensitive," most notably apparel. Pressure from the U.S. textile industry limited reduced-duty benefits for apparel to those assembled from fabric formed and cut in the United States. In 1990, Congress amended CBERA to make its temporary benefits permanent, and duty benefits were extended to leather products.

[1] When a country enters into a free trade agreement (FTA) it generally loses its eligibility for preference program benefits. Peru and Jordan have been the exceptions. Thus, for example, Mexico and Chile lost GSP benefits when their FTAs with the United States entered into force.

[2] At the eight-digit tariff level.

When it became clear that the more generous tariff and quota treatment of U.S. imports from Mexico under the North American Free Trade Agreement (NAFTA) was diverting trade from CBI beneficiaries towards Mexico, Congress made several attempts to amend the program's product coverage to establish "NAFTA parity." Those amendments were embodied in the Caribbean Basin Trade Partnership Act (CBTPA), which passed in 2000. Again, strong opposition from the U.S. textile industry and its Congressional supporters meant that the CBTPA granted NAFTA-like duty-free treatment only for apparel meeting highly restrictive rules of origin requiring local or U.S. inputs. Those rules were so convoluted that U.S. Customs and Border Protection ended up interpreting them in a way that Congress had not intended. Consequently, in 2002, CBTPA was itself amended to ensure that Customs would interpret the rules as Congress had intended.

Today, CBERA benefits 18 countries in the Caribbean basin region (including Haiti).[3] It excludes a slightly different list of products than GSP — with the notable exception of textile and apparel products, which meet the requirement that they must be made of U.S. or regional yarn, fabric, thread, and cutting operations, rather than the value-added rule that applies to other products.

Andean Preference Programs (ATPA/ATPDEA)

The Andean preference program, first implemented for a ten-year period by the Andean Trade Preference Act (ATPA) in 1991, was very limited in its product coverage and was consequently little used. Congress expanded it with the Andean Trade Promotion and Drug Eradication Act (ATPDEA) in 2002, adding apparel among other products to the list eligible for benefits. The program originally extended benefits to four countries: Peru, Bolivia, Ecuador, and Colombia; today, only Colombia, Ecuador, and Peru are eligible.[4] Like the Caribbean Basin preference programs, ATPDEA's special feature is duty-free treatment to U.S. imports of textile and apparel products, but once again these products are subject to unique rules of origin. Like GSP, ATPA/ATPDEA is set to expire at the end of 2010 and Congress must pass legislation that will renew it, most probably for a short length of time.

Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act

CBTPA was amended with HOPE in December 2006 to provide Haiti with more liberal, duty-free apparel access to the U.S. market. As with every other preference program that extended benefits to apparel, the first effort was too restrictive to be useful and ultimately had to be amended in 2008 to expand apparel product coverage and ease the rules of origin. Under CBPTA, Haiti could export apparel duty-free to the United States if it was assembled or knit-to-shape from U.S. yarns and fabrics. Under HOPE, Haitian apparel receives duty-free treatment if it meets one of five specific rules of origin, with many resulting product imports capped. These highly complicated rules resulted from charges by the U.S. textile industry that anything more liberal would open the United States to a flood of indirect imports from China and actually disadvantage apparel producers in the Caribbean region.

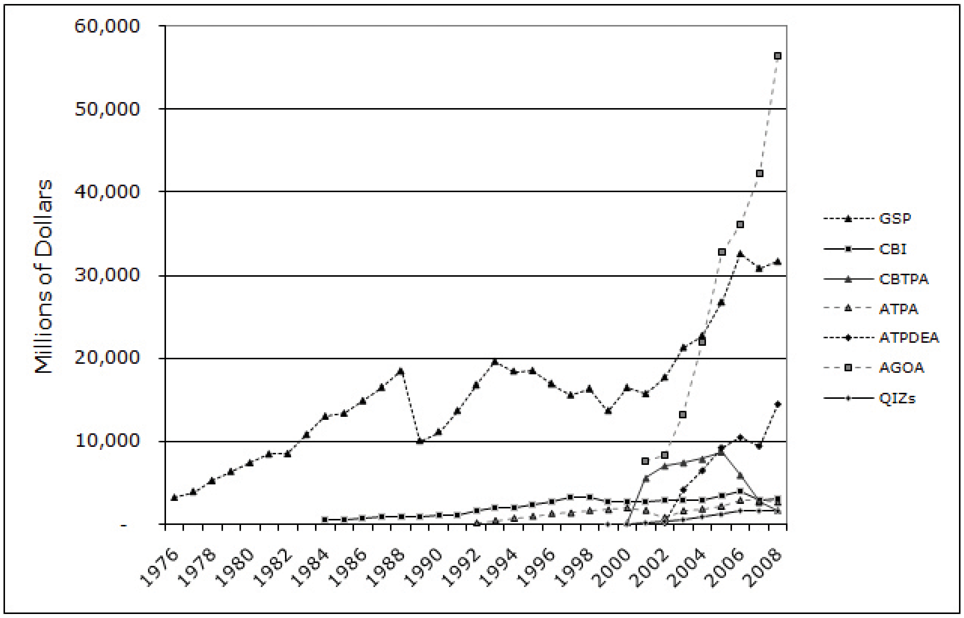
As with every other preference program that extended benefits to apparel, the first effort was too restrictive to be useful and ultimately had to be amended.

Another new and controversial feature of HOPE is a labor eligibility condition that is the most demanding of any preference program, requiring factory-specific inspections by International Labor Organization officials, among others.

[3] Seven of the 18 lost eligibility for GSP because their per capita income thresholds exceeded the GSP limit. None of the Caribbean preference programs has a per capita income threshold eligibility criterion, so the seven countries that lost GSP benefits continue to receive duty-free access benefits through the Caribbean preference programs.

[4] Bolivia lost eligibility for ATPA benefits in 2009; however, it and the other ATPA beneficiaries are eligible to receive GSP benefits.

Chart 1: U.S. Imports under U.S. Preference Programs, by Program



NOTE: Data for imports under HOPE are not available

Source: U.S. Census Bureau

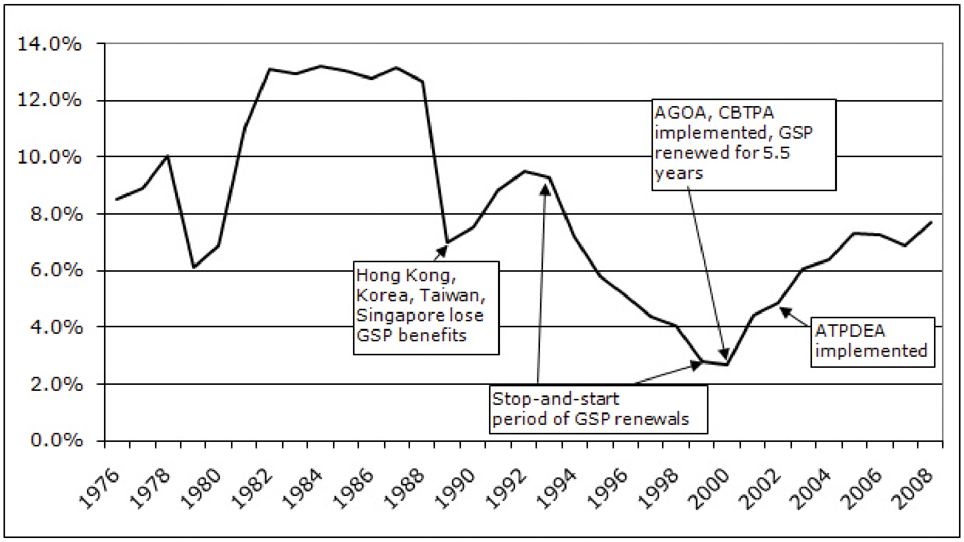
African Growth and Opportunity Act (AGOA)

AGOA duty-free preferences permit 38 African countries to export goods duty-free to the United States.[5] First implemented in 2000, preferential treatment is available for most products — again with the notable exception of textile and apparel products that do not meet very specific rules of origin. Notably, AGOA exempts beneficiaries from GSP's competitive need limits. Once again, opposition from the U.S. textile industry succeeded in limiting the apparel benefits with a highly restrictive rule of origin, with only a small volume subject to a more generous rule of origin. The four subsequent revisions of the program — 2002, 2004 (two times), and 2006 — which were necessary to repair the distortions of trade that resulted from the apparel rules of origin, pitted African suppliers and their Congressional champions against U.S. textile producers and their Congressional champions. Ultimately the lesson was that efforts to "micro-manage" apparel sourcing failed to generate the desired results, and the preference rules needed to be repeatedly revised, clarified, or liberalized.

AGOA also included trade capacity building provisions and funds. It directed the President to target U.S. government technical assistance and trade capacity building to AGOA beneficiary governments and nongovernmental entities, including business associations and private networks among U.S. and sub-Saharan African companies. Assistance was aimed at helping AGOA beneficiaries meet World Trade Organization (WTO) commitments, building trade missions, addressing agricultural policy issues, and promoting trade in services.

[5] All 38 are also eligible for GSP benefits.

Chart 2: Total U.S. Imports under All U.S. Preference Programs, 1976-2008
(Share of total dutiable imports)



Source: U.S. Census Bureau

Qualifying Industrial Zones (QIZs)

An extension of the U.S.-Israel Free Trade Agreement (FTA) added in 1996, QIZs are essentially export processing zones. The QIZ preferences are unique, unlike any of the other preference programs with regard to the extent of the generosity of their benefits, the simplicity of their rules, and their lack of controversy. QIZs are areas that 1) encompass parts of the territory of Israel and Jordan, or Israel and Egypt, 2) have been designated by local authorities as an area where merchandise may enter without payment of duty or taxes, and 3) which have been identified by the U.S. Trade Representative (USTR) as QIZs. Products — including apparel — manufactured in these zones that meet a 35 percent value-added rule of origin may enter the United States duty-free. Today, five QIZs are operating in Jordan, and four in Egypt. There are otherwise no country or product eligibility criteria or restrictions.

Current Program Utilization and Proposed Additional Programs

Chart 1 shows that AGOA has replaced GSP as the largest U.S. preference program in terms of the value of imports that entered the United States receiving duty-free treatment. This is due to the fact that it covers apparel and has the most “liberal” of the apparel rules of origin in any of the preference programs. While GSP is important, importers have struggled to use it consistently over the years, particularly in the mid- to late 1990s as the program suffered from frequent expirations and retroactive renewals.

Over the last several decades as U.S. duties have dropped to zero thanks to trade agreements (U.S.-

Significant opposition resulted in the scope of the benefits being quite limited — so much so that the view of many U.S. consumers is that the proposal is ultimately unworkable.

Israel in 1985, U.S.-Canada in 1989, the North American Free Trade agreement in 1994) or on a most-favored-nation basis (e.g., the Uruguay Round beginning in 1985), preferences have become less and less important to U.S. importers as a way to save duties. Chart 2 shows that preferences accounted for a generally declining share of duty-free imports from 1989 (when the "Asian Tigers" lost their GSP benefits) until 2001, when AGOA went into effect.

Even though the United States maintains a large number of preference programs, and their popularity generally is — except for apparel — waning, members of Congress continue to introduce legislation that would establish new preference programs or expand existing ones. These new programs are often suggested in response to national security or foreign policy concerns, or natural disasters that devastate economies of developing countries.

As of early 2010, a number of new preference bills had been introduced into Congress. These would make the options to exporters and importers even greater — and even more complicated. They include:

- *"Reconstruction Opportunity Zone" Preferences for Afghanistan and Pakistan.* Legislation pending before the U.S. House of Representatives and the Senate would extend duty-free treatment to certain goods produced in Afghanistan and specific (remote) regions of Pakistan, called "Reconstruction Opportunity Zones" (ROZs). ROZs would be a specific type of export processing zone, self-contained areas of production located in relatively undeveloped geographic locations. The ROZ program would expand the duty-free benefits currently available to Afghanistan and Pakistan under GSP to include benefits for certain textile goods (primarily towels, sheets, comforters and curtains, and a very small number of apparel products) produced in the ROZs. The legislation would also impose additional requirements on both countries to meet, in particular, strict labor rights conditions. The motivation behind the proposal is primarily to support the abilities of Afghanistan and Pakistan to confront "violent extremism" through the creation of jobs. However, significant opposition registered by the U.S. textile industry and related unions resulted in the scope of the benefits being quite limited and the labor conditionality very expansive — so much so that the view of many U.S. consumers is that the proposal is ultimately unworkable.
- *The TRADE Act.* Legislation introduced in the Senate, the "Tariff Relief Assistance for Developing Economies Act of 2009 or the TRADE Act of 2009," authorizes the President to designate Afghanistan, Bangladesh, Bhutan, Cambodia, Kiribati, Lao People's Democratic Republic, Maldives, Nepal, Samoa, Solomon Islands, Timor-Leste (East Timor), Tuvalu, Vanuatu, Yemen, and Sri Lanka as beneficiary countries eligible to receive duty-free treatment for certain articles that are the growth, product, or manufacture of those countries, if after receiving the advice of the International Trade Commission (ITC), the President determines that those articles are not import-sensitive in the context of imports from those countries. Most notably, the bill would extend AGOA-like duty-free treatment, without any quantitative limitations, to certain textile and apparel products from those beneficiary developing countries (BDCs) if their assembly meets specified U.S. origin requirements.
- *Philippines: The SAVE Act.* The "Save Our Industries Act of 2009 or the SAVE Act," introduced in the House, grants reduced-

duty or duty-free treatment to certain apparel wholly assembled in the United States or the Philippines, or both, and components of that apparel consisting entirely of 1) fabric components cut in both or either the United States or the Philippines, provided it is from fabric and yarn wholly formed in the United States; 2) components knit-to-shape in the United States from yarns wholly formed in the United States; or 3) any combination of these components.

- *Paraguay and Uruguay.* Bills pending in the House and Senate, the "U.S.-Paraguay Partnership Act of 2009," amend the ATPA and ATPDEA to include Paraguay on the list of countries eligible for duty-free treatment and other preferential treatment for its products as a designated beneficiary country and ATPDEA beneficiary country. Other legislation in the Senate would add Paraguay and Uruguay to the list of countries eligible for duty-free treatment under ATPA/ATPDEA.

- *New Partnership for Trade Development Act of 2009.* This bill would extend duty-free, quota-free benefits for least developed countries for all products — including apparel, subject to a 35 percent value-added rule of origin. In a nod to expected opposition from AGOA beneficiaries and the U.S. textile industry, the bill limits benefits for a set of certain apparel products imported from Bangladesh and Cambodia. It extends GSP for 10 years, calls for a review of the list of products that cannot get GSP benefits, permits broader cumulation across BDCs to meet the 35 percent value-added rule of origin, and makes an effort to establish trade capacity building coordination within the U.S. government agencies with responsibility for it. In acknowledgement of some members of Congress who believe "more advanced" developing countries should open their markets further to least developed countries (LDCs), the bill stipulates that advanced developing countries can continue to receive GSP benefits only if they have in place a meaningful trade preference program of their own for least developed countries.

The pending expiration of two preference programs (GSP and ATPDEA on December 31, 2010) means that Congress must devote attention to legislation that, at a minimum, renews these preference programs.

3 Are U.S. Preference Programs Working?

A successful preference program must meet the needs of two constituencies: those who grow, make, and export goods in the beneficiary developing country, and their customers.

With all of these preference options, one might wonder why imports under preference programs account for such a small share of total duty-free imports. A successful preference program must meet the needs of two constituencies: those who grow, make, and export goods in the beneficiary developing country, and their customers in the United States. These constituencies require a preference program that:

- Applies to the products developing countries actually make;
- Is certain, reliable, predictable, and long-term;
- Is simple to use;
- Promotes sustainable development and stimulates value-added production opportunities in the beneficiary countries;
- Is sensitive to beneficiaries' differing or unique development needs; and
- Wherever possible, is linked to targeted policies and programs to build capacity to participate in trade and take full advantage of preferential market access.

Currently, U.S. preference programs fall short of most if not all of these requirements. The family of U.S. preference programs does not cover all products of key interest to BDCs. They contain a multiplicity of rules of origin, eligibility requirements, and product "graduation" procedures that frequently mystify exporters as well as importers. Many expire frequently and must be renewed through a Congressional process that causes uncertainty among importers and exporters. Further, these programs may be sensitive to the economic challenges of some beneficiaries while not meeting the needs of others. Indeed, their inability to fully meet the development expectations of their authors has led to new iterations of the programs as legislators have attempted to fix some of the problems encountered in the original programs. As noted above, for example, CBI I led to CBI II, which was followed by CBTPA (which had to be amended in response to problems that developed), which was then followed and joined by HOPE I and HOPE II. AGOA, meanwhile, has been through four iterations in less than ten years.

Inadequate Product Coverage

One of the biggest complaints about the U.S. GSP program is that it excludes key products that developing countries are most able to produce: apparel and other textile products; footwear; and certain agricultural products, in particular. Indeed, one of the driving forces behind the creation of many of the subsequent regional preference programs was a desire to bring at least apparel into the preference fold. But even these regional preference programs continue to exclude other products of importance to BDCs. This includes, for example, agricultural products subject to tariff-rate quotas, in particular a number of sugar or sugar-containing products under AGOA.

Difficult Rules of Origin

Generally, U.S. preference programs contain a 35 percent value-added rule of origin for non-apparel goods that BDC producers must meet in order to qualify for benefits. However, for apparel products, strong opposition from the U.S. textile industry and its Capitol Hill champions has meant that the various U.S. preference programs include a number of differing rules of origin, and many of them were initially so restrictive that more liberal rules had to be included to make the preferences meaningful — but only for short periods of time. These different and complex rules have created confusion and uncertainty for U.S. customers and an enormously burdensome paperwork requirement for BDC exporters. In addition, the opportunities to meet the rules of origin by using or combining inputs from other BDCs are limited. Cumulation is also not possible in most cases with respect to U.S. FTA partners, undermining economic opportunities.

Inconsistent Requirements for Eligibility

U.S. preference programs have differing eligibility criteria, some of which are more restrictive than others and many of which are similar but differently worded. These differences arose as members of Congress over time responded to new pressures from interest groups to add new eligibility criteria to new preference programs or to reword eligibility criteria from other preference programs. Often, in addition, the new preference programs reference the GSP eligibility criteria as well. This resulted in, for example, two separate and differently worded labor eligibility criteria. These differences create confusion and uncertainty for producers in BDCs and their customers in the United States about whether a BDC will qualify for benefits.

Complicated Procedures

Under all existing U.S. preference programs, a BDC may lose benefits (permanently or temporarily) if the President determines that it no longer meets one or more of the eligibility criteria. Under GSP, an individual product (at the eight-digit tariff level) can lose benefits as a result of a variety of reviews and rules. Sometimes, politics injects a new rule: in 2006, two members of Congress blamed India and Brazil for the impasse at the World Trade Organization's Doha negotiations and inserted a new threshold for products from a country to lose benefits. The provision was drafted to capture products of key interest to India and Brazil and remove them from eligibility for duty-free benefits.

Individual products can lose benefits (permanently or temporarily) only under the GSP program when trade in those products exceeds "competitive need limits" (CNLs) or as the result of action on a petition from a U.S. producer. The CNLs are artificial measures of "competitiveness," causing some products to lose benefits, for example, solely because the price of a commodity raw material input soars. In addition, the annual review process is confusing to both exporters and importers. Deadlines for the implementation of the loss of benefits are unreasonable, and the reasons for determinations are often obscure.

In short, the processes leading to product and country eligibility determinations can be inconsistent and unpredictable, stretching over many years, or informed more by political than objective rationales. In all cases, the process has lacked transparency.

Unpredictable Benefits

To encourage sustainable development and investment, preferences need to be in effect for as long a period of time as possible. With the exception of CBI and the QIZs, U.S. preference programs only remain in effect for short periods of time, discouraging U.S. investors and customers from relying on them for stable production or sourcing relationships. These short terms are the result of a unique feature of the U.S. legislative process: a Congressional budget "rule" referred to as "pay-as-you-go," or "pay-go." This rule stipulates that any piece of legislation that costs the Treasury money must be "paid for" with offsetting budget cuts or revenue increases. Preference programs "cost" the Treasury tariff revenues. Finding offsetting budget cuts or revenue increases raise their own political obstacles, especially for multi-year extensions of programs, and is the reason so many GSP renewals have been for only short periods of time.

Constraints on Foreign Production/Exporting

The United States extends billions of dollars ($2.3 billion in FY2008) in trade capacity building assistance (TCBA) to developing countries. Unfortunately, this spending is not as successful as it should be in generating sustainable development and increasing value-added production opportunities in many developing countries. The reasons are several. Over 15 U.S. government agencies report devoting some funds to TCBA, with little effective coordination among them or with other donor governments, international institutions, businesses, and nongovernmental organizations engaged in TCBA efforts. Additionally, TCBA is not systematically used to help BDCs take full advantage of U.S. preference programs. There is no formal, comprehensive assessment of what individual BDCs need to enable them and their business communities to fully participate in markets and make full and effective use of U.S. preference programs, including meeting eligibility requirements and other requirements, e.g. sanitary and phytosanitary (aka food safety and animal/plant health) standards.

In short, these factors create confusion and uncertainty for producers in BDCs and their customers in the United States about whether a BDC will qualify for benefits and whether a product imported under a particular preference program will actually receive duty-free treatment when it finally crosses the U.S. border. They also impose an enormously burdensome paperwork requirement on BDC exporters. Compliance and enforcement problems are inevitable under the current systems. Often, the time and effort involved in meeting these program rules cost exporters and importers more than the tariff savings afforded by the preference program.

4 Proposals for Reform of U.S. Preference Programs

Recognizing that something needed to be done to improve the ability of preference programs to achieve their goal — sustainable development — a group of think tanks, nongovernmental organizations, businesses and business associations, labor groups, beneficiary country representatives, and others met regularly over a three-year period, and intensively during 2009, to develop recommendations for ways that the factors inhibiting full and effective use of preferences could be addressed. The discussions were unusual in that they brought together individuals representing organizations that frequently did not agree with each other on many trade issues. While at times the discussions were heated, there was a common goal that was clear and kept the discussions going: the agreement that something had to be done to improve the ability of preference programs to support meaningful and sustained development in beneficiary countries.

By the end of 2009, most of the group had coalesced around a number of recommendations for ways in which U.S. preference programs could be improved. The guiding "yardstick" was to recommend a program that was certain, reliable, predictable, and long-term; simple to use; covered all products that beneficiary countries are capable of producing; was sensitive to beneficiaries' differing or unique development needs; and, wherever possible, was linked to targeted policies and programs to build capacity to participate in markets and take full advantage of preferential market access.

In December 2009, the group issued six recommendations for a preference program:

1. One Program Covering All Products

The United States should maintain a single preference program that extends duty-free treatment for imports of eligible articles from BDCs, and that provides permanent, 100 percent duty-free and quota-free (DFQF) benefits to imports from eligible lesser-developed countries.

2. Clear Country Eligibility Requirements

The new single preference program should have one set of clear, commercially meaningful and achievable eligibility criteria. The goal should be to have as many beneficiary developing countries achieve and retain eligibility as possible, and ideally the eligibility criteria should work to promote progress in different areas rather than blocking access to the U.S. market. The purpose of the eligibility criteria should be to provide incentives for BDCs to adopt policies and practices that will have the greatest positive impact on their sustainable development. Whenever possible, the United States should encourage and support progress towards meeting eligibility criteria, including through targeted capacity building assistance. New process requirements should help ensure that the eligibility criteria are used to the fullest extent possible, and priority would be placed on maintaining benefits if countries work to make progress in meeting the eligibility criteria within a reasonable period of time.

The group recommended two types of eligibility criteria. The first is a group of statistical and other objective criteria relating to levels of development and trade competitiveness. It included a definition of developing countries contained in the U.S. GSP program and a new definition of a "lesser developed country" that is designed to be objective, measurable, and sensitive to the special needs of BDCs in sub-Saharan Africa.

The second group of criteria would require a Presidential assessment of a developing country's trade, business, labor, and other practices. It covered the major criteria currently included in other existing U.S. preference programs, including conditions relating to civil rights, democracy,

Something had to be done to improve the ability of preference programs to support meaningful and sustained development in beneficiary countries.

corruption, market access, intellectual property rights, investment, labor/human rights, and national security/terrorism/narcotics.

3. A Simple Rule of Origin for All Products

The group recommended that the preference program contain a single, simple rule of origin for all products, with a clear opportunity to cumulate inputs from other BDCs and, if feasible under the rules of the WTO, with countries party to free trade agreements with the United States. The rule should be "substantial transformation" plus at least 35 percent of the appraised value of the article, with the sum of the cost or value of the materials produced in the BDC, partner BDCs, the United States, and U.S. FTA partners if possible, plus the direct costs of processing operations performed in the BDC or other BDCs, counting towards that 35 percent.[6]

4. Simple, Clear Product "Graduation" Processes

Bearing in mind that the goal was to retain preference benefits for the greatest number of products imported from the greatest number of eligible developing countries based on objective criteria, the group recommended that the current country and product "graduation" procedures, particularly those under the GSP program, be significantly changed. In particular, the group argued that clear and reasonable deadlines for action should be maintained and that the President should publish, publicly, the reasons for decisions regarding country and product graduation. The group recommended that the President work with BDCs, using capacity building if necessary, to assist BDCs in meeting the eligibility criteria or in overcoming any deficiencies in continuing to meet eligibility criteria.

The group also recommended that the preference program contain no a priori product exclusions, but that, for non-LDC beneficiaries, extension of preference benefits for products currently excluded from GSP be evaluated on a case-by-case basis during a pre-implementation "transition period." During this transition period and annually afterward, the group recommended the establishment of a clear and objective process for removing products from eligibility when imported from non-LDCs. It further recommended a policy approach that enables countries that exceed certain development thresholds (such as income levels) to enter into more mature trading relationships, rather than lose trade benefits.

5. Capacity Building Linked to Preferences

The group recommended that trade capacity building assistance (TCBA), currently spread throughout the government, be coordinated and targeted at initiatives that will help BDCs meet the eligibility criteria of the preference program and fully participate in markets, including taking full advantage of the preferences available, with a particular focus on connecting women, smallholder farmers, and other small business to market.

It recommended that the President undertake a development review with input from every agency with TCBA programs in place, including input from multilateral lending banks, foundations, NGOs, BDC governments, U.S. consumers (U.S. importers), local businesses as well as workers and their organizations, and other private sector organizations. The input should address the effectiveness of current TCBA initiatives and suggest ways to improve them to target specific products and sectors with the greatest long-term promise for development, including ways to encourage and support building local and regional markets and capacity, especially in sub-Saharan Africa.

[6] This means, for apparel, that if fabric from any source is cut and sewn in a BDC, the full value of the fabric counts toward the 35 percent requirement.

Annually thereafter, the group recommended that the President seek input from governments of preference beneficiaries and affected communities, including local business groups, NGOs, worker organizations, and others, to assess what is working and what is not and develop capacity building initiatives that are most appropriate for ensuring that beneficiaries are able to use the preference program. The review would include recommendations for fully utilizing preferences.

Additional recommendations on 1) specific areas of focus for trade capacity building programs and 2) an integrated "whole of government" approach to support building local and regional capacity in sub-Saharan Africa were subsequently issued. They include working collaboratively with African governments, regional institutions, nongovernmental organizations, and businesses, as well as other countries and international institutions, to design policies and programs that address Africa's priorities. In particular, this means strengthening the Regional Economic Communities (RECs) and supporting the Development Corridors, which build on existing trade and transport corridors to create a robust regional network that connects smallholder farmers and other businesses to markets and other relevant institutions, e.g. water and power commissions.

6. Long Term Benefits

The group recommended that the term of the preference program be permanent upon enactment for LDCs and extend for five years to all other BDCs, with automatic renewal for another five years if the President certifies to Congress that BDCs are contributing positively (from the multilateral perspective) to a successful outcome of WTO Doha Development Round trade negotiations. If the President determines that only a small number of countries are not contributing positively to the successful outcome of the WTO Doha Round, the program would expire only for those countries. Upon implementation of a Doha agreement, preferences for non-LDC BDCs would be automatically extended for 10 years.

Sensitive to some of the concerns of BDCs in Africa, the group further recommended that existing U.S. preference programs continue until their scheduled expiration dates.[7] Renewal of those preference programs, including AGOA, should be considered if beneficiaries believe continuation would be beneficial and seek renewal.

Most of these changes require Congressional action to implement. Most also seek to revise features of U.S. preference programs that arose because of politics. Many of the recommendations are controversial with the same groups that managed to distort current U.S. programs. African apparel producers seek to preserve their preference advantage over other apparel-exporting developing countries. U.S. textile producers oppose a simple substantial transformation plus 35 percent value-added rule of origin and the extension of apparel benefits to such least developed countries as Bangladesh and Cambodia. Environmental groups want the addition of environmental eligibility criteria, currently absent from all U.S. preference programs. Intellectual property rights (IPR) groups want to strengthen the programs' IPR eligibility criteria, making it all the more likely that BDCs could lose benefits for violations. Some members of Congress remain angry over the lack of progress in multilateral negotiations under the Doha Development Agenda at the WTO, continue to blame developing countries that do not want to have their preference margins reduced, and are seeking new ways to have the benefits of the more advanced developing countries restricted in some

Additional recommendations include working collaboratively with African governments, regional institutions, nongovernmental organizations, and businesses.

[7] Certain African BDCs have expressed concern that they will lose market share and jobs if equally generous preferences are extended to other developing countries with more globally competitive industries, particularly in apparel.

way — if not removed completely. Individual U.S. producers of products facing competition from imports under a preference program seek to have that product removed from eligibility via statute. Unions that want to expand the coverage of the labor conditions in the programs demand tougher criteria as well as certain investigations of alleged labor rights violations.

5 Lessons for Europe

Certainly, EU trade programs and policies have not been immune to political pressures from industries and member governments. Undoubtedly, certain features of the EU's current preference programs were shaped by those pressures. Nevertheless, the perception on the U.S. side of the Atlantic is that, compared to the United States, the Commission has been largely saved from the heated and protracted fights over preference program features that have characterized the U.S. process. European policymakers have had considerably more room to choose to implement trade preference program changes they thought were the "best," according to reasonable, objective yardsticks (do the benefits to industry A outweigh the costs to industry B?). Indeed, the EU GSP scheme already includes some of the key (controversial in the U.S.) features now sought by the U.S. preference reform group, including extension of benefits to many apparel and footwear products and permanent duty-free, quota-free benefits to LDCs for all products. Further, in November 2010, the Commission announced that several changes would be made, effective January 2011, to its GSP scheme affecting rules of origin, cumulation and eligibility certification.[8] These changes would have required Congressional approval had they been contemplated for the U.S. GSP scheme, and some of them — notably the rule of origin changes — would have triggered opposition from some industry quarters.

Going forward under the Treaty of Lisbon, if politics intervene more forcefully, the preference reform debate over the scope and shape of the EU GSP scheme after 2011 (extended now until 2012) could prove to be as heated as that in the United States over the years.[9] Indeed, the European Parliament has already weighed in on the matter with a resolution in March that contains nine specific instructions to the Commission regarding the current review of the GSP program. These include focusing preferences more on "developing countries that need them most," ensuring that beneficiaries are implementing their International Labor Organization and United Nations commitments, and dealing with specific human rights situations in Sri Lanka and Colombia, among other hot-button issues.

Under discussion in the EU review are many of the changes now being considered for the U.S. GSP scheme, changes that have proven to be politically challenging in the United States and likely will be challenging in Europe as well. This may especially be the case as foreign policy concerns come to have more influence, as they have in the United States, over trade policy decisions.[10] These include:

- Expanding the objectives of the program to include others that would address, for example, climate change and food security, or adding to current eligibility criteria for benefits to include protection of the environment and promotion of good governance, with benchmarks for performance. Changing objectives and criteria brings new interest groups into the debate, some pressing for expansion of the objectives, and others opposing it. Agreement on the appropriate benchmarks will also likely prove difficult in an environment where interest groups — and politics — are mobilized and given a more

Under the Treaty of Lisbon, the preference reform debate over the EU GSP scheme could prove to be as heated as that in the United States.

[8] Regulations are passed either jointly by the EU council and the European Parliament, or by the Commission alone. This particular change was an EU Commission regulation implementing a nonlegislative act, specifically a 2005 Commission communication on GSP Rules of Origin, and thus did not go through the European Parliament.

[9] Of course, the strength of the fight depends crucially on the political and financial weight of the parties on each side of an issue.

[10] The addition of the High Representative for Foreign Affairs and Security Policy to the cast responsible for trade matters is likely to mean that trade — and GSP — may be used more consistently to advance EU foreign relations objectives.

In a political environment, it goes without saying that the policy outcome will be less than optimal.

direct voice through European Members of Parliament (MEPs).

- Deciding whether the existence of the three European preference regimes — GSP, GSP+, and Everything But Arms (EBA) — is confusing and therefore ultimately ineffective and needs to be changed. This question goes to the heart of a big complaint of U.S. preference program users: there are too many of them with too many dissimilar rules, creating confusion that ultimately reduces the use and utility of the preference program. But opponents of a single preference program argue that having multiple programs enables policymakers to address specific political concerns in a given region, which they could not tackle if there were one program that applied to all countries in the same way. "Simplicity" has been sacrificed to the political need to address unique geographic or national security issues and concerns.

- Changing the product coverage by expanding or contracting the number of products that receive full duty-free treatment versus reduced duty treatment. Clearly, European importers of "import sensitive" products will want them to receive full duty-free treatment, while European producers of competitive products will marshal their forces to keep whatever duties in place they can, as both parties have likely always done. But now each can more effectively enlist allies in the European Parliament to push or block a change. In addition, beneficiary countries that now receive full duty-free benefits for a given product will likely object to that treatment being extended to others that now pay reduced duties. If they have champions within the European Parliament, as the African countries do in the U.S. House of Representatives, or take actions to cultivate them, they can affect the outcome of the debate.

- Refocusing preferences away from high-income countries and towards those "most in need of GSP preferences," and continuing to extend preferences, in whole or in part or not at all, to major (lower income) traders like Brazil, China and India. This difficult question comes fraught with political baggage, and may be impossible to address in any dispassionate, analytical manner.

- Revising graduation thresholds and procedures. While seemingly an administrative question, in fact politics can and will intrude because an indirect way to eliminate preferences for "controversial" recipients is to target the products they export.

- Making benefits for lower income developing countries permanent — e.g., by exempting them from graduation under GSP+, changing the way "vulnerable" countries are defined so as to include more income groups, or adding some to EBA. The current proposal from the U.S. preference reform coalition to extend full duty-free, quota-free benefits permanently to all least developed countries triggered a battle in Congress between supporters of African countries, which currently have the freest access to the U.S. market for apparel, and supporters (largely U.S. importers) of the extension of those benefits to non-African apparel exporters, including Bangladesh and Cambodia. The EU can anticipate a similar fight, as countries with benefits seek to preserve their preference margin against all newcomers.

In a political environment, it goes without saying that the policy outcome will be less than optimal, from the perspective of both beneficiary developing countries as well as EU importers, assuming that their political clout is diminished or outweighed by those defending the status quo or seeking to restrict imports under preferences. Gone will be the days when the Commission could conduct a dispassionate economic analysis of the likely results of a particular change to GSP and make an informed decision accordingly. This is not to suggest that all reason will be absent from GSP policy discussions going forward; but there is a concern that reason will now likely take a backseat most, if not all, of the time.

While so far the EU political system does not include some of the more difficult features of the U.S. system — "pay-go" budget rules and "unanimous consent" procedures in one house of the government — as the EU puts the finishing touches on how the Treaty of Lisbon will work in practice, equivalent procedures should be avoided. The recent complaint from the European Parliament that it has not always been fully or adequately consulted under the pre-Lisbon process, and its early weigh-in with the March resolution comments on GSP, suggest the European Parliament will be on particular alert with respect to the details of its role in future GSP decisions.

6 Conclusion

The lesson of the long history of U.S. preference programs boils down to this: the best of intentions are repeatedly frustrated by politics. The role of Congress in the preference creation process ensures that some less-than-optimal result will find its way into law. That result will inevitably require correction, which, in turn, could result in still more frustration.

It would be naïve to expect that politics can be forced out of the system of preference approval in either the United States or the EU. What is called for instead is recognition by policymakers — including and perhaps especially those in the United States — that second- and third-best formulations do not achieve the goals of preference legislation authors. Indeed, those second- and third-best formulations simply further distort import sourcing to the benefit, primarily, of customs attorneys who make their living helping U.S. importers understand the programs and bailing them out of the trouble into which they inevitably fall. To the extent that the European Union can avoid this costly and unfortunate side effect of the politicization of the trade policymaking process, it should endeavor to do so.

Appendix: Comparison of U.S. Preference Programs

GSP	ATPA/ATPDEA	AGOA	
Benefits Duty-free treatment for 131 eligible beneficiary developing countries/territories (BDCs)	**Benefits** Duty-free treatment for Bolivia, Colombia, Peru, Ecuador (Bolivia suspended from benefits)	**Benefits** Duty-free treatment for 38 eligible BDCs in sub-Saharan Africa	
Product Coverage All products EXCEPT: • Most textile and apparel articles • Most footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel • Certain watches & parts • Above-quota imports of certain agricultural products subject to tariff rate quotas (TRQs) • Import-sensitive electronic articles • Import-sensitive steel articles • Import-sensitive semimanufactured and manufactured glass products Affects >3,400 eligible products (out of >10,500 total)	**Product Coverage** All products EXCEPT: • Nonqualifying textile and apparel articles • Above-quota imports of certain agricultural products subject to TRQs • Canned tuna • Rum and tafia • Sugars, syrups, and sugar-containing products above TRQ levels • Certain import-sensitive footwear These products can be EXCLUDED if found to be import-sensitive: • Tuna in pouches • Leather products • Other footwear • Petroleum & petroleum products • Watches & watch parts Affects >5,700 eligible products (out of >10,500 total)	**Product Coverage** All products EXCEPT: • Non-qualifying textile or apparel products or those that exceed specified caps • Above-quota imports of certain agricultural products subject to TRQs • Certain steel products • Canned peaches and apricots • Dehydrated garlic Affects "substantially all" products (>10,500)	
Key Conditions for Eligibility Common to at least four Preference Programs Beneficiaries must not: • Be a communist country • Provide preferential treatment to other developed countries but not the United States • Nationalize, expropriate, or seize U.S. property without compensation • Aid or otherwise support international terrorism Beneficiaries must: • Afford or take steps to afford internationally recognized worker rights defined as the right of association; the right to organize and bargain collectively; a prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health • Meet its commitments to eliminate the worst forms of child labor, defined as all forms of slavery or similar practices like the sale or trafficking of children, debt bondage and serfdom, or forced labor, including forced or compulsory recruitment of children for use in armed conflict; child prostitution, the production of child pornography; use of a child for illicit activities like drug production and trafficking; and work that, by its nature or the circumstances, could harm the health, safety, or morals of children Beneficiaries should: • Provide the U.S. access to its markets (including basic commodity resources) and assure the United States that it will not engage in unreasonable export practices • Have in place a system to fight corruption, or be a party to an anti-corruption treaty or convention			

CBERA/CBTPA	HOPE	QIZs
Benefits Duty-free or reduced-duty treatment for 18 countries in the Caribbean region (including Haiti)	**Benefits** Enhanced CBPTA benefits for Haiti	**Benefits** Duty-free benefits for products from "qualifying industrial zones" in Egypt and Jordan
Product Coverage All products EXCEPT: • Nonqualifying textile/apparel products or those that exceed specified caps • Certain footwear • Certain watches & parts • Above-quota imports of certain agricultural products subject to TRQs • Canned tuna • Petroleum and products Affects about 5,400 products (out of >10,500)	**Product Coverage** Apparel and automotive wiring sets	**Product Coverage** All products

Key Conditions for Eligibility Common to at least four Preference Programs

Beneficiaries must not:

- Be a communist country
- Provide preferential treatment to other developed countries but not the United States
- Nationalize, expropriate, or seize U.S. property without compensation
- Aid or otherwise support international terrorism

Beneficiaries must:

- Afford or take steps to afford internationally recognized worker rights defined as the right of association; the right to organize and bargain collectively; a prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health
- Meet its commitments to eliminate the worst forms of child labor, defined as all forms of slavery or similar practices like the sale or trafficking of children, debt bondage and serfdom, or forced labor, including forced or compulsory recruitment of children for use in armed conflict; child prostitution, the production of child pornography; use of a child for illicit activities like drug production and trafficking; and work that, by its nature or the circumstances, could harm the health, safety, or morals of children

Beneficiaries should:

- Provide the U.S. access to its markets (including basic commodity resources) and assure the United States that it will not engage in unreasonable export practices
- Have in place a system to fight corruption, or be a party to an anti-corruption treaty or convention

GSP	ATPA/ATPDEA	AGOA	
Other Eligibility Criteria Beneficiaries must not: • Be a developed country or member of the European Union • Be a member of a commodity cartel • Have a per capita income that exceeds that of a high income country as defined by the World Bank (currently, $11,116) Beneficiaries should: • Provide adequate and effective protection of **intellectual property rights** • Reduce trade-distorting **investment** practices and policies including export performance requirements • Reduce or eliminate barriers to **trade in services**	**Other Eligibility Criteria** Beneficiaries must not: • Fail to recognize or enforce binding arbitral awards favoring U.S. citizens/business entities • Permit government-owned entity broadcasts of U.S. copyrighted material without consent or fail to work towards the provision of adequate and effective protection of intellectual property rights • Permit government-owned entity broadcasts of U.S. copyrighted materials without consent Beneficiaries should: • Reduce trade-distorting practices and policies including export performance and local content requirements • Have laws and effectively enforce laws that protect foreign intellectual property rights and provide IPR protection that is consistent with or greater than TRIPs requirements • Abide by its WTO Agreement obligations • Meet narcotics cooperation and counternarcotics certification criteria • Apply government procurement procedures equivalent to those in the WTO's GPA • Meet narcotics cooperation and counternarcotics certification criteria	**Other Eligibility Criteria** Beneficiaries must not: • Be a member of a commodity cartel • Fail to recognize or enforce binding arbitral awards favoring U.S. citizens/business entities • Engage in activities that undermine U.S. national security or foreign policy interests or constitute gross violations of internationally recognized human rights Beneficiaries must have established, or be making continual progress toward establishing: • A market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy • The rule of law, political pluralism, and the right to due process • The elimination of barriers to U.S. trade and investment, including national treatment, IPR protection, and resolution of bilateral trade and investment disputes • Policies to reduce poverty, increase the availability of health care and education, expand infrastructure, promote development of private enterprise, and encourage formation of capital markets Beneficiaries must also: • Provide adequate and effective IPR protection • Reduce trade-distorting **investment** practices and policies including export performance requirements • Reduce or eliminate barriers to **trade in services**	

CBERA/CBTPA	HOPE	QIZs
Other Eligibility Criteria Beneficiaries must not: • Fail to recognize or enforce binding arbitral awards favoring U.S. citizens/business entities • Permit government-owned entity broadcasts of U.S. copyrighted materials without consent Beneficiaries should: • Reduce trade-distorting practices and policies including export performance and local content requirements • Have laws and effectively enforce laws that protect foreign intellectual property rights and provide IPR protection that is consistent with or greater than TRIPs requirements • Follow rules of international trade provided for under multilateral Agreements • Apply government procurement procedures equivalent to those in the WTO's GPA • Meet narcotics cooperation and counternarcotics certification criteria	**Other Eligibility Criteria** The President must determine and Congress must certify that Haiti has established, or is making continual progress toward establishing: • A market-based economy • The rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law • The elimination of barriers to United States trade and investment, including by the provision of national treatment and measures to create an environment conducive to domestic and foreign investment; the protection of intellectual property; and the resolution of bilateral trade and investment disputes • Economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets • Does not engage in activities that undermine United States national security or foreign policy interests • Does not engage in gross violations of internationally recognized human rights and cooperates in international efforts to eliminate human rights violations Haiti must establish a Labor Ombudsman Office to oversee compliance with labor conditions in HOPE, and start a program that uses the ILO for technical assistance to monitor the compliance with core labor standards of apparel producers who want to export to the U.S.; ILO must issue a report every six months evaluating the progress of each producer.	**Other Eligibility Criteria** None

GSP	ATPA/ATPDEA	AGOA	
Rules of Origin Eligible products must: • be imported directly from a BDC into the United States • be wholly the growth, product, or manufacture of a BDC or be substantially transformed into a new or different article in the BDC • 35% of the value of the product must be added in a single BDC or in a specified association of eligible BDCs No U.S. contented counts.	**Rules of Origin** Eligible non-textile/apparel products must: • be imported directly from a BDC into the United States • be wholly the growth, product, or manufacture of a BDC or be substantially transformed into a new or different article in the BDC • contain a minimum of 35% local content of one or more CBTPA BDCs (or 20% if 15% of the minimum content comes from the United States) Textile/apparel product rules: • complicated requirements for the use of U.S. or regional fabrics, yarns, cutting, thread • some exceptions for short supply yarns/ fabrics, handmade, or folklore articles	**Rules of Origin** Eligible non-textile/apparel products must: • be imported directly from a BDC into the United States • be wholly the growth, product, or manufacture of a BDC or be substantially transformed into a new or different article in the BDC • contain a minimum of 35% local content of one or more AGOA BDCs (or 20% if 15% of the minimum content comes from the United States) Textile/apparel product rules: • complicated requirements for the use of U.S. or regional fabrics, yarns, cutting, thread • some exceptions for short supply yarns/ fabrics, handmade, or folklore articles • exception for third country fabric usage by LDCs, subject to caps	

	CBERA/CBTPA	HOPE	QIZs
	Rules of Origin Eligible non-textile/apparel products must: • be imported directly from a BDC into the United States • be wholly the growth, product, or manufacture of a BDC or be substantially transformed into a new or different article in the BDC • contain a minimum of 35% local content of one or more CBTPA BDCs (or 20% if 15% of the minimum content comes from the United States) Textile/apparel product rules: • complicated requirements for the use of U.S. or regional fabrics, yarns, cutting, thread • some exceptions for short supply yarns/fabrics, handmade, or folklore articles	**Rules of Origin** Apparel imports from Haiti are duty free if at least 50% of the value of inputs and/or costs of processing are from any combination of U.S. FTA and regional preference program partner countries, subject to quantity caps. Capped volumes of woven apparel permitted when made with fabric from any country. Automotive wire harnesses imported from Haiti must contain at least 50% by value of materials produced in Haiti, U.S. FTA, or regional preference program countries to qualify for duty-free treatment.	**Rules of Origin** • A product must be wholly the growth, product, or manufacture of the QIZ, or a new or different article of commerce that was grown, produced or manufactured in the QIZ • The sum of the cost or value of the materials produced in the QIZ, the West Bank, the Gaza Strip, or Israel PLUS the direct costs of processing operations in the QIZ, the West Bank, The Gaza Strip, or Israel is not less than 35% of the appraised value of the goods (U.S. inputs can account for up to 15% of the appraised value in meeting the 35% value-added requirement) • It must be imported directly from the QIZ or Israel. The agreement reached by Israel and the QIZ partner country establishes the details of the division of the 35% value added requirement. For textile and apparel products, the rule of origin is the so-called “Breaux-Cardin” rule, i.e., location of assembly for apparel. Products can be shipped to the United States from either Israel or the QIZ partner country.

GSP	ATPA/ATPDEA	AGOA
Loss of Benefits A BDC can lose benefits if: • It reaches the per capita income cut-off ($11,116) • It no longer meets one or more of the other eligibility criteria • The President determines that the BDC's advances in economic development and trade competitiveness warrant graduation President can withdraw duty-free treatment for any product that the President determines to be import-sensitive in the context of GSP. "***Competitive Need Limits, CNLs.***" GSP benefits terminate for a particular product imported from a BDC if the imports from the BDC of that product during any calendar year: 1) account for 50% or more of the value of total U.S. imports of that product; or 2) exceed a certain dollar value. Statute increases the dollar-value limit by $5 million annually (the limit was $135 million in 2008, and is $140 million in 2009). ***Waivers of CNLs.*** CNLs can be waived if imports of the product from the BDC drop below the CNL limit in a subsequent year and someone files a petition for a waiver (waivers are not automatic). A decision to grant a waiver depends in large part on whether the country is providing reasonable and equitable access to its market for U.S. goods and services and reasonable and effective protection of U.S. IPR. The percentage provision is waived for certain GSP eligible articles that were not produced in the United States on January 1, 1995. ***De minimis waiver:*** Provided when total U.S. imports from **all** countries of a product are small or "de minimis." The de minimis level is adjusted each year, in increments of $0.5 million (the 2008 level was $19 million, and 2009 level was $19.5 million). A de minimis waiver is automatically considered for all BDCs that exceeded the percentage competitive need limitation for a product where total imports from all countries for the preceding year were below the de minimis level. Such waivers cannot be requested by petition, but public comments are accepted. Granting such waivers is a discretionary decision of the President. ***(column continued on next page)***	**Loss of Benefits** [No per capita income cut-off.] [No CNLs] BDCs may lose benefits in whole or in part if they no longer meet one or more of the eligibility requirements. Apparel products may lose benefits as a result of a safeguard action. Products subject to a Section 201 action lose CBTPA duty-free treatment. The President/ITC must conduct reviews every 2 years of each BDC and the economic impact, including on U.S. employment, of the ATPDEA. The Department of Labor must make annual reports to Congress on the impact of ATPDEA on U.S. labor.	**Loss of Benefits** [No per capita income cut-off.] [No CNLs] BDCs may lose benefits in whole if they are not making "continual progress" in meeting one or more of the eligibility requirements. Apparel products may lose benefits as a result of a safeguard action. Annual review by President of BDC eligibility.

	CBERA/CBTPA	HOPE	QIZs
	Loss of Benefits No per capita income cut-off.] [No CNLs] BDCs may lose benefits in whole or in part if they no longer meet one or more of the eligibility requirements. Apparel products may lose benefits as a result of a safeguard action. Products subject to a Section 201 action lose CBTPA duty-free treatment. Sugar and beef products may lose benefits if BDCs do not have an acceptable stable food production plan. The President/ITC must conduct reviews every 2 years of each BDC and the economic impact, including on U.S. employment, of the CBTPA.	**Loss of Benefits** [No per capita income cut-off.] [No CNLs] Haiti can lose benefits if it no longer meets one or more of the eligibility criteria.	**Loss of Benefits** Permanent

(continued) GSP	ATPA/ATPDEA	AGOA	
Duration of waivers. A waiver remains in effect until the President determines that it is no longer warranted due to "changed circumstances." The statute also provides that the President "should" revoke any waiver that has been in effect for at least five years, if a GSP-eligible product from a specific country has an annual trade level in the previous calendar year that exceeds 150% of the annual dollar-value limit or exceeds 75% of all U.S. imports. ***Limitations on CNL waiver authority.*** The total value of U.S. imports from all beneficiary countries benefiting from the waiver cannot exceed 30% of the total value of GSP imports in a calendar year. Countries having a per capita GNP greater than $5,000 or that account for 10% or more of total GSP benefits cannot be granted waivers, with an aggregate value equal to more than 15% of GSP imports.			
Extra Benefits for Least Developed Countries "Least developed countries" (LDCs) are typically those defined by the United Nation as least developed countries. 42 eligible LDCs get benefits for an additional 1,434 products otherwise excluded from GSP. LDCs are not subject to CNL limits.	**Extra Benefits for Least Developed Countries** N/A	**Extra Benefits for Least Developed Countries** LDCs are eligible for "third country fabric" rule, which permits them to make apparel using fabric or yarn from non BDCs and still qualify for duty-free treatment. Total volume of this trade is subject to caps.	
Trade Capacity Building None	**Trade Capacity Building** None	**Trade Capacity Building** Technical assistance provided for	
Termination Expires 12/31/2010	**Termination** Expires 12/31/2010	**Termination** Third country fabric rule expires 9/30/2012; all benefits expire 09/30/2015	

Source: The Trade Partnership from USTR, ITC, CRS documents; texts of legislation.

CBERA/CBTPA	HOPE	QIZs
Extra Benefits for Least Developed Countries N/A	**Extra Benefits for Least Developed Countries** N/A	**Extra Benefits for Least Developed Countries** N/A
Trade Capacity Building None	**Trade Capacity Building** None	**Trade Capacity Building** None
Termination Expires 9/30/2020	**Termination** CBTPA expires 9/30/2018, CBI is permanent	**Termination** None

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