

# The U.S. Generalized System of Preferences

## In Principle and Practice

Emily Blanchard\*

Shushanik Hakobyan†

December 2013

### Abstract

In principle, the U.S. Generalized System of Preferences (GSP) offers uniform market access to exports from eligible developing countries for a broad set of GSP-eligible products. In practice, realized GSP tariff-exemptions demonstrate marked variation across countries, industries, and years. In this paper, we identify the sources of discretionary and non-discretionary GSP exclusions, and quantify the extent to which competitive needs limitations (CNLs), waivers, and additional annual product, country, and country-product exclusions drive a wedge between the ‘generalized’ principle of GSP and its implementation in practice.

**JEL Classifications:** F13, F14, F53, F59, O19, O24

**Keywords:** Trade preference programs, Generalized System of Preferences (GSP), trade policy, developing countries

---

\*Tuck School of Business, Dartmouth College; emily.blanchard@tuck.dartmouth.edu.

†Department of Economics, Fordham University; shakobyan@fordham.edu.

# 1 Introduction

Following the 1968 introduction of the ‘Enabling Clause’ under the General Agreement on Tariffs and Trade, many industrialized countries created Generalized System of Preferences (GSP) programs as an aid-through-trade initiative by which developing countries could qualify for expanded market access to their relatively wealthy markets.<sup>1</sup> In principle, GSP programs were meant to be just that – generalized – offering uniform preferential market access to all eligible developing countries for a wide range of goods. In practice, however, *de facto* GSP market access varies widely across countries, products, and time. In this paper, we document the extent of variation in realized duty-free access under the U.S. GSP. We trace the source of deviations between the principle and practice of GSP to specific provisions in U.S. trade law, and explore the extent to which they are potentially subject to political discretion.

While many product, country, or even country-product specific exclusions to the GSP program derive from unambiguous and clearly articulated provisions in the (amended) 1974 Trade Act that governs the U.S. GSP program, others are subject to considerable discretion in implementation. For instance, several communist countries and members of commodity cartels historically have been granted eligibility despite their explicit prohibition under Article V of the Act, while others have not. Many product-level exclusions are similarly discretionary, subject to an annual review process driven by petitions and counter petitions from business and political interests both in the U.S. and abroad. Even among eligible countries and products, narrowly targeted country-product specific exclusions are widespread; in 2009, for example, such exclusions applied to 16 percent of otherwise GSP eligible exports.<sup>2</sup> At the country-product level, exceeding competitive needs limitations (CNL) provides the primary basis for statutory GSP exclusion. But even in this case, *de jure* ineligibility does

---

<sup>1</sup>A basic framework for GSP provisions were introduced at the UNCTAD II conference in New Delhi 1968; the Enabling Clause – formally the “Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries” – was officially adopted by the GATT under the Tokyo Round in 1979.

<sup>2</sup>Table 1, Column 8 divided by the sum of Columns 4 and 8.

not always translate into *de facto* ineligibility in the presence of discretionary CNL waivers. Some country-product exports are granted CNL waivers even though the CNL threshold was exceeded, while others that are eligible for a *de minimis* waiver based on the negligible volume of imports are nonetheless excluded from GSP. Other country-product level exclusions stem from punitive exclusions under intellectual property rights (IPR) or workers rights violations; in these instances, product-by-product implementation can be remarkably idiosyncratic: for instance, following an IPR violation over pharmaceuticals in 1997, Argentina lost GSP eligibility for products ranging from raw cane sugar to garlic and anchovies – censure that continued for more than a decade.<sup>3</sup>

As a descriptive contribution, this paper quantifies the extent and sources of variation in GSP implementation, and the degree to which the program appears to be subject to discretionary political influence. Our study period spans 2002-2009, allowing us to explore variation in GSP application over time, as well as across products, countries, and country-product pairs. We use detailed panel data from U.S. Customs to track the number and the value of tariff line exclusions. We complement our descriptive analysis with an overview of the legislative process governing the U.S. GSP. We draw on a careful reading of the 1974 Trade Act together with the Federal Register and publicly available petitions from the U.S. International Trade Commission and U.S. Trade Representative’s GSP Subcommittee to offer insight on how, when, and by whom the GSP and its formal annual petitioning review cycle introduce the potential for discretionary application.

Although the GSP program is small relative to total U.S. imports – on the order of 3 to 4 percent of total dutiable U.S. imports over the past decade<sup>4</sup> – GSP market access is of critical importance to the developing countries that rely on preferential market access to the U.S. as a critical export promotion policy. According to Hakobyan (2012), when a developing country loses GSP access, its exports in affected industries fall by an average of

---

<sup>3</sup>Presidential Proclamation 6988 of April 11, 1997. To Modify Application of Duty-Free Treatment Under the Generalized System of Preferences. Published in Federal Register, Vol. 62, No. 74, Thursday, April 17, 1997.

<sup>4</sup>Imports facing zero MFN tariff rates are duty-free and therefore by definition GSP ineligible.

19 percent in the year of exclusion, an additional 20 percent in the first year, and are still 60 percent below pre-exclusion levels three years later. But perhaps the strongest case for the importance of the GSP is made by former UN Secretary General Kofi Annan, who put it simply: “*The main losers in today’s very unequal world are not those who are too much exposed to globalization. They are those who have been left out.*”<sup>5</sup>

The remainder of the paper proceeds as follows. The next section offers an overview of legislative underpinnings for the GSP, including a brief look at the 1968 Enabling Clause that codifies aid-through-trade programs under the GATT, and the 1974 Trade Act that authorizes the GSP in the United States. Section 3 comprises the core of the paper, methodically categorizing and quantifying GSP exclusions by type, and discussing the extent of executive discretion exercised in GSP implementation under each provision of the law. We begin with country- and product-specific exclusions written explicitly into the 1974 Trade Act, then examine competitive need limitations and *de minimis* allowances, and finally intellectual property rights, workers rights, and other more idiosyncratic exclusions. A short final section of the paper summarizes and concludes, in part by calling for new research on the causal mechanisms that underlie now well-documented variation in the U.S. GSP program.

## 2 Legislative Background: GSP In Principle

Part outgrowth of colonial legacy, and part aid-through-trade initiative, the so called ‘Enabling Clause’ allows GATT member countries to offer preferential market access to developing countries’ exporters in a non-discriminatory manner consistent with the GATT’s core Most Favored Nation (MFN) principle.<sup>6</sup> The Enabling Clause effectively institutionalizes a two-tiered system within the GATT: most member countries receive non-discriminatory

---

<sup>5</sup>Secretary-General Kofi Annan’s address to the Tenth United Nations Conference on Trade and Development (“UNCTAD X”), Bangkok, 12 February 2000; UN Press Release No. G/05/2000.

<sup>6</sup>Officially, the Enabling Clause is the “Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries,” which was officially adopted under GATT at the Tokyo Round in 1979. The GSP and its GATT authorization under the Enabling Clause traces its origins to the UNCTAD II meetings in New Delhi in 1968.

treatment under the MFN clause, while designated developing countries are afforded expanded market access under a second ‘Generalized System of Preferences.’<sup>7</sup> Every country may structure its GSP program as it sees fit, as long as the overall framework conforms to the non-discrimination principle – offering the same expanded market access for all named beneficiary countries. Each GATT signatory is free to determine the set of its GSP beneficiary countries unilaterally, subject only to a statutory limitation excluding high income countries.

In the United States, the Generalized System of Preferences is governed by the 1974 Trade Act (hereafter simply ‘the Act’). Under the Act, the executive branch has complete authority to grant or rescind duty-free treatment under GSP by unilateral presidential proclamation. (The GSP program itself is subject to periodic reauthorization by the House Ways and Means committee, however (Hakobyan, 2013).) In practice, GSP implementation falls under the umbrella of the U.S. Trade Representative (USTR) and its cross-agency GSP Subcommittee, which typically includes representatives from the departments of Agriculture, Commerce, Labor, State, and Customs and Immigration; the U.S. International Trade Commission (USITC) plays an advisory role.

The Act consists of three key components; the first two prescribe the designation of beneficiary countries and products, respectively, while the third creates a scheme of ‘Competitive Needs Limitations’ (CNLs). While a few clauses of the Act place explicit restrictions on GSP eligibility, most are subject to the President’s discretion, requiring only that the President exercise “due regard” to the provisions outlined in subchapter V of the Act. We briefly describe these provisions for country, product, and CNL exclusions below before turning to an overview of the GSP annual review process, through which most eligibility changes take place.

**Beneficiary Country Designations.** The Act permits two categories of country-level

---

<sup>7</sup>Strictly speaking, the GSP allows a three tiered system, since there may be two beneficiary designations *within* GSP itself: beneficiary countries (BCs) and least developed beneficiary countries (LDBC).

GSP eligibility: designated *beneficiary developing countries* (BCs) are entitled to duty-free market access for all GSP eligible products, subject to competitive needs limitations, which we outline later; a second category, *least-developed beneficiary countries* (LDBCs) are offered additional market access for a broader set of ‘GSP-plus’ eligible products, and are not subject to competitive needs limitations.

The Act guides country-level GSP eligibility designation first by defining a set of GSP *ineligible* countries and then by outlining the guidelines for country eligibility designation. Accordingly, we too begin with a summary of the nine criteria for GSP ineligibility below. While certain grounds for statutory ineligibility leave little or no scope for Presidential discretion – for instance countries explicitly listed as ineligible or communist regimes – most provisions (particularly those with intellectual property or workers rights violations) leave the ultimate decision to the office of the President to determine “that such a designation will be in the national economic interest of the United States.”

#### **Bases for Statutory Determination of GSP Country Ineligibility:**

The President shall not designate a country a beneficiary developing country if any of the following apply:

1. the country is: Australia, Canada, a European Union member state, Iceland, Japan, Monaco, New Zealand, Norway, Switzerland;
2. the country is a *Communist* country, unless (a) the products of such country receive nondiscriminatory treatment (normal trade relations), (b) such country is a member of both the WTO and the IMF, and (c) such country is not controlled by international communism;
3. the country is a member of an *international commodity cartel* (the Trade Agreements Act of 1979 amended this exclusion to allow GSP benefits to go to those OPEC members that entered into bilateral trade agreements with the U.S. prior to 1980);
4. the country affords preferential treatment to the products of a developed country other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce;
5. the country has nationalized, *expropriated*, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or corporation;
6. the country fails to act in good faith in recognizing as binding or in enforcing *arbitral awards* in favor of United States citizens or corporations;
7. the country has not taken steps to support the efforts of the United States to combat *terrorism*;
8. the country does not take steps to afford internationally recognized *worker rights* to workers in the country and eliminate the worst forms of *child labor*;
9. the country does not provide adequate and effective protection of *intellectual property rights*.

Among those countries not deemed GSP ineligible, the President shall, under the Act,

determine GSP eligibility based on seven more criteria, listed below. As with the ineligibility criteria, the Act clearly leaves discretionary authority to the office of the President.

**Factors to Determine GSP Country Eligibility:**

The President shall take into account:

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

Finally, regarding changes in country eligibility (withdrawal, suspension, or limitation of country designation), the only explicit provision in the Act is the mandatory graduation of beneficiary countries that attain “high income” status, as defined by the World Bank.<sup>8</sup>

**Product Eligibility.** Just as for country-level GSP designation, the Act contains a few inflexible statutory exclusions at the product level, but most provisions are again discretionary. Similarly, there are again two tiers of GSP eligibility at the product level: the baseline GSP-eligible products that afford duty-free access for all designated beneficiary countries, (again, subject to country-product specific competitive needs limitations), and an additional class of GSP-plus eligible products, which extend duty-free access to LDBC’s only – in effect, a preference program within a preference program for the poorest countries.

Subject to basic rules of origin and local content restrictions, products are deemed GSP eligible unless they are “import sensitive” or agricultural products subject to a tariff-rate

---

<sup>8</sup>In 2009, the per capita income defined as “high income” by the Bank was \$12,196 or more.

quota. As one would expect, the designation of products as “import sensitive” leaves considerable discretion to the President; even so, a number of products are named explicitly as being GSP ineligible. We note these below for the interested reader. The last provision is perhaps the most instructive, as it clearly articulates the potential breadth of GSP product-level exclusions. As we note shortly, this flexibility is exercised frequently, through annual changes in the designation of ineligible products under the GSP Annual Review process.

#### **GSP-Ineligible Import-Sensitive Articles:**

The President may not designate any article as GSP-eligible within one of the following categories of import-sensitive articles:

1. textile and apparel articles (with a few exceptions, including hand-knotted and hand-woven carpets, noted in the amended Act);
2. watches, except those that the President determines will not cause material injury to U.S. watch and watch accessory manufacturers;
3. import-sensitive electronic articles;
4. import-sensitive steel articles;
5. footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel (with some exceptions noted in the Act);
6. import-sensitive glass products;
7. “any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.”

**Competitive Needs Limitations.** Competitive needs limitations (CNLs) form the most important platform for product-level discretionary actions towards certain beneficiary countries under the U.S. GSP. Under the 1974 Trade Act, CNL rules stipulate a clear set of guidelines for detecting the most competitive exporters and limiting their exporting capacity. A beneficiary country automatically loses its GSP eligibility on a product if the country’s exports become “competitive” enough to exceed the CNL threshold, which is defined as either more than 50 percent of the total value of U.S. imports for that product (percentage CNL), or the value threshold (value CNL), which stands at \$155 million in 2012, with a statutory \$5 million increase per annum. When the exports of a specific product from a beneficiary country meet either of these thresholds, duty-free treatment for that beneficiary country and product is automatically terminated by no later than July 1 of the next calendar



year. Again, recall that designated least developed beneficiary countries (and Sub-Saharan African countries) are exempt from CNLs.

On the surface, CNL rules seem to leave little discretion in implementation. In practice, however, not every eligible country-product pair that meets the CNL threshold criteria sees its GSP eligibility suspended. A system of CNL waivers and waiver-exceptions afford considerable policy flexibility in practice. And because CNLs apply explicitly to the most successful exporters, this policy flexibility under CNL applies to a large fraction of U.S. imports under GSP overall; on average about 22% of potential GSP imports exceeded statutory CNL thresholds, either value or percentage, every year over our sample period. Waivers come in three forms. *De minimis* waivers may be applied if the value of total imports of that product from all countries during the calendar year did not exceed the applicable amount (\$21 million for 2012 with a \$0.5 million per annum increase). While *de minimis* waivers are automatically considered, they are not guaranteed. A percentage CNL may also be waived under a 504(d) exemption if a “like or directly competitive product” was not produced in the U.S. on January 1, 1995. Finally, a beneficiary country subject to CNL may also apply for a waiver and a waiver may be granted at the discretion of the President based on its potential impact on the affected domestic industry.<sup>9</sup>

**The GSP Annual Review.** Most changes to GSP eligibility are implemented as a part of the GSP Annual Review process, a formal yearly request for public petitions and comments from interested parties including foreign governments, U.S. and foreign companies, and labor or other public interest groups. In a typical year, the GSP annual review begins mid-year, when the U.S. Trade Representative (USTR) circulates a public notice requesting

---

<sup>9</sup>There are additional limits on CNL waivers, such as the total value of U.S. imports from all beneficiary countries under the waiver cannot exceed 30 percent of the total value of GSP imports in a calendar year. In addition, countries with a per capita GNP above \$5,000 or with 10 percent or more of total GSP benefits cannot be granted waivers with an aggregate value of more than 15 percent of GSP imports. More recently, in 2006, several statutory changes were made to the GSP pertaining to CNL waivers. In particular, the President has to revoke any CNL waiver that has been in effect for five or more years if the value of imports under the waiver exceeds 150% of the CNL value threshold, or if more than 75% of total U.S. imports of that product come from the country receiving the waiver.

submissions on the products and/or countries to be considered for addition to, or removal from, the GSP. Petitions concerning CNL waivers, and CNL waiver extensions or revocations are also considered under the annual review. While most petitions concern product or country-product specific exemptions, the USTR also accepts petitions related to country practices, primarily pertaining to the protection of intellectual property rights (IPR) or workers rights (WR).

The executive branch, under the auspices of the USTR, retains ultimate authority to grant or deny GSP annual review petitions. That said, the USITC plays an important advisory role, and conducts its own ‘request for comments’ process subsequent to the USTR’s consideration of a case. Together, the USTR and USITC review processes take more than a year to complete for each annual review cycle. Petitions submitted to USTR and USITC, as well as the USITC reports, are publicly available, though much of the detailed information provided by petitioners and counter petitioners is redacted.<sup>10</sup> An example timeline of the annual review process (for 2009) is outlined in Table A.1 of the Appendix.

### 3 Measuring GSP Exclusions: GSP In Practice

Having outlined the legislative scope for discretionary application of preferential market access under the U.S. GSP, we are now ready to quantify the extent to which country, product, and country-product level exceptions to ‘generalized’ market access are exercised in practice. We focus on the time period from 2002-2009, a span during which Congressional authorization of the GSP program was never allowed to lapse.<sup>11</sup> When expositional parsi-

---

<sup>10</sup>The USTR determines whether to accept a petition for review based on established filing criteria. The public versions of all submissions are made available at Regulations.gov in a docket announced in the Federal Register (for example, the submissions for product additions and removals during 2009 annual review were made available in a docket USTR-2009-0015). When the USTR announces the list of accepted petitions, it also announces a new docket number where the pre-hearing and post-hearing briefs of accepted petitions eventually become available, along with other comments received from the public regarding these petitions. The USITC conducts its own investigation and holds a separate hearing for which it accepts submissions through its Electronic Document Information System (<http://edis.usitc.gov>). Again, confidential information is removed from submissions prior to making these documents public.

<sup>11</sup>The GSP expired on September 30, 2001, and was renewed retroactively on August 6, 2002. More recently, the GSP was expired between January 1 and November 5 of 2011 (Hakobyan, 2013).

mony demands we restrict attention to a single year (as in many of our figures); we use 2004 – an unremarkable year for the U.S. GSP. Our panel covers every dutiable product at the 8-digit level of the Harmonized System (HS) product classification for which imports were positive in a given year from any country. Thus, our panel is balanced within years, but may be unbalanced across years – particularly in the case of product code obsolescence during the sample period.

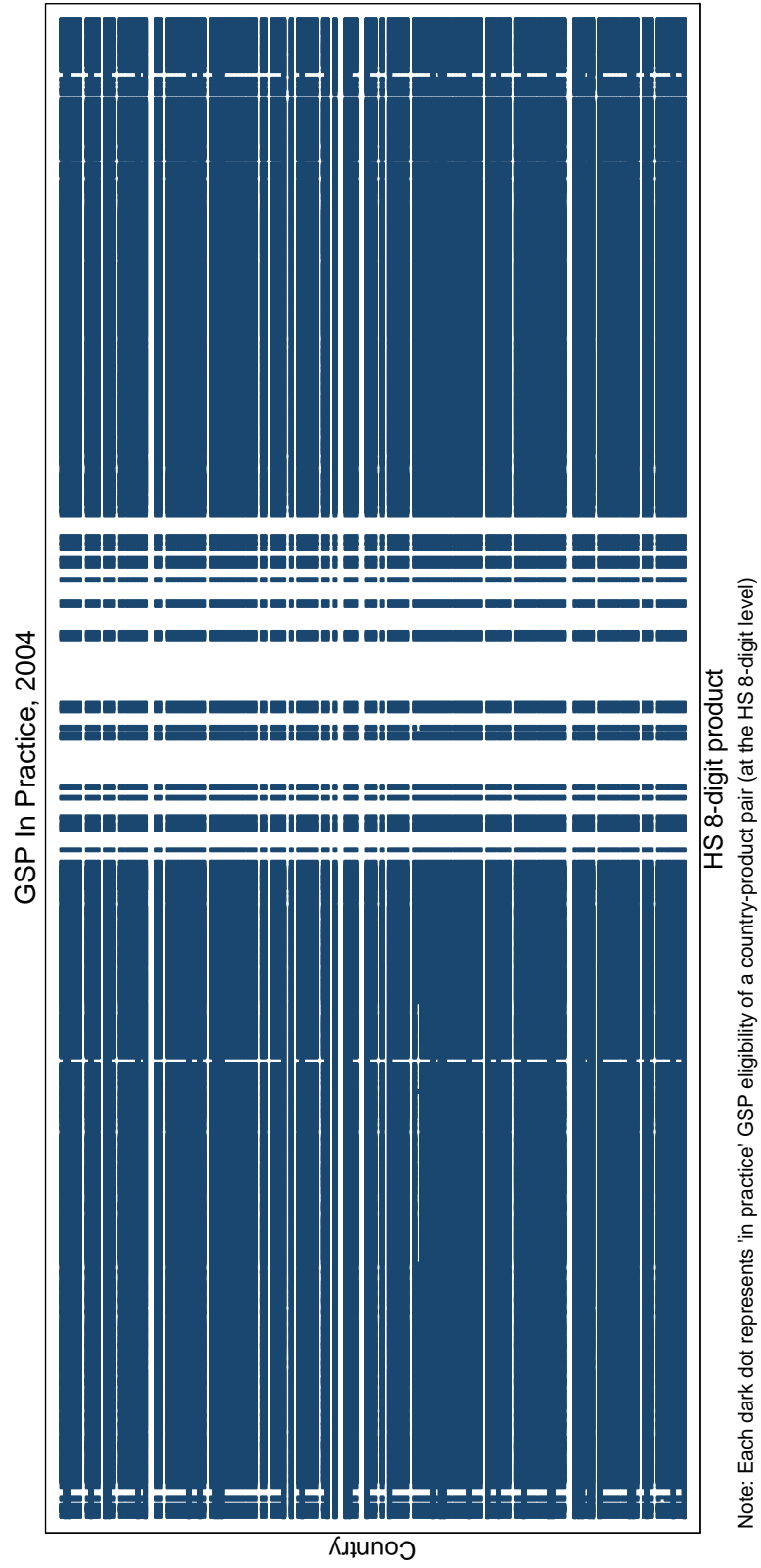
We approach the exercise in stages, metaphorically peeling the onion by layers, to develop a careful accounting of GSP exclusions. Our benchmark starting point, ‘GSP In Principle’, is the broadest possible coverage of GSP market access, covering all developing countries and all dutiable goods. (In the subsequent analysis we consider only GSP eligibility for *dutiable* products, as products facing MFN zero tariff rates are by definition GSP ineligible.) From there we incorporate the country- and product-level exclusions specified in the 1974 Trade Act, and evaluate the extent of discretion (if any) with which each criterion in the Act was implemented during our sample period. We then move on to the more complex terrain of country-product specific exclusions under CNLs, CNL-waivers, CNL-waiver-exemptions, *de minimis* waivers, *de minimis* waiver exclusions, and finally country-product level exclusions applied under intellectual property rights, workers rights, and related violations.

Beginning with the broadest possible coverage of GSP – as conceived by only the most optimistic drafters of the Enabling Clause – the GSP would cover all developing countries and all dutiable products. Starting from this admittedly naive definition of ‘in principle’ potential GSP eligibility, Figure 1 illustrates GSP eligibility in practice for all developing countries and all dutiable HS 8-digit level products in 2004.<sup>12</sup> Countries are sorted along the vertical axis, with HS 8-digit products along the horizontal axis. GSP exclusions for any given country-product pair are marked by a corresponding white marker. Thus, rows that are white across all products indicate country ineligibility, while an all-white column indicates product ineligibility. Country-product level exclusions are more difficult to discern

---

<sup>12</sup>Figures for all other years between 2002 and 2009 are readily available from the authors.

Figure 1: GSP Eligibility by Country and HS-8 Product, 2004



given the dimensionality of the figure, but are widespread; we explore this more targeted exclusion type in more detail in a later Figure.

Looking at Figure 1, one could reasonably come away with the impression that although country- and product-level exclusions are widespread, the majority of U.S. imports from developing countries are GSP eligible. Table 1 suggests a very different conclusion, based on U.S. import *volumes*. Table 1 quantifies the value of U.S. imports from developing countries that are GSP-ineligible in practice due to country-, product-, and country-product specific GSP exclusions. From Column 12 of the table, we see that over our sample period, only 8.5 percent of all developing countries' dutiable exports to the U.S. (just 4.1 percent of total dutiable U.S. imports) were in practice GSP eligible. By trade volume, product-level ineligibility (Column 7) accounted for slightly more of total GSP exclusions than country-level ineligibility (Column 6). The more idiosyncratic country-product level exclusions (Column 8) comprise a much smaller share of total GSP ineligibility by volume, but are still substantial relative to total imports under the GSP program: but for country-product level exclusions, total in practice GSP eligible imports from developing countries would have been 20 percent higher over the course of the sample period (Column 8 divided by Column 4).<sup>13</sup> We will return to these country-product level exclusions shortly. First, however, we delve into the far more pervasive (in terms of trade volume) country- and product-level exclusions observed in the data.

## Country Level Exclusions

Over our sample period, most of the country ineligibility criteria outlined in Section 2 have been used to exclude countries from GSP. Specifically, in our sample period, country-level ineligibility designations stem from provisions that exclude EU members, communist countries, cartel members, and intellectual property and workers rights violations. We outline

---

<sup>13</sup>Indeed, 20 percent is a lower bound – if developing country exports increased with the expansion of duty-free access as robustly as one would expect (Hakobyan, 2012), the implied expansion of GSP market access would have been higher.

Table 1: GSP (in)eligibility by Import Volume (billions of U.S. dollars) 2002-2009

Year	In practice GSP ineligible imports											
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Total U.S. imports	Total U.S. dutiable imports	Total dutiable imports from developing countries	In practice GSP eligible imports	Total imports	Eligible products from ineligible countries	Ineligible products from eligible countries	Ineligible products from eligible countries	Ineligible products from otherwise eligible products	Ineligible products from otherwise eligible products	In principle GSP eligible imports as a share of dutiable U.S. imports	In practice GSP eligible imports as a share of dutiable U.S. imports	In GSP eligible imports as a share of total dutiable imports from developing countries
2002	1106	628	261	23	76	72	4	87	41.5%	3.7%	8.8%	
2003	1202	675	291	26	83	83	5	94	43.2%	3.9%	9.1%	
2004	1409	753	339	29	99	104	4	102	45.0%	3.8%	8.4%	
2005	1606	869	414	38	115	132	6	123	47.6%	4.3%	9.1%	
2006	1785	973	485	44	135	144	8	154	49.8%	4.5%	9.1%	
2007	1881	1019	518	40	147	151	11	169	50.9%	4.0%	7.8%	
2008	2026	1114	588	50	149	194	10	184	52.7%	4.5%	8.5%	
2009	1493	784	435	31	125	123	6	150	55.4%	3.9%	7.1%	
Average	1564	852	416	35	116	125	7	132	48.3%	4.1%	8.5%	

Source: U.S. International Trade Commission and authors' calculations

Notes: Columns (1) and (2) report total U.S. imports and total dutiable U.S. imports, respectively, from all trading partners in billions of nominal U.S. dollars. Column (3) shows imports of all dutiable products from all developing countries (after removing countries with "high income" status as defined by the World Bank). Column (4) reports the value of GSP eligible imports in practice. Columns (5)-(9) report the value of in practice GSP ineligible imports from all developing countries. The total value of GSP-excluded imports is reported in Column (5); Columns (6)-(9) break out the Column (5) total into four sub-categories, respectively: imports of eligible products from ineligible developing countries (6); imports of ineligible products from eligible countries (7), imports of ineligible country-product pairs of otherwise eligible products from otherwise eligible countries due to country-product specific exclusions (CNLs and IPR violations) (8); and the residual - imports of ineligible products from ineligible developing countries (9). Finally, Columns (10)-(12) calculate the total 'potentially GSP eligible' imports (of all dutiable products from all developing countries) and 'in practice' GSP eligible imports as a share of total dutiable U.S. imports, and 'in practice' GSP eligible imports as a share of total imports of all dutiable products from all developing countries.

each briefly, and quantify the volume of excluded imports under each provision in Figure 2.

During our sample period, nine countries graduated from GSP upon their accession to the EU: Poland, Hungary, Slovak Republic, Czech Republic, Latvia, Lithuania, Estonia as of May 1, 2004, and Bulgaria and Romania as of January 1, 2007; Slovenia had already been removed effective January 1, 2002 on the grounds of reaching “high income” status.

Exclusions based on communism were quantitatively very important as a share of U.S. imports, as China, Cuba, Laos, North Korea, and Vietnam remained ineligible for GSP preferences throughout the sample period.<sup>14</sup> It is worth mention, however, that the U.S. is currently considering a request from Vietnam to be designated as a beneficiary country.<sup>15</sup> It should be noted that the U.S. makes a unilateral decision over which countries are designated as ‘controlled by international communism’ for the purposes of GSP eligibility.

Cartel membership – exclusively related to OPEC within our sample period – is involved in many of the instances over our sample period when *de facto* GSP eligibility deviated from the *de jure* provisions in the GSP statutes of the 1974 Trade Act. In particular, Algeria (OPEC member since 1969) became GSP eligible in March 2004; Angola did not lose its GSP benefits (GSP LDBC since 1997) after becoming an OPEC member in 2007; and Nigeria (OPEC member since 1971) became GSP eligible in August 2000.<sup>16</sup> At the same time, other OPEC members like Iran and Libya remained ineligible.<sup>17</sup>

Country-level violations of workers and intellectual property rights underpin many of the country-level GSP exclusions during our sample period. For instance, Ukraine lost its GSP eligibility in 2001 on the grounds of inadequate and ineffective IPR legislation addressing the piracy of optical media products, such as CDs and DVDs. (GSP benefits were reinstated

---

<sup>14</sup>In the past, Romania and Yugoslavia, being communist countries until 1989 and 1991, respectively, were eligible for the GSP because they were IMF members at the same time.

<sup>15</sup>In 2008 Vietnam officially requested to receive trade benefits under the GSP as a beneficiary developing country after its accession to the WTO was finalized in 2007, but the decision is still pending.

<sup>16</sup>Such discretion has been exercised in the past as well, primarily based on the 1979 amendment to the Trade Act. In March 1980, three OPEC members became eligible for the GSP program – Ecuador (joined OPEC in 1973, left in 1992, and rejoined in 2007), Indonesia (OPEC member 1986-2008), and Venezuela (founding member of OPEC).

<sup>17</sup>Other OPEC member countries (Saudi Arabia, United Arab Emirates, Qatar, Kuwait) have reached high-income status according to the World Bank and are thus ineligible by virtue of mandatory graduation.

in 2006 after the Ukrainian parliament approved a package of important amendments to the Laser-readable Disc Law that strengthened Ukraine’s licensing regime and enforcement capabilities to stem the illegal production and trade of optical media products.) Meanwhile, Belarus’ beneficiary status was suspended in 2000 due to workers rights violations, and its GSP eligibility has not yet been reinstated. Likewise, Nicaragua, Burma, Sudan and Syria were deemed ineligible over our sample period because of workers rights concerns. Notably, the process can work in reverse, too: Liberia and the Maldiv Islands were reinstated as GSP beneficiaries in 2006 and 2010, respectively, after demonstrating continual effort in improving workers rights.<sup>18</sup> Table A.2 in the Appendix lists all the country practice reviews initiated by the USTR over our sample period over allegations of violations of IPR and worker rights.

Violations of workers rights and IPR warrant, at least according to the law, a suspension of GSP benefits on *all* products exported from a country in question. But importantly, as we will see when we examine country-product specific exclusions, such violations can, in practice, lead to the elimination of GSP benefits for a subset of products exported from that country. For that reason, we do not observe the in practice exclusion of some countries (again, recent suspension of Argentina’s benefits is a focal example) that were deemed in violation of IPR and workers rights under the Act.

In addition to the explicit provisions for designation of country *ineligibility* listed hereto, there are yet additional factors that limit the extent of GSP eligibility. Although not spelled out explicitly in the Trade Act of 1974, it has been customary to suspend the GSP eligibility of an otherwise eligible developing country that signs an FTA with the United States. Typically all products for which the country received GSP benefits become fully duty-free on the first day the FTA goes into effect, so GSP benefits are no longer needed by the beneficiary country. Jordan, eligible for GSP and party to an FTA since 2001, has been a notable exception.

Over our sample period several countries achieved ‘high income’ status as defined by the World Bank, resulting in their mandatory graduation from GSP – Antigua Barbuda

---

<sup>18</sup>The GSP eligibility of Liberia and the Maldiv Islands had been suspended in 1990 and 1995, respectively, because of workers rights concerns.



(2005), Bahrain (2005), Barbados (2005) and Trinidad and Tobago (2009). This provision can potentially be used with discretion. For example, Nauru was removed from GSP in 1988 based on “high income” status. At the time Nauru was ranked as a high income country by the World Bank, but soon thereafter their GDP per capita plummeted (Nauru’s growth was based on phosphate mining and thus was not sustainable in the long run). Nauru is currently ranked as a lower middle-income country, but is not eligible for GSP benefits.

Finally, the factors affecting country designation outlined in Section 2 have been invoked in two separate instances. First, GSP is not offered unless a country asks for designation; accordingly, two otherwise eligible developing countries, Tajikistan and Turkmenistan, were not eligible to receive GSP benefits over our sample period. Second, Malaysia, although not a high income country (as of 2002) was deemed ‘sufficiently competitive’ in the U.S. markets and removed from GSP as of January 1, 1997.

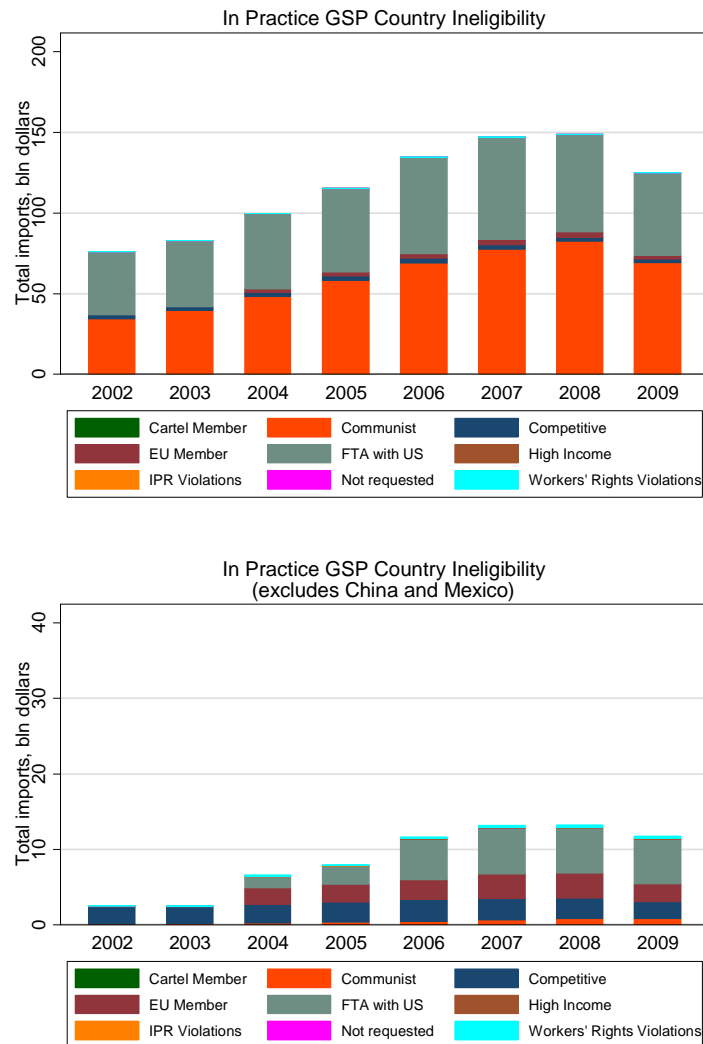
Figure 2 tracks the value of imports of in practice GSP ineligible countries over our sample period by type of GSP exclusion. The two largest categories by far are ‘communist’ country exclusions and ‘FTA exclusions’, which pick up China and Mexico respectively; to better illustrate the composition of exclusions, we therefore exclude China and Mexico in a second panel of the figure. As both panels clearly demonstrate, the value of excluded imports by country-level ineligibility has been growing steadily, both in percentage terms and as a percentage of total U.S. imports;<sup>19</sup> notice that this trend is consistent both including and excluding trade with Mexico and China. (The dip in 2009 mirrors the overall fall in imports following the global economic crisis and concomitant ‘great trade collapse’.)

Focusing on the second panel, we see that beginning in 2002, most country exclusions traced to the ‘competitive’ country designation – Malaysia – which was applied to countries still below the ‘high middle income’ threshold. Expanding EU membership and new FTAs with the U.S. comprise the majority of the remaining country-level exclusions by volume of imports. Workers rights and IPR violations barely register when measured by trade volumes

---

<sup>19</sup>It should be noted that the figures include imports of all dutiable products, regardless whether they are in practice eligible or ineligible for GSP. Product-level exclusions are detailed below.

Figure 2: In Practice GSP Ineligibility by Exclusion Type: Country Level Exclusions, 2002-2009



– both because the smallest and least developed countries are typically those censored for workers rights violations, and perhaps even more so because these ‘fuzzier’ country-level violations are often punished by country-product level exclusions, as we explore in more depth shortly.

### Product Level Exclusions

The Trade Act of 1974 is explicit in some product-level exclusions, and decidedly vague for others. We begin by describing the clearest product-level exclusions, before turning to the

grayer areas of the law and implementation. Our approach is to identify chapters or headings of the Harmonized System (HS) that encompass the product groups that may in principle be excluded from GSP according to the law, and to compare those *de jure* exclusions with what we observe in practice.

The Act explicitly designates a number of product categories as ineligible for GSP treatment: textiles and apparel, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel and watches. These product exclusions are implemented according to a specific historical date specified in the Act (or in subsequent presidential proclamations): 1994 for textiles, 1995 for footwear and other leather products, and 1989 for watches.<sup>20</sup> We use historical tariff data from Feenstra et al (2002) to identify products that were designated *de facto* ineligible at the specified historical date under relevant HS Chapters or Headings: textiles and apparel under HS Chapters 50 through 63 and Headings 6501 through 6505;<sup>21</sup> watches and watch movements under Headings 9101, 9102, 9108 and 9110; and footwear and other leather products under Chapter 64 and Headings 4202, 4203 and 4205. We then trace the ineligibility of these products over time (some products become duty-free, others undergo code changes), so that we can map ‘in principle’ ineligibility designation from the Act to our sample period and construct a benchmark measure of ‘in principle’ GSP ineligibility for these products over our sample period.

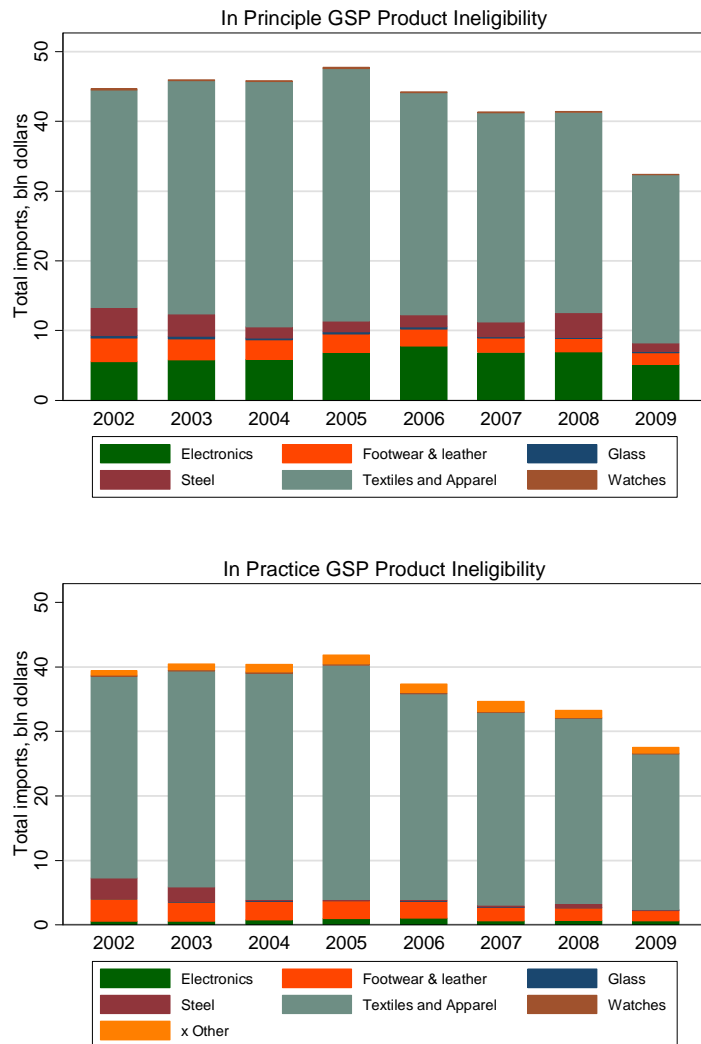
The remaining product ineligibility provisions of the Act are (much) less clearly defined, including all ‘import sensitive’ electronics, steel and glass products. We therefore include all the products under the relevant HS Chapters in our benchmark measure of ‘in principle’ ineligibility: electronics under Chapters 84 and 85; steel products under Chapters 72 and 73; and glass products under Chapter 70.

---

<sup>20</sup>For instance, on October 31, 1989, the President designated 18 categories of digital and mechanical display watches as eligible for GSP treatment, but denied GSP eligibility for 40 other watch categories (Presidential Proclamation 6058, Oct. 31, 1989).

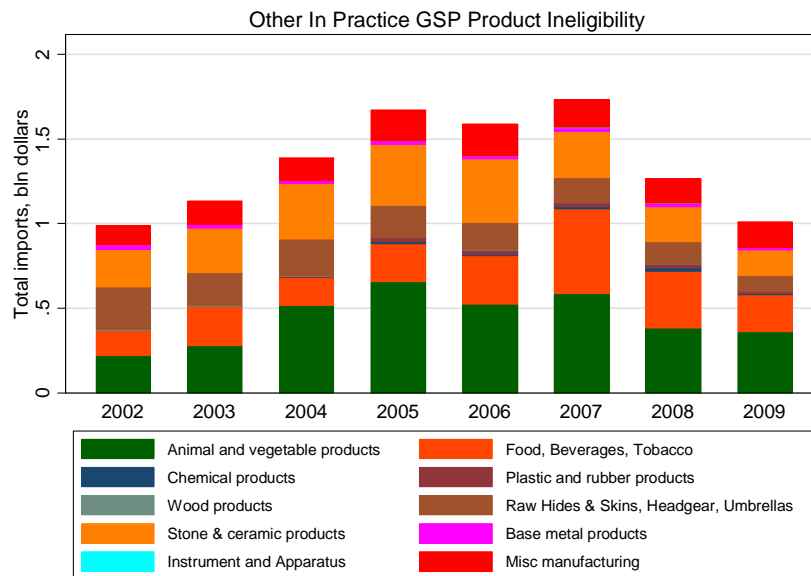
<sup>21</sup>A 2004 amendment of the Act outlines a potential loophole for certain named hand-knotted or hand-woven carpets: 5701.10.16, 5701.10.40, 5701.90.10, 5701.90.20, 5702.10.90, 5702.42.20, 5702.49.10, 5702.51.20 (currently 5702.50.20), 5702.91.30, 5702.92.00 (currently 5702.92.10), 5702.99.10 (currently 5702.99.05), 5703.10.00 (currently 5703.10.20), 5703.20.10, and 5703.30.00 (currently 5703.30.20).

Figure 3: In Practice versus In Principle GSP Ineligibility: Product Level Exclusions, 2002-2009



In Figure 3, we compare the value of total dutiable in principle and in practice ineligible imports by each product-level exclusion articulated in the Act and described above. The first panel of the figure illustrates our benchmark measure of ‘in principle’ product-level GSP ineligibility, while the second panel offers a comparison with what we observe in practice in the data. There are few discrepancies between in principle and in practice ineligibility of textiles and footwear, and no discrepancies between in principle and in practice ineligibility of watches over our sample period. In these explicitly named provisions of the 1974 Trade Act for product-level ineligibility, it appears that the executive branch does indeed exercise

Figure 4: In Practice versus In Principle GSP Ineligibility: Other Product Level Exclusions, 2002-2009



very little discretion. In contrast, we find that most electronics, steel and glass products are eligible for GSP despite in principle ineligibility on the grounds of ‘import sensitivity’. A small number of sub-categories are restricted to LDBC’s only, and a handful of steel and glass products are ineligible for all countries. In practice, then, the executive branch appears to exercise discretion *in favor of* beneficiary country exporters, deeming most of the glass, steel, and electronics potentially eligible for GSP designation.

After excluding in practice ineligible products classified under one of the six product categories outlined above, we are left with roughly 150 products (at the HS 8-digit level) that are not eligible for GSP for at least part of our sample period on the grounds of ‘import sensitivity’. As illustrated in Figure 4, these include some agricultural products (meat, dairy produce, certain fruits and vegetables, sugar and sugar confectionery), some food preparations and beverages, certain chemicals, plastics, ceramic products, and cutlery. Together, these excluded products had an annual import value between \$1 billion and \$2 billion during our sample period.

## Country-Product Level Discretion

We now reconstruct our benchmark Figure 1, excluding all *de facto* GSP ineligible countries and products. Our new Figure 5 additionally weights each observed country-product specific exclusion by its trade value in 2004 to best illustrate the relative importance of observed country-product level exclusions. From the figure, it is immediately apparent that many GSP exclusions are for successful exporters which is, of course, precisely the intent of the competitive need limitations (CNL). Some countries and products face more frequent exclusions than others – as evidenced by the occasional horizontal or vertical bands in the figure,<sup>22</sup> but many of the observed exclusions appear idiosyncratic, at least at first glance.

Country-product level exclusions trace their roots to two primary sources. First, as alluded to above, in some instances violations of intellectual property rights (IPR) or workers rights (WR) lead to suspension of GSP benefits for a subset of products imported from a given country, rather than a full suspension of the GSP benefits of such country. Second, if a country-product pair exceeds CNL thresholds (by value or percentage), it may (but need not) be excluded from the program. These country-product level exclusions due to CNLs, IPR and WR violations loom large in the GSP program; but for these exclusions, GSP imports would have been 20 percent larger over our sample period (from Table 1,  $(7+35)/35 = 1.2$ ). We briefly discuss each source of exclusions in turn.

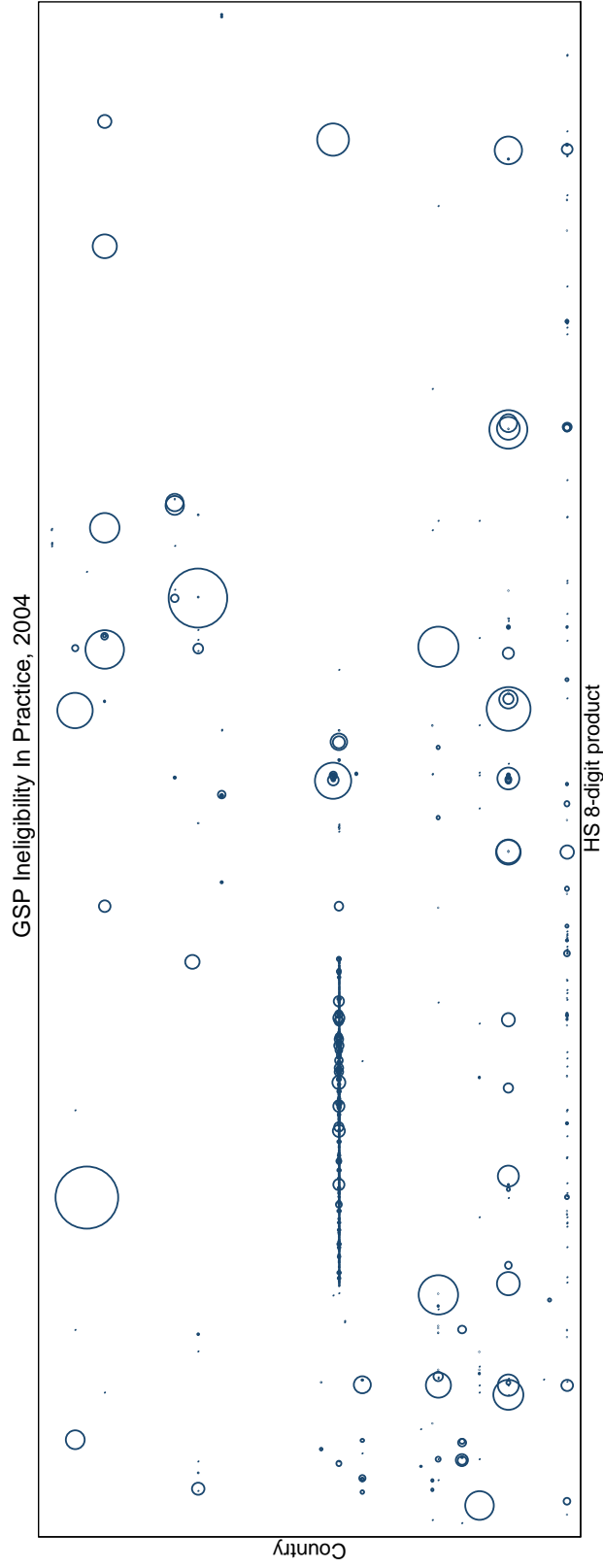
IPR and WR violations often lead to in practice country-product level exclusions, rather than full country-level ineligibility as stipulated in the Act. Although such product-level censure for country-level violations is nowhere codified in the Act or the Enabling Clause, the practice is widespread. For example, in 1992, the GSP benefits on about 800 goods imported from India were suspended on the grounds of inadequate protection of intellectual property rights of agro-chemicals and pharmaceutical products.<sup>23</sup> Likewise, in 1997 the GSP

---

<sup>22</sup>The top three countries subject to the largest number of product exclusions in 2004 were India, Argentina and Brazil; these countries' exclusions are the horizontal bands of exclusions in Figure 5.

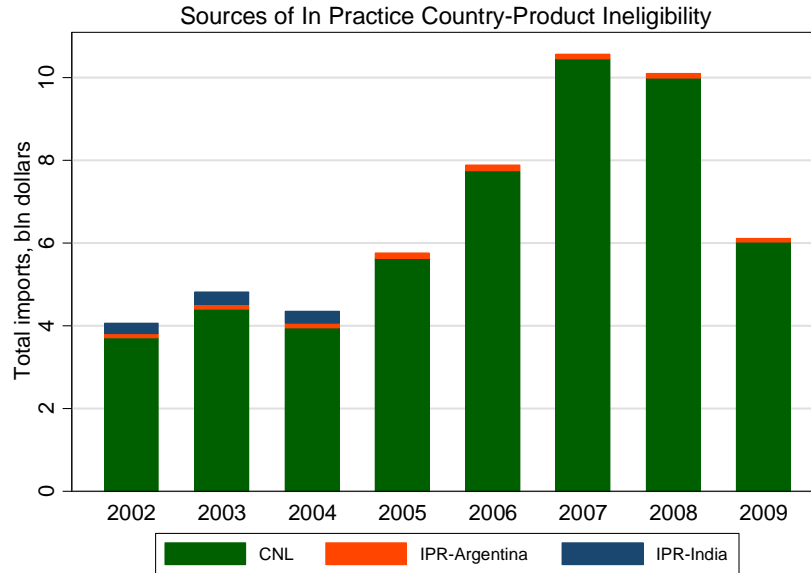
<sup>23</sup>GSP benefits on 42 products including jewelry (HS chapter 71) were restored on August 22, 2001, while the rest of the excluded product lines became GSP eligible only in 2005 after India adopted legislation strengthening its patent protection of pharmaceutical and agricultural chemicals.

Figure 5: “Swiss Cheese” of GSP in Practice Ineligibility, 2004



Note: Each circle represents 'in practice' GSP ineligibility of a country-product pair (at the HS 8-digit level). The larger the circle, the greater the value of imports.

Figure 6: Sources of In Practice Country-Product Ineligibility, 2002-2009



benefits were suspended for over 100 Argentine products – about 20 percent of Argentina’s GSP eligible exports at the time – including chemicals, certain metals and metal products, a variety of manufactured goods, and several agricultural items (raw cane sugar, garlic, fish, milk protein concentrates, and anchovies) due to inadequate “protection of test data submitted for marketing approval of pharmaceutical products.” These exclusions remained in place as of 2010. Contrary to the Indian case above, the exclusion of products from Argentina was not restricted to pharmaceuticals only, and encompassed many other categories of products.<sup>24</sup>

Despite the widespread *number* of WR and IPR cases among country-product level ex-

<sup>24</sup>In related cases outside our sample period, GSP benefits were suspended on selected goods (including sporting goods, surgical instruments, and hand woven rugs) from Pakistan in October 1996 because of persistent workers rights violations, in particular, the widespread use of child labor. (The suspension was lifted in 2005). In another instance, because of the failure to control broadcast television piracy, Honduras saw a portion of its GSP benefits (including those on certain cucumbers and watermelons) suspended on April 20, 1998; the suspension lasted only couple of months and the benefits were fully restored on June 30, 1998, following the government action to suspend and fine the offending stations. In yet another case, five South African products were denied a *de minimis* waiver and two products were not granted a CNL waiver in 1998 based on the concerns regarding South Africa’s Medicines Act and its protection of patent rights for pharmaceuticals. The waivers were granted in 1999 and 2001 after South Africa reaffirmed its commitment to comply with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and to ensure the full protection of IPR.

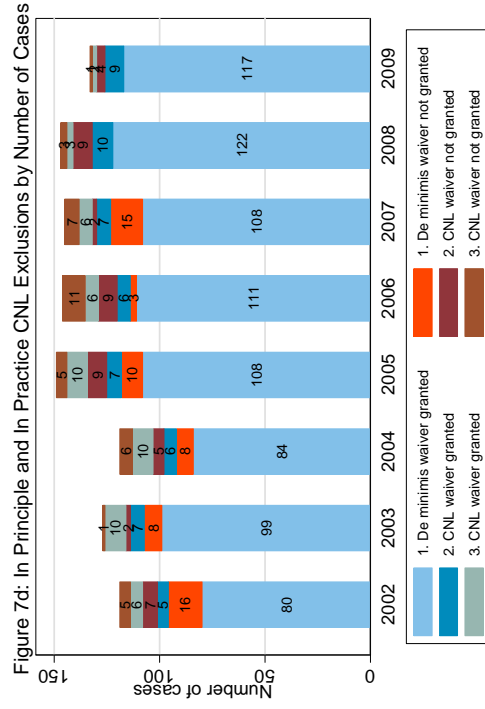
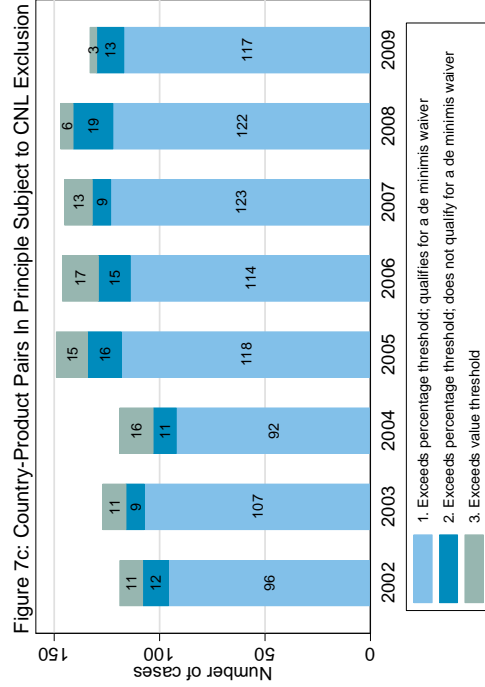
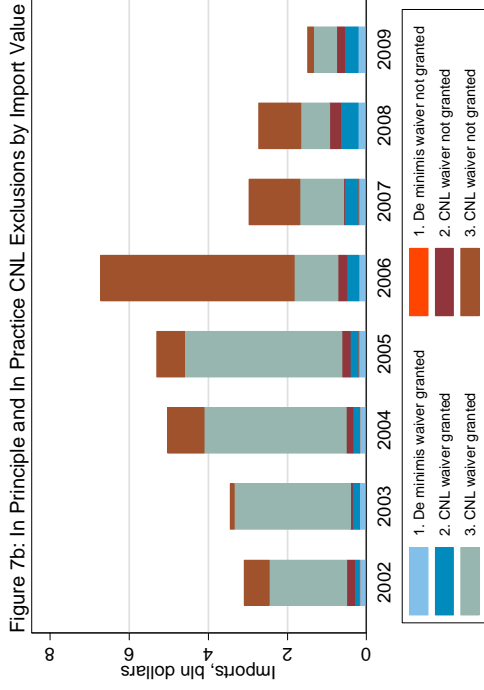
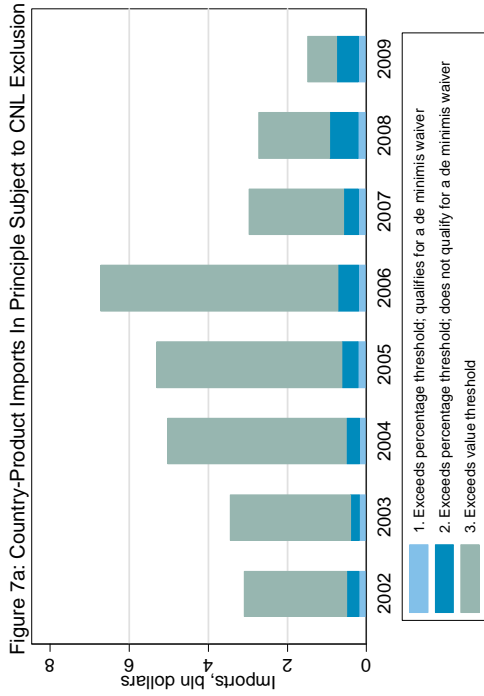


clusions, the vast majority of the *import value* of country-product exclusions is due to CNLs. Figure 6 tracks the value of country-product level exclusions over our sample period. From the figure, the total value of these exclusions rose steadily until the great trade collapse beginning in the last part of 2008. But for the recession, the value of CNL exclusions demonstrated a consistent increase over the sample period, whereas the value of IPR and WR violations decreased dramatically. (The largest drop reflects the lifting of all IPR censures from India in 2005.)

Turning now to CNL exclusions, we examine the extent to which CNLs and related waiver programs reveal discretionary implementation of GSP in practice. In particular, we look for cases (1) when the CNL value threshold was exceeded and the waiver was granted or not, (2) when the CNL percentage threshold was exceeded and a *de minimis* waiver was granted or not, or (3) when CNL threshold was not exceeded, but the country-product pair was excluded from GSP. We disentangle the in principle CNL exclusions into 3 types: those that exceed the percentage threshold but qualified for a *de minimis* waiver, those that exceed the percentage threshold but do not qualify for a *de minimis* waiver, and those that exceed value thresholds. By construction, we expect to see the latter group to dominate in the value of imports, as shown in Figure 7a. Only a small number of country-product pairs in principle exceed the value threshold (around 10 on average over our sample period), while a large number of country-product pairs hit the percentage threshold (Figure 7c). Figure 7b and 7d further break down the country-product level imports and number of country-product pairs in principle subject to CNL exclusions into those that receive a CNL or *de minimis* waiver and those that are in practice excluded. It is apparent that in the majority of cases (except in 2006 when the changes to the GSP statute limited the waiver duration), a waiver is granted across all three types of CNL exclusions. During our sample period, GSP benefits were ultimately suspended for only 10-20 country-product pairs every year, more than half of which were simply not granted a *de minimis* waiver.

The importance of these exclusions can further be assessed by the extent to which these

Figure 7: In Principle versus In Practice CNL Exclusions by Type, 2002-2009



Note: In principle ineligible country-product pairs do not include those that have been excluded previously, and may include those that received a CNL waiver previously but continue to exceed the CNL thresholds. Figures 7b and 7d break down the in practice ineligible country-product imports/pairs from Figure 7a and 7c, respectively, into those that receive a waiver (CNL or *de minimis*) and those that are ultimately excluded.

country-product pairs utilized the benefits prior to their removal from GSP. As documented in Hakobyan (forthcoming), only about 60 percent of all GSP eligible exports claim the preferences. However, the utilization of preferences by country-product pairs that were removed from GSP over our sample period due to new CNL exclusions and CNL waiver revocations is considerably higher – on average 87 and 96 percent, respectively.<sup>25</sup> Thus, it is precisely the country-product pairs that face CNLs which most benefited from GSP preferences in the first place. If anything, then, CNLs exact a higher toll on developing country exporters when utilization rates are taken into account.

Finally, it is worth noting a few more idiosyncratic cases of country-product level exclusions that fall outside of either the IPR/WR or CNL categories. In one recent case, during the 2003 annual review process, four domestic PET film manufacturers (DuPont Teijin Films; Mitsubishi Polyester Film of America; Toray Plastics (America), Inc.; and SKC America, Inc.) successfully requested the removal of PET film (3920.62.00) from GSP with respect to Thailand. While not a major source of U.S. imports, Thailand was the third largest supplier of PET film among GSP eligible countries. Petitioners argued that Polyplex, an Indian firm, built a plant in Thailand to ship its products to the U.S. market without paying duties.<sup>26</sup> According to the petitioners, the U.S. domestic industry was already suffering from ‘unfair’ imports of low-priced products from Thailand. In response to these allegations, Polyplex argued that PET film from Thailand accounted for only 1 percent of U.S. consumption and 2 percent of total PET film imports into the U.S. in 2003, and the removal of Thailand from GSP would primarily benefit the petitioning companies that import PET film from China, Indonesia, Korea, and Malaysia.<sup>27</sup>

More recently, just beyond our formal sample period of 2002-2009, a domestic manufacturer of non-down sleeping bags (Exxel Outdoors, Inc.) requested the removal of its product

---

<sup>25</sup>These figures are based on the values of imports claiming preferences in the year of exclusion when GSP eligibility is suspended as of July 1.

<sup>26</sup>Imports of PET film from India became ineligible for GSP as of July 1, 1998, and by 2003, they additionally faced antidumping and countervailing duties.

<sup>27</sup>USITC, Advice Concerning Possible Modifications to the U.S. Generalized System of Preference: 2003 Review, Investigation No. 332-459, Hearing Transcript, March 31, 2004.

(9404.30.80) from GSP with respect to Bangladesh. On behalf of Exxel Outdoors, Senator Jeff Sessions (R-AL) forced a highly publicized congressional hold on legislation extending the entirety of the GSP program.<sup>28</sup> As a result, the GSP was allowed to expire on December 31, 2011, and was only renewed in October of 2012 after the Obama administration agreed to investigate the issue one more time and ultimately removed the product from GSP effective January 1, 2012.<sup>29,30</sup>

Ostensibly, the 1974 Trade Act does not leave scope for such country-product specific GSP exclusions outside of the CNL, but clearly they do occur in practice, however rarely.

### **GSP Annual Reviews**

In a quick last exercise, we offer a cursory evaluation of the extent of discretion in the USTR's annual review process. Recall from Section 2 that each year, the USTR invites petitions to add or remove products and/or countries from GSP, and whether to waive or apply competitive needs limitations. Petitions are filed by a broad range of constituencies, including foreign governments, domestic and foreign firms, and various interest groups. The USTR accepts a handful of these petitions for formal review; the decision over which petitions advance to formal review is made by the interagency GSP Subcommittee.<sup>31</sup> While we speculate that most petitions that were not accepted for formal review failed to meet basic statutory filing requirements, the internal process is confidential and thus unobservable.<sup>32</sup> For this reason,

---

<sup>28</sup>Indeed, the story is more complicated, because the opposing side, CellCorp, a Kentucky-based manufacturer and importer of sleeping bags from Bangladesh, was supported by Kentucky Senate Minority Leader Mitch McConnell (R-KY). McConnell initially blocked the possible compromise of GSP renewal. Interested readers are referred to articles in the New York Times, "No Way to Run a Trade Policy," February 2, 2011; The Washington Post, "Mr. Sessions and the need to trade," February 12, 2011; and The Wall Street Journal, "Fair Trade for One," February 4, 2011.

<sup>29</sup>USITC, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences: 2010 Review of Removals, Investigation No. 332-521, Hearing Transcript, December 1, 2010.

<sup>30</sup>Presidential Proclamation 8770 of December 29, 2011. Published in Federal Register, Vol. 77, No. 2, Wednesday, January 4, 2012.

<sup>31</sup>In 2009, for example, the USTR accepted 7 of 95 submissions; petitions ranged from the AFL-CIO and the Manufacturing Jewelers and Suppliers of America Inc., to Basso S.A. (an Argentine manufacturer of automotive parts), to the governments of Argentina, Sri Lanka, and Egypt.

<sup>32</sup>In some instances, the annual review process is used as an opportunity to advance political objectives unrelated to the GSP. For instance, in 2009, a U.S. based company Azurix Corp. petitioned for removal of Argentina's beneficiary status following an arbitral dispute with the Argentine government.

Table 2: Annual Review Petitions to Waive CNLs and Add/Remove Products (Countries)

Year	Accepted for Review		Of which:		Opposing Party	
	Total number (1)	Value (mln \$) (2)	Granted (3)	Denied (4)	Total number (5)	Denied (6)
Petitions to waive a CNL						
2009	1	154.8	0	1	1	1
2008	6	423.4	2	1	1	1
2007	5	368.2	3	2	1	0
2006	8	659.9	3	5	1	1
2005	5	385.7	0	5	2	2
2004	8	682.0	7	1	1	0
2003	3	119.4	1	2	1	1
2002	14	652.1	10	4	1	1
Petitions to add a product						
2009	5	0.03	2	3	3	3
2008	11	0.04	2	7	1	1
2007	9	0	3	2	2	2
2005	8	0	0	8	7	7
2004	13	0	9	4	4	4
2003	4	0	0	4	0	0
2002	33	0.01	12	19	21	16
Petitions to remove a product or a country-product pair						
2009	2	136.6	1	1	0	0
2008	3	218.7	0	2	3	2
2007	2	29.2	0	2	2	2
2004	1	8.1	0	1	1	1
2003	4	251.3	3	1	4	1
2002	1	20.9	0	0	1	1

Source: USITC Publications and Federal Register

Notes: Missing years indicate that there were no petitions of that kind. Columns (1) and (2) provide the number of petitions accepted for the review by the USTR and the total value of imports subject to the review. Of the accepted petitions, some are granted (Column 3) and some are denied (Column 4). Some petitions may be withdrawn or deferred for future consideration; in such instances the Columns (3) and (4) do not add up to Column (1). Of the accepted petitions, some may be challenged by an opposing interested party (Column 5). Column (6) provides the number of petitions that had an opposing party and were denied.

we focus below on the disposition of only those cases accepted by the USTR.

In Table 2 we summarize the number of USTR petitions accepted for review, whether they faced opposition, and how many petitions were granted or denied. Relative to the number of country-product pairs exceeding CNL thresholds every year, only a small number of petitions to waive the CNL are accepted for review (Column 1), suggesting that the annual review process is costly to individual exporters; in 2009, for instance, the USTR heard only one petition out of the 16 instances in which CNL thresholds were violated outside of *de minimis* waivers. (Indeed even a small cost to filing a petition may prove prohibitive if the market structure in the developing country is highly competitive, leading to a free-rider problem.) The value of imports subject to petitions is large – \$120 to \$650 million or 10-15 percent of imports exceeding CNL thresholds, yet another indication of high costs. Over our sample period, more petitions to waive a CNL were denied than granted on average (Columns 3 and 4), and it appears that the petition was most likely to be denied when other interested parties (likely domestic interest groups) opposed to it (Columns 5 and 6).<sup>33</sup>

Petitions for product additions typically involved products for which we observe zero imports in our sample. Nevertheless, two out of three petitions on average were denied, suggesting that such products were viewed ‘import sensitive’ by the USTR and domestic interest groups who opposed to their addition to GSP not only during annual reviews, but also when the GSP was originally devised. As for product removals, it appears that the USTR is reluctant to grant removal requests except for four cases over our sample period.

## 4 Concluding Remarks

Our work documents four basic findings. First, the U.S. GSP program has extensive country, product, and country-product level exclusions – and these exclusions are subject to varying degrees of executive discretion. Some GSP guidelines are more sensitive (countries’ cartel

---

<sup>33</sup>The number of opposing parties in the Table 2 refers to the number of petitions for which an opposing party came forward during the USITC hearing. This may not fully capture the extent of the opposition, since the USTR also holds a separate hearing and requests comments.

membership or products’ ‘import sensitivity’, for example) and others less so (e.g. country-level exclusions due to income ‘graduation’ or specific products named in the 1974 Trade Act). Second, restricting attention to GSP eligible countries and products in a given year, we still find considerable deviation from uniform duty-free access – averaging roughly 20% per annum over our sample period. Third, CNL limitations, CNL waivers, and *de minimis* waivers are subject to marked discretion. And finally, even outside of CNL exemptions, country-product specific exclusions do occur – for instance, exclusion of Thai PET following energetic petitions to the USTR by import-competing domestic firms, or workers’ rights or intellectual property rights violations – even Argentina’s recent exclusion due to unsatisfactory ‘enforcement of arbitral awards’ in favor of U.S. interests.<sup>34</sup>

This paper’s contribution is twofold. The first is simply descriptive: we offer the first comprehensive analysis of GSP exclusions, together with a rough mapping to the legislative provisions that permit those exemptions under the 1974 Trade Act. The second, we hope, is motivational: this paper serves as a call for further studies to explore the *causal* mechanisms responsible for the observed variation in trade policy implementation, particularly through unilaterally discretionary ‘aid-through-trade’ programs like the U.S. GSP. Several studies over the years have looked at both domestic and more complex international political economy influences on the GSP in the U.S. (see DeVault, 1996; Hakobyan, 2012; Blanchard and Matschke, 2012; Lederman and Özden, 2007) and in Europe (Manchin, 2006; Nilsson, 2011), but there is certainly more scope for careful work on the topic given the breadth and depth of GSP exclusions.

---

<sup>34</sup>Argentina’s eligibility was suspended as of May 28, 2012. Presidential Proclamation 8788 of March 26, 2012 states, “[Argentina] has not acted in good faith in enforcing arbitral awards in favor of United States citizens or a corporation.” (Federal Register, Vol. 77, No. 61, Thursday, March 29, 2012)

# Appendix

Table A.1: Timeline of Annual Reviews (2009 Annual Review)

Date	Action	Agency
May 28, 2009	USTR Notice in Federal Register initiates the 2009 Annual Review and sets deadlines for submission of country practice petitions and product petitions (June 24, 2009) and CNL waiver petitions and determinations regarding products not produced in the United States on January 1, 1995 (November 17, 2009).	USTR
Jun 24, 2009	Due date for submission of country practice petitions and product petitions to USTR	USTR
Oct 16, 2009	USTR requests USITC to investigate the potential effect of product additions and removals	USTR
Oct 26, 2009	USITC Notice in Federal Register instituting Investigation No. 332-507, Advice Concerning Possible Modifications to the U.S. GSP, 2009 Review of Additions and Removals, and setting the schedule for comments and public hearings	USITC
Oct 22, 2009	USTR Notice in Federal Register announces the product addition and removal petitions accepted for review and sets the review schedule for comments and public hearings	USTR
Nov 4, 2009	Deadline for filing requests to appear at the public hearing at the USITC regarding product additions and removals	USITC
Nov 5, 2009	Deadline for filing pre-hearing briefs and statements to the USITC on product additions and removals	USITC
Nov 6, 2009	Due date for submission of pre-hearing briefs and requests to appear at the USTR GSP Subcommittee Public Hearing on the 2009 GSP Annual Review	USTR
Nov 16, 2009	Public hearing at the USITC regarding product additions and removals	USITC
Nov 17, 2009	Due date for submission of petitions to grant waivers to CNLs for products exceeding the CNLs in 2009 to USTR	USTR
Nov 19, 2009	USTR GSP Subcommittee Public Hearing on all product petitions accepted for the 2009 GSP Annual Review	USTR
Nov 19, 2009	Deadline for filing post-hearing briefs and statements and other written submissions to the USITC regarding product additions and removals	USITC
Dec 3, 2009	Due date for submission of product petition post-hearing briefs to USTR	USTR
Dec 30, 2009	USTR requests USITC to investigate the potential effect of CNL waivers	USTR
Jan 5, 2010	USTR Notice in Federal Register announces CNL waiver petitions accepted for further review and sets the schedule for submitting comments and public hearings	USTR
Jan 20, 2010	USITC institutes Investigation No. 332-512, Advice Concerning Possible Modifications to the U.S. GSP, 2009 Review of a CNL Waiver, and sets the schedule for comments and public hearings	USITC
Jan 21, 2010	Due date for submission of pre-hearing briefs and comments on CNL waiver petitions, requests to testify at the USTR GSP Subcommittee Public Hearing, and hearing statements	USTR
Jan 21, 2010	Transmittal of the USITC report on product additions and removals to the USTR	USITC
Feb 2, 2010	Deadline for filing requests to appear at the public hearing regarding CNL waivers at the USITC	USITC



(continued)

Date	Action	Agency
Feb 4, 2010	Deadline for filing pre-hearing briefs and statements on CNL waivers to USITC	USITC
Feb 11, 2010	USTR GSP Subcommittee Public Hearing on the CNL waiver petitions accepted for the 2009 GSP Annual Review	USTR
Feb 16, 2010	Public hearing on CNL waivers at the USITC.	USITC
Feb 26, 2010	Deadline for filing post-hearing briefs and statements and other written submissions on CNL waivers to the USITC	USITC
March 2010	USITC publishes a public version of the report providing advice on the potential impacts of product additions on U. S. industry and consumers Comments on the USITC report due to USTR 10 calendar days after the date of USITC's publication of the public version of the report	USITC
Mar 4, 2010	Due date for submission of post-hearing briefs and comments on CNL waiver petitions to USTR	USTR
Mar 5, 2010	USTR Notice announces the availability of full 2009 calendar year import statistics relating to CNLs and sets the deadline for public comments (March 25, 2010)	USTR
Mar 30, 2010	Transmittal of the USITC report on CNL waivers to the USTR	USITC
April 2010	USITC publishes a public version of the report providing advice on the potential impacts of CNL waiver petitions Comments on the USITC's report on this product are due to USTR 10 calendar days after the publication date of the USITC report.	USITC
Jun 30, 2010	Announcement of modifications to the list of articles eligible for duty-free treatment under the GSP resulting from the 2009 Annual Review	

Table A.2: Country Practice Petitions and Outcomes  
RPT=Reverse Preferential Treatment; WR=Worker Rights; IPR=Intellectual Property Rights;  
MA=Market Access; CN=Contract Nullification

Annual Review Year(s)	Country	Petitioner	Type of Review	Status/Action taken
1999-2005	Bangladesh	AFL-CIO	WR	Accepted (1999); Not accepted (2005)
2002	Costa Rica	AFL-CIO	WR	Not accepted
2002	El Salvador	AFL-CIO and International Labor Rights Fund (ILRF)	WR	Not accepted
2002	Guatemala	AFL-CIO and ILRF	WR	Closed
2002	Peru	ILRF and Human Rights Watch	WR	Not accepted
2002	Sri Lanka	AFL-CIO	WR	Not accepted
2002-2005	Swaziland	AFL-CIO	WR	Ongoing; Closed (2005)
2002	Armenia	International Intellectual Property Rights Alliance (IIPA)	IPR	Closed
2002-2005	Brazil	IIPA	IPR	Ongoing; Closed (2005)
2002	Dominican Republic	IIPA and Pharmaceutical Research and Manufacturers of America (PhRMA)	IPR	Closed
2002-2005	Kazakhstan	IIPA	IPR	Ongoing; Closed (2005)
2001-	Lebanon	IIPA	IPR	Accepted (2001); Ongoing
2002-2005	Pakistan	IIPA	IPR	Accepted (2002); Closed (2005)
2002	Poland	PhRMA	IPR	Not accepted
2000-	Russia	IIPA	IPR	Accepted (2000); Ongoing
2002	Thailand	Association of American Publishers; AFMA; Interactive Digital Software Association; Motion Picture Association of America (MPAA); National Music Publishers' Association; Recording Industry Association of America	IPR	Withdrawn
2002	Uruguay	IIPA	IPR	Not accepted
1999-	Uzbekistan	IIPA	IPR	Accepted (1999); Ongoing
2002	India	American Natural Soda Ash Association	MA	Closed
2002	Pakistan	American Textile Manufacturers Institute	MA	Closed
2002-2006	Bulgaria	Distilled Spirits Council of the United States	RPT	Accepted (2002); Closed (Jan 1, 2007)
2002, 2005-2006	Romania	Distilled Spirits Council of the United States	RPT	Withdrawn (2002); Accepted (2005); Closed (Jan 1, 2007)
2002	Bangladesh	To-Ro Enterprises, Inc.	CN	Not accepted
2005-2006	Romania	PhRMA	RPT	Accepted (2005); Withdrawn (2006)
2005	Costa Rica	ILRF and Asociacion Servicios de Promocion Laboral (ASERPOL)	WR	Not accepted
2005	El Salvador	AFL-CIO and International Brotherhood of Teamsters (IBT)	WR	Not accepted
2005	El Salvador	ILRF and ASERPOL	WR	Not accepted
2005	Guatemala	ILRF and ASERPOL	WR	Not accepted
2005	Guatemala	Washington Office on Latin America (WOLA) and U.S. Labor Education in the Americas Project (US\LEAP), endorsed by AFL-CIO	WR	Not accepted
2005	Honduras	ILRF and ASERPOL	WR	Not accepted

(continued)

RPT=Reverse Preferential Treatment; WR=Worker Rights; IPR=Intellectual Property Rights;  
MA=Market Access; CN=Contract Nullification

Annual Review Year(s)	Country	Petitioner	Type of Review	Status/Action taken
2005	Oman	AFL-CIO	WR	Not accepted
2005	Panama	ILRF and ASERPOL	WR	Not accepted
2005-2006	Uganda	AFL-CIO	WR	Accepted (2005); Closed (2006)
2005	Dominican Republic	MPAA	IPR	Not accepted
2006	Iraq	AFL-CIO	WR	Not accepted
2006-	Niger	ILRF	WR	Accepted (2006); Ongoing
2006	Ukraine	R&J Trading International Company, Inc. (R&J)	Expropriation	Not accepted
2007-	Uzbekistan	ILRF	WR	Accepted (2007); Ongoing
2007-	Philippines	ILRF	WR	Accepted (2007); Ongoing
2007-	Bangladesh	AFL-CIO	WR	Accepted (2007); Ongoing
2007-	Iraq	AFL-CIO	WR	Decision deferred on acceptance; Accepted (2011)
2008-2011	Sri Lanka	AFL-CIO	WR	Decision deferred on acceptance; Accepted (2009); Closed (2011)
2008	Philippines	National Pork Producers Council	MA	Withdrawn
2009-	Argentina	Azurix Corporation and Blue Ridge Investments, LLC	Arbitral Awards	Accepted (2009)
2010-	Georgia	AFL-CIO	WR	Ongoing
2011	Ukraine	IIPA	IPR	Accepted
2011	Indonesia	IIPA	IPR	Accepted
2011	Fiji	AFL-CIO	WR	Accepted
2011	Russia	American Shareholders in Yukos Oil	Expropriation	Decision deferred on acceptance

## References

- [1] Blanchard, Emily and Xenia Matschke (2012). “U.S. Multinationals and Preferential Market Access,” CESifo Working Paper No. 3847.
- [2] DeVault, James (1996). “Competitive need limits and the U.S. Generalized System of Preference,” *Contemporary Economic Policy* 14, 58-66.
- [3] Federal Register, various USTR Notices and Presidential Proclamations, 1989-2012.
- [4] Feenstra, Robert C., John Romalis and Peter K. Schott (2002). “U.S. Imports, Exports and Tariff Data, 1989-2001,” NBER Working Paper 9387.
- [5] Hakobyan, Shushanik (forthcoming). “Accounting for underutilization of trade preference programs: The U.S. Generalized System of Preferences,” *Canadian Journal of Economics*.
- [6] Hakobyan, Shushanik (2012). “Export Competitiveness of Developing Countries and U.S. Trade Policy,” mimeo, Middlebury College.
- [7] Hakobyan, Shushanik (2013). “GSP Expiration and Declining Exports from Developing Countries,” mimeo, Fordham University.
- [8] Lederman, Daniel and Çağlar Özden (2007). “Geopolitical Interests and Preferential Access to U.S. Markets,” *Economics & Politics* 19(2): 235-258.
- [9] Manchin, Miriam (2006). “Preference Utilisation and Tariff Reduction in EU Imports from ACP Countries,” *World Economy* 29(9): 1243-1266.
- [10] Nilsson, Lars (2011). “Small Trade Flows and Preference Utilisation: The Case of the European Union,” *South African Journal of Economics* 79(4): 392-410.
- [11] USITC, Advice Concerning Possible Modifications to the U.S. Generalized System of Preference: 2003 Review, Investigation No. 332-459, Hearing Transcript, March 31, 2004.
- [12] USITC, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences: 2010 Review of Removals, Investigation No. 332-521, Hearing Transcript, December 1, 2010.