

The Briefly Open Door: GSP Reauthorization Gives Importers Fleeting Opportunity to Recover Overpaid Duties

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On June 29, the President signed into law the Trade Preferences Extension Act of 2015, reauthorizing the Generalized System of Preferences (GSP) and making its reauthorization apply retroactively. The White House has touted the GSP's renewal, stating that it will help developing countries in addition to US businesses and consumers. Importers can begin reaping the benefits of the GSP now by obtaining refunds of duties overpaid during the interim period between the expiration of the GSP and its now imminent revival.

The GSP program encourages multinational investment in specified developing countries by permitting selected goods produced there to enter the United States duty-free. The GSP program has only now been renewed after expiring on July 31, 2013. However, since 2013, prudent importers have been flagging their entries of formerly GSP-eligible imports (using an "A+," "A" or "A*" designation on entry), to expedite refunds in the event that Congress ever reauthorized the program retroactively. That time has arrived.

Once the Act becomes effective on July 29 (thirty days after the President signed the bill), Section 201 will allow importers to receive a refund for duty overpayments occurring between July 31, 2013 and July 29, 2015. Essentially, the law authorizes US Customs and Border Protection (CBP) to liquidate or reliquidate (i.e., to finalize CBP's calculation of duties owed on) any eligible good that entered (i.e., that had its documentation presented to CBP on arrival at the port) after the GSP expired on July 31, 2013 and to treat that good as if entered on July 29, 2015. The Act also reauthorizes, with certain modifications, the African Growth and Opportunity Act (AGOA), and the preferential duty treatment program for Haiti.

1. Submitting a Request for Repayment

To be eligible for repayment, an importer does not have to have flagged its import entry with an "A+," "A" or "A*" indicator. However, those that have flagged interim entries may not have to file a request for repayment. CBP will reportedly, as in the past, automatically process previously filed entry forms that already contain the GSP designators "A+," "A" or "A*." If CBP automatically processes the entries, then importers can expect to receive their refunds 90 days after CBP concludes the liquidation or reliquidation process. It is not yet certain whether CBP will automatically process refunds because during 2014 the President removed Russia and Bangladesh from the list of GSP-eligible countries. Importers who claimed GSP benefits on their entry forms for goods from those countries will therefore not be eligible for a refund, as those items are not duty-free. CBP is currently testing to see if automatic processing is a feasible option and will issue instructions on the processing of claims most likely next week but definitely before July 29. The Office of the United States Trade Representative (USTR) issued a notice [today, July 6, 2015](#), in the Federal Register. CBP should also be issuing a notice in the Federal Register soon.

Importers who did not flag their import entry with an “A+,” “A” or “A*” must submit a “sufficient” formal request to CBP within 150 days of the reauthorization’s July 29 effective date. A “sufficient” request provides enough information to allow CBP to locate or reconstruct the entry. If the good is eligible for the GSP and the importer files a sufficient request, CBP will pay the amount owed within 90 days of the completion of the liquidation or reliquidation process. The repayment does not include interest.

To be eligible for the retroactivity provision the goods must:

- (1) Be from a country considered a “beneficiary developing country” as of July 29, 2015 (note: Russia and Bangladesh no longer qualify);
- (2) Be designated an eligible article under the GSP in the Harmonized Tariff Schedule of the United States, as shown by the word “Free” in the “Special” duty-rate subcolumn, followed by the symbol “A+,” “A” or “A*” in parentheses;
- (3) Have entered the United States between July 31, 2013 and the July 29, 2015 effective date of the provision (“entered” includes the good being withdrawn from a warehouse to be used for consumption); and
- (4) Have been shipped directly to the United States, without further processing in a non-GSP-eligible country.

Importers must file requests with CBP by December 28, 2015—180 days after the President signed the Act.

As was the case before reauthorization, CBP may verify that the good originated from a GSP-eligible country. Besides having placed the appropriate indicator (“A+,” “A,” or “A*”) on the CBP Form 7501 Entry Summary to flag the importation for GSP benefits, importers should, as before, obtain and have available to present upon request a compliant certificate of origin. A compliant certificate of origin, meaning one that follows specific regulatory guidelines, will allow CBP to determine what portion of the product’s material inputs originated in the GSP-eligible country, what portion of the processing occurred there, and whether non-originating materials were substantially transformed. Based on this information, CBP will assess whether the item qualifies as GSP-originating (that is, as having been produced in a GSP-eligible country). The list of GSP-eligible countries and goods will not be the one used before the GSP expired but will be a new list based on 2014 data. Probably the only change will be that Russia and Bangladesh are no longer GSP-eligible countries.

This begs the question of which countries are GSP-eligible and which goods are eligible articles. Under the statute, 19 U.S.C. §2463, the President has the power to determine which countries and goods are GSP-eligible. The President can do so either by Executive Order or by Presidential Proclamation after receiving advice from the International Trade Commission (ITC). In the past, the list of eligible countries and goods was reviewed on an annual basis. The USTR would submit a list of countries and goods to the ITC for review. Interested parties could submit petitions to the USTR to have goods or countries added to the list. Once the list was submitted to the ITC, parties could comment on the list, appear at the public hearings and/or file briefs and statements before and after the public hearing. Notification of applicable deadlines was provided in the Federal Register. The ITC would have six months to provide its recommendations taking the hearings and filings into account. The ITC report was then filed with the USTR. There was no review conducted in 2014 but, the President removed Russia and Bangladesh from the list of eligible countries.

2. Competitive Need Limitation Waivers

In addition, Section 203 of the Act revises the competitive need limitation (CNL) waiver provision contained in 19 U.S.C. §2463(d).

Ceilings built into the GSP program terminate benefits for products from specified countries when GSP imports of those products either account for at least half of the value of total US imports of that product or exceed a certain dollar value. In certain circumstances, however, the President—acting through the USTR after an ITC investigation—may, via a CNL “waiver,” grant continued duty-free access to products that exceed the import ceilings. To get a CNL waiver, the product must either not be made in the United States, be imported in only small (“*de minimis*”) volumes, or originate in a designated GSP *least-developed* country.

The USTR will be conducting a limited review of CNL product designations based on 2014 data. USTR will also be considering five cotton products from least-developed beneficiary developing countries for potential GSP eligibility. As provided for in the new legislation, this review is to conclude on October 1, 2015. For this

review the USTR will generally not be accepting petitions to request that products be redesignated, as occurred in the past under the normal review process. USTR will accept petitions only for products newly accepted for CNL in 2014; two products from Thailand are the only newly accepted products. USTR will also be accepting comments regarding (1) *de minimis* CNL waivers, (2) possible redesignations of articles not currently eligible for GSP benefits, (3) possible revocation of CNLs waivers and (4) the proposed designation for GSP eligibility for the five cotton products from least-developed beneficiary developing countries. The deadline for submissions will be July 31. This limited review process will occur only once.

After the single limited review occurs, the review process will resume its former timeline with USTR review, concluding on July 1. Once the regular review process resumes, importers will be able to submit petitions to have any product redesignated. In August, the USTR will announce, via the Federal Register, the timeline and procedures for the review of 2015 data. USTR reviews the amount and value of goods being exported to determine whether the good is eligible for CNL.

CNLs tie into the reimbursement process because an importer's ability to receive reimbursement may hinge on whether the value of the goods imported surpasses the CNL. If that is the case, then GSP benefits would not be available and so CBP would not reimburse overpaid duties. However, if there is a CNL waiver, then it is still possible to obtain reimbursement for overpaid duties because the good would still be eligible for GSP benefits. The assessment for CNL and CNL waivers is typically conducted at the same time as the assessment for GSP-eligible goods and countries. The petition process is ordinarily the same, as well. The yearly assessment of CNL and CNL waivers is used as a basis to determine which countries will receive limitations or waivers in the next year. For example, the 2012 assessment would determine the CNLs and CNL waivers for 2013. There was no review of CNLs and CNL waivers conducted in 2014.

In light of the Federal Register notice, eligible importers should work closely with their customs brokers or other trade advisors to identify eligible entries and to begin the administrative process necessary to receive refunds of the overpaid duties. Failing to act within the specified time periods can result in accepting unnecessarily high import costs.

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