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PROPOSALS TO RENEW GENERALIZED SYSTEM OF PREFERENCES

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

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COMMUNICATIONS

PROPOSALS TO RENEW GENERALIZED SYSTEM OF PREFERENCES

MONDAY, JUNE 20, 1994

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
Washington, DC.

The hearing was convened, pursuant to notice, at 1:30 p.m., in room SD–215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the subcommittee) presiding.

Also present: Senator Conrad.

[The press release announcing the hearing follows:]

[Press Release No. H–39, June 14, 1994]

INTERNATIONAL TRADE SUBCOMMITTEE TO HOLD HEARING ON PROPOSALS TO RENEW GENERALIZED SYSTEM OF PREFERENCES

WASHINGTON, DC.—Senator Max Baucus (D–MT), Chairman of the Senate Finance Committee's Subcommittee on International Trade, announced today that the Subcommittee will hold a hearing on the Administration's proposal to renew the Generalized System of Preferences (GSP) program, which expires September 30, 1994.

The hearing is scheduled for *Monday, June 20, 1994, at 2:00 p.m.* in room SD–215 of the Dirksen Senate Office Building.

Senator Baucus said, "The GSP program is an important part of our U.S. trade laws. Not only does the program assist developing countries with their long-term development plans through export expansion, it also promotes greater market access and intellectual property protection for the United States abroad.

"I strongly support renewal of the GSP program," Baucus said.

Title V of the Trade Act of 1974, as amended, establishes the GSP program, which provides duty-free entry to imports of selected products from eligible developing countries. Originally authorized in 1974 for 10 years, the Trade and Tariff Act of 1984 modified the program and authorized its extension through July 4, 1993. In 1993, President Clinton requested a 15-month extension of the program, through September 30, 1994. Congress granted the extension in the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66). The Administration stated at the time that it would work with the Congress during the 15-month extension to develop a proposal for a longer-term extension. The Administration announced its proposal on May 16, 1994.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN OF THE SUBCOMMITTEE

Senator BAUCUS. This hearing will come to order. Today this subcommittee will review the prospects for amending and renewing the generalized system of preferences, otherwise known as GSP.

GSP gives developing countries in Africa, Latin America, Southeast Asia and the Middle East duty-free access to our market and a range of products which are not sensitive to imports. About $14

billion worth of imports a year comes to the United States under GSP.

About 140 countries are eligible for the program. The largest beneficiaries include Mexico, Malaysia, Thailand, Brazil and the Philippines. It is a valuable and important way to promote development through trade rather than direct foreign aid.

GSP is also a unilateral benefit. We do it out of the goodness of our heart. In exchange for this unilateral benefit, we ask recipient countries to take some modest steps which benefit both their own people and America.

Specifically, we ask them to give American exporters nondiscriminatory access to their markets, pass and enforce laws to ensure respect for American intellectual property. Also we ask them to not exappropriate American property without compensation and to take at least some steps, hopefully more steps, toward respect for internationally recognized worker rights like banning child and enforced labor, allowing trade union organization and ensuring safe and healthy work places.

The GSP is a critical program and must be renewed this year. It is good for the United States, for developing countries, for business and labor, and there is no excuse for letting that expire.

We most recently renewed GSP last June. But given the heat of debate at the time over NAFTA the program did not receive a full review and the only change made was to add Russia and some other formerly communist republics as beneficiaries.

Thus, the renewal was extended for only 18 months and without legislation to renew it once again GSP will lapse this fall.

As we approach the renewal of this program, we have received suggestions both for strengthening and cutting back these qualifying standards. I think we are absolutely right to strengthen the qualifications. Countries which want special access to our market should be asked for something in return. They should protect intellectual property. They should allow trade unit organizing. These are things they should do anyway as a matter of course.

I also believe there are compelling reasons to add an environmental standard. Trade and commerce are not only ends in themselves, if we pursue them only for their sake, we can harm the global environment and quality of life, not only abroad but here at home.

The Maquiladora program on our border is one example. Another is the drift net fishing some GSP beneficiaries pursued in the 1980's. It brought them temporary higher profits, better trade balances, but badly damaged specific fishing grounds, long-term prospects for sustainable development and the livelihoods of American fishermen in the process.

Thus, I strongly believe that when we renew GSP we should ask the beneficiaries to respect international standards on trade-related environmental matters. These can include the bans on trade in endangered species and on drift net fishing and other destructive marine practices and perhaps other carefully chosen issues such as rain forest protection as well.

Some other eligibility standards can also be strengthened. First, GSP should be amended to tie eligibility to meeting the Uruguay

Round level of intellectual property standards on an accelerated time table.

Second, we should also review the worker rights provision. The present language requires only taking steps toward meeting international standards and we should consider whether to replace it with a provision that requires beneficiaries to adopt and enforce laws that meet these standards.

The most important thing, however, is that GSP be renewed. It can improved. It should be improved. But it is already a good program that contributes a great deal to our trade policy. Whatever else we say about it, the most important thing is that if we do not act GSP will lapse in December.

Today we will hear from the administration as it plans for renewal and from business, labor and environmental groups with an interest in the program's renewal and revision. I thank our panelists for taking the time to participate in today's hearing.

The first witness will be the honorable Rufus Yerxa, who is a Deputy USTR, who has extensive knowledge and has worked quite a bit with the program. Ambassador, we are very honored to have you here and encourage you to proceed in any manner you wish.

I do not know that you are going to take more than 10 minutes in your statement, but I urge you to stay within 10 minutes as best you can.

STATEMENT OF HON. RUFUS YERXA, DEPUTY U.S. TRADE REPRESENTATIVE, WASHINGTON, DC, ACCOMPANIED BY JOSEPH DAMOND, EXECUTIVE DIRECTOR, GSP PROGRAM, USTR

Ambassador YERXA. Thank you, Mr. Chairman. Let me say first of all to thank you for this important hearing. You are right that this is an extremely important program and we appreciate the leadership that you have shown on this and on most other trade issues over the past year and a half that I have had the pleasure to work with you in my present capacity.

We hope that as we move towards completion of Uruguay Round implementing legislation and other matters this year that we can address this very important issue.

I am accompanied today by Mr. Joseph Damond, who is the Executive Director of the GSP Program at USTR to make sure that we can answer all of your questions on the programs.

But let me start by indicating where we stand in our current proposal to renew this program. Last August President Clinton signed legislation extending the program through September 30 of this year as you indicated. And at that time the administration did note its strong support for the long-term renewal of the program and we have spent the last year developing a legislative proposal for renewal which I would like to briefly outline.

But first, I would like to just discuss what the program is and why its renewal is so important. At this time 147 countries are eligible to ship over 4,000 different items duty-free to the United States under GSP. Last year duty-free imports from all countries under GSP totalled nearly $20 billion.

This year marks the twentieth anniversary of the program. During that period we have seen many changes in its operation, in the

countries that have been covered. As you know, we have removed a number of countries from GSP as they have moved up the development ladder.

But the administration does believe that it continues to play a vital role in U.S. trade and foreign economic policy. It remains an important program for several reasons. First of all, GSP remains a key means of advancing development in beneficiary countries using trade instead of aid, as you said, Mr. Chairman. It is one form of economic assistance that fosters and builds markets.

This not only benefits the residents of the beneficiary countries, but works to create new market opportunities for American firms and thus jobs for American workers.

Second, our GSP program is designed to encourage developing countries to adopt international trade and labor standards which also fosters development. The administration is committed to actively enforcing the eligibility provisions of the law and our record over just the past year indicates that our approach is yielding substantial results. I can go into that in further detail during questions and answers with you, Mr. Chairman.

We believe that using GSP to foster greater adherence by developing countries to international rules is entirely consistent with its objective of economic development. since we believe that these standards themselves promote such development. Because of its usefulness in promoting market-based economic development, it has also become an important part of our policy towards economies in transition in central and eastern Europe and the former Soviet Union.

Most of these countries are now GSP beneficiaries and we believe that the preferences foster opportunities for new entrepreneurs in these countries, as well as helping them to earn hard currency. And in that way, it is helping to foster political and economic stability in the former Soviet block.

Finally, GSP plays an important role in keeping literally hundreds of U.S. firms competitive in international markets. It enables companies in dozens of sectors the ability to source components and diversify their output at a lower cost, enabling them to better compete against firms in Europe, Asia and elsewhere.

To lose this advantage, especially when competing firms in other industrialized countries have the ability to benefit from GSP schemes in those countries would dull the competitive edge of U.S. companies and ultimately would cost us jobs.

To better achieve these objectives the administration recently transmitted to Congress its proposal for a renewed program. There are four major elements in the administration's new proposal.

First, we retain the current criteria for country eligibility with some minor modifications, including the removal of anachronistic provisions on communist countries and OPEC members. This is to ensure that countries receiving GSP are working to meet international standards on trade and on worker rights as I have noted. We are committed to the effective enforcement of these provisions.

Second, the proposal lowers the program's thresholds for graduating—that is, removing both products and countries from GSP eligibility. This includes lowering the competitive need limits that

govern how much of any single item is entitled to be shipped duty-free from a country.

Lowering these limits will better allow us to monitor and control the use of GSP by the largest most competitive beneficiaries whose share of GSP benefits has increased significantly in the last several years. In essence, if a country begins to be internationally competitive in a particular product, our view is the program should no longer treat them as needing the special benefits of the preference.

We believe that the competitive limits need to be reduced in order to more quickly graduate products in countries that have become competitive. Our proposal also lowers the per capita income threshold for graduating advanced countries from GSP, thereby directing it more towards the most needy countries.

Third, the administration's proposal gives the President the authority to grant expanded benefits to the least developed countries. As with the lowering of the competitive need limits, this proposal is meant to better focus the program's benefits on the most truly needed countries. This provision is also in accordance with the Uruguay Round ministerial declaration on measures in favor of least developed countries.

Finally, Mr. Chairman, and of no little importance to GSP beneficiary countries and petitioners, we propose to reform the review process, including the establishment of clearer standards for the acceptance of petitions. A common comment and complaint about the GSP program is that the regulations do not define clear informational standards for the acceptance of petitions and for review.

Our proposal would do that, which we believe will improve the transparency and predictability of the program's administration to the benefit of both interested U.S. parties and beneficiary countries.

In conclusion, as you have said, GSP plays a unique role in U.S. trade policy. It has served both the interests of the United States and beneficiary countries for nearly two decades. We strongly support its renewal and want to continue our close work with this committee and the Congress to achieve this proposal.

Now you have raised a number of issues which I am prepared to address in discussion with you, including the question of how we handle such issues as labor, intellectual property, environment and other key concerns. And, of course, we need to talk with you about what is in light of the budgetary constraints, what is the best way to achieve renewal.

We have proposed, as you know, Mr. Chairman, that this program be included as part of Uruguay Round implementation legislation. We need to discuss with you how we can best accomplish that goal.

Let me thank you. I am at your disposal for any questions, along with Mr. Damond.

Senator BAUCUS. Thank you very much, Ambassador.

[The prepared statement of Ambassador Yerxa appears in the appendix.]

Senator BAUCUS. Let us begin at the last point. That is, the cost under the budget provisions, you know, how we accommodate that, how we pay for it, et cetera. Should there be a waiver or whatnot?

I would just like your recommendation on how we accommodate the budget provisions with respect to extending GSP.

Ambassador YERXA. The current estimates, as I understand it, is that the 5-year cost is somewhere around $2 billion. The 10-year cost of the program renewal would be double that. Now as you know, we have indicated to the committees on both sides, to your committee and to the House Ways and Means Committee, that with respect to the Uruguay Round we are prepared to sit down with you and work out how this program would fit in and what kind of duration we would give to it in light of the budgetary problems.

What we think is very important is that the policy changes we are recommending here in the legislation itself be implemented. Then we make a decision on duration based on what you and the committee feel is most acceptable. Clearly a full $2 billion price tag on this in the current environment would be difficult. But maybe that can be worked out. If not, the administration is prepared to consider a temporary extension, but with the permanent program changes in place. Then next year in the budget cycle, if need be, we could renew it further.

Mr. DAMOND. About $500 million.

Ambassador YERXA. A 1-year extension would cost about $500 million. So those are the options for dealing with the pay-go problem. It seems to us that if we are going to do it on the Uruguay Round bill obviously we need to view it in the context of that entire package.

Senator BAUCUS. Can you give us some sense of when you might have a more precise recommendation? You outlined the issues and you outlined some of the alternatives, but there comes a time when we have to make some decisions here.

Ambassador YERXA. Yes.

Senator BAUCUS. I am just curious when the administration might be at the point to more specifically make some recommendations.

Ambassador YERXA. I believe that when we come back from the recess we will have a number of specific points to raise with the committee about the pay-on issues related to the Round. But as we have stressed over and over again, this is something we want to work out with you. So our initial proposals could be an initial starting point for working out a package. But I would imagine it would be shortly after the 4th of July recess.

Senator BAUCUS. I appreciate that. As you know, in the Uruguay Round there are provisions of the Round that provide that GATT contracting parties agree that "the relations in the field of trade and economic endeavors should be conducted in accordance with the objective of sustainable development." Obviously a heavy emphasis on environmental provisions.

As you know, including this provision in the Round was a primary objective of U.S. Government. Why should not that standard also be incorporated in GSP? That is, in determining the degree to which the United States should either extend benefits or continue benefits or perhaps withhold.

Ambassador YERXA. I think there are a number of factors we have to consider here. One of them is that first it should be said

that obviously we feel it is important to advance our interest in having a better relationship between trade and environmental policies. That is one of the reasons that we proposed that there be extensive discussion of this in the WTO context.

But I think there are some real constraints in how you could fashion a specific provision with specific standards in this legislation. First of all, there is not to the same degree internationally accepted standards in the environment that there are in the labor field, for example.

Senator BAUCUS. But this is an American unilateral program though.

Ambassador YERXA. I understand that. But with regard to using it as a device to establish internationally recognized standards, we do have that constraint to keep in mind, not that we could not effectively work with countries to promote sustainable development.

But we believe that the GSP program itself has done that in many respects because it promotes the kind of diversification by countries away from basic agriculture and commodities where they might not be engaging in sustainable development.

But the second thing I would stress is that the kind of leverage we have under GSP is limited and is declining somewhat. Adding significant new conditions to the GSP eligibility program could hurt us in obtaining results in any other area. We think at this stage we would be far more comfortable with dealing with the environmental issue in the context of broader negotiations, in the context of the WTO and the development of new work programs under the WTO.

Senator BAUCUS. But why is that? Let us take the Marine Mammal Protection Act. I do not know if there are any countries that we give GSP to that perhaps violate that Act, or the United States thinks might violate that Act. But let us assume hypothetically that there is one. Why should not the United States enforce a law it believes in quite strongly, the Marine Mammal Protection Act by not extending it or denying benefits? What is wrong with that?

Ambassador YERXA. I think the problem would be in setting forth specific criteria for individual countries and individual products——

Senator BAUCUS. It is the same criteria applied to Americans.

Ambassador YERXA. Well, I think the problem here is that you have all sorts of different countries at different levels of development. I do not think that it is as an effective measure for dealing with those problems as some others we have at our disposal.

Senator BAUCUS. Why might that be?

Ambassador YERXA. Because one of the challenges we have here is to develop some international consensus on these issues before beginning to use these kinds of trade devices.

Senator BAUCUS. Generally I think there are a lot of Americans who wonder, why in the world should we Americans give $14 billion annually to some of these countries that are doing pretty well. I do not know if these countries are still granted preferences or not, like say Malaysia, Brazil, Thailand, countries that are——

Ambassador YERXA. Malaysia is, Thailand is, Brazil is. They all three are. They are the three major beneficiaries.

Senator BAUCUS. And a lot of Americans are thinking, my gosh a lot of American companies are there, make a lot of money. A lot of other countries have their companies there making a lot of money. What is going on here in the view of many. Why are we continuing to provide all these benefits to these countries that we are competing with? Particularly countries that do not enforce their intellectual property laws very well, countries which are in some sense going to take advantage of the United States. And any of the countries, too, where the income distribution is not very good.

Some might suggest, my gosh, we are giving all these benefits to these countries. So it is the wealthy people, the top of the hierarchy, who really receive the benefits. Major companies receive the benefits while the average person out in the hinterland does not get the benefits of this. What is your response to those?

Ambassador YERXA. Well, a couple of things I would stress. First, with respect to labor standards and intellectual property protection, the use of GSP has been very effective. I think we have submitted to the committee I would be glad to go over it for you what we have been able to achieve with a number of countries in the last 7 years since this standard was added.

I think it has been very effective in moving in the right direction. But those are cases in which we had explicit standards against which to measure a country's performance. They were standards, which as I say, were international standards.

With intellectual property, I think the annual review process has enabled us to get countries to do a remarkable number of things. I think it has been used with intelligence and flexibility to achieve the best possible kinds of results.

I guess the concern I am raising here, Mr. Chairman, is just how you can build that in for the environment given the fact that we do not have common standards to deal with here. We have some pretty significant differences between countries over how those standards were applied.

Senator BAUCUS. I was not referring specifically to environment. I was just making a more broad, general statement. With respect to intellectual property, why should not the standard be the Uruguay Round standards? That is 5 years for developed and 10 years for developing countries as we apply GSP.

As I understand it, the basic intellectual standard we now use is weaker than that, from an American business point of view.

Mr. DAMOND. The standard in the current law is simply adequate and effective protection of intellectual property which is in some ways broader than implementation of the TRIPS agreement, GATT for example.

Senator BAUCUS. Right.

Mr. DAMOND. A country could even be in compliance with the GATT agreement and we could determine——

Senator BAUCUS. Maybe that is possible, but in actual practice though, I am just curious about the degree to which intellectual property provisions are weaker than the TRIPS in the Uruguay Round or not.

Ambassador YERXA. In these countries you mean?

Senator BAUCUS. In these countries.

Ambassador YERXA. Well, in a number of these countries they are currently weaker and we see the GSP statute as an important means of positive leverage to influence improvements. But we do have a set of international standards here to work towards.

It seems to me that we have used the program very effectively in that regard. If you look at the progress we have made with a number of these countries, GSP has been an element in that negotiation.

Senator BAUCUS. I see Senator Conrad is here.

Could you give me one or two or three best success stories where GSP has, in fact, been a good leverage to encourage a country to do what it otherwise should be doing anyway? In this case, let us say to give better protection to intellectual property.

Ambassador YERXA. In fact, I will submit this for you, Mr. Chairman. There are about two pages of specific cases where countries in the context of GSP review have made commitments to us. Let me ask Mr. Damond to summarize.

[The information requested follows:]

USES OF GSP LEVERAGE

The following outline highlights how GSP has been used to obtain progress (or punish the lack thereof) in the worker rights, intellectual property and expropriation areas.[1] In each case cited below, the GSP review was instrumental in achieving the described outcome.

A. WORKER RIGHTS

1993 Annual Review (ongoing; final results in June 1994)

Costa Rica: Enacted ILO-approved reforms to existing labor code in 1993, strengthening legal protections against anti-union discrimination and prohibiting solidarity associations from engaging in collective bargaining or interfering with labor union activities; Supreme Court issued major decision upholding basic worker rights. AFL–CIO withdrew petition on basis of progress.

El Salvador: Introduced significant labor code reform package, approved by the ILO, before the national assembly in Dec. 1993. Reforms would allow agricultural workers to form unions, repeal the Executive's power to dissolve unions, and improve protections for the right to strike.

Guatemala: Passed new labor code in December 1992 increasing protections for union leaders, reducing administrative requirements for union registration and increasing fines for violations of the code. Hired and trained 37 new labor inspectors; reduced backlog of unions applying for recognition.

Indonesia: Repealed Decree No. 342 of 1986 which authorized military intervention in labor disputes; promulgated a regulation authorizing collective bargaining at the factory level by independent groups; invited and hosted an ILO delegation whose objective was to assess Indonesian labor practices.

Malawi: Released labor leader Chakufwa Chihana; permitted reopening of regional labor organization's offices in Malawi; created management-labor councils in key industries for mediation of labor issues and scheduled free union elections for 1994.

Paraguay: Enacted a new ILO-consistent labor code in 1993; requested U.S. technical assistance in developing enforcement mechanisms for the code; Supreme Court declared unconstitutional a decree which effectively denied union leaders of their authority to represent workers in essential union activities. AFL–CIO withdrew petition on basis of progress.

Thailand: Cabinet approved and submitted to Parliament in December 1993 legislation that would bring worker rights in the state enterprise sector significantly closer to international norms; promised to revise the controversial NPKC Announcement 54 of 1991; committed to reducing child labor abuses through various concrete actions including increased inspections and prosection.

[1] In the 1986 General Review of GSP, there are also examples of improved market access in beneficiary countries (e.g., Taiwan, Colombia) not detailed here.

1992 Annual Review

Mauritania: Suspended from GSP for lack of steps to afford worker rights in June 1993.

Panama: Passed new labor laws in 1992–93 reinstating the right to associate, organize and bargain collectively in export processing zones.

1991 Annual Review

Sri Lanka: Passed new regulations easing the access of labor organizers to export processing zones. Bangladesh: Agreed to phase out suspension of labor laws in export processing zones. Took actions to deter child labor.

Syria: Suspended from GSP for lack of steps to afford worker rights.

1991 Worker Rights Reinstatements

Chile, Paraguay, and the Central African Republic (CAR) had been previously suspended from GSP for lack of progress on worker rights. They were "reinstated" to GSP in February 1991 as a result of new efforts in the area. In brief, these actions were:

Chile: Passed significant reforms to labor code, curtailed harassment of labor leaders.

Paraguay: Government proposed reform of labor code and worked towards its passage in legislature.

CAR: Passed new labor law allowing for union activity; allowed formation of new labor federation.

1990 Annual Review

Dom. Republic: Passed comprehensive new labor code; worked to improve status of Haitian cane cutters.

Benin: Guaranteed right to strike, allowed major union to become independent of government, began revision of labor code.

Haiti: Increased the number of judges in labor courts and the number of inspectors for child labor abuses. Promised additional reforms under newly elected Aristide regime.

Sudan: Suspended from GSP for failure to take worker rights actions.

1989 Annual Review

Indonesia: Liberalized policies allowing workers to strike, made efforts to make labor federation more. responsive to workers.

Thailand: Took actions in curbing child labor.

Liberia: Suspended from GSP for failure to take worker rights actions.

1988 Annual Review

Burma: Suspended from GSP for failure to take worker rights actions.

CAR: Suspended from GSP for failure to take worker rights actions.

1987 Annual Review

Korea: Passed new measures to ease process of forming new unions and to improve labor standards. Implemented new minimum wage.

Taiwan: Submitted new labor law to legislature; created new avenues for treating worker grievance.

1986 General Review of SP

Korea: Abolished labor law restricting union activities; proposed new labor reforms proposed.

Taiwan: Implemented regulations enforcing 1984 labor law.

Philippines: President Aquino proposed major changes to labor laws that increased protections of union rights.

Paraguay: Suspended from GSP for failure to take worker rights actions.

Romania: Suspended from GSP for failure to take worker rights actions.

Nicaragua: Removed from GSP for failure to take worker rights actions.

B. INTELLECTUAL PROPERTY RIGHTS

1993 Annual Review (ongoing—final results in June 1994)

El Salvador: Passed a new copyright law and amendments to penal code to deal with offenders; results not final.

Guatemala: Continued progress in abating the piracy of U.S. satellite broadcasts by cable TV operators; adopted implementing regulations for cable law; committed. to passage of copyright, patent and trademark laws; results not final. Honduras: Enacted comprehensive intellectual property legislation in 1993; made progress in

abating the piracy of U.S. satellite broadcasts by cable TV operators; results not final.

Dom. Republic: Made continued progress in abating the piracy of U.S. satellite broadcasts by cable TV operators; upgraded Copyright Office; results not final.

Poland: Passed a new copyright law in early 1994; results not final.

Venezuela: Passed a new copyright law; petition withdrawn by IIPA.

1992 Annual Review

Malta: Explicitly agreed to end the piracy of videos by taking various steps; petition withdrawn by MPEAA on basis of progress.

India: GSP benefits suspended on $60 million in chemical, pharmaceutical and other imports for lack of progress in resolving pharmaceutical patent issue.

1991 Annual Review

Mexico: GSP competitive need limit *waivers granted* on $2.4 billion in imports for passage of comprehensive patent and copyright legislation.

Philippines: GSP competitive need *waivers granted* on $110 million in imports for progress in the copyright area.

Chile: Reinstatement to GSP was withheld until passage of pharmaceutical patent law; reinstated February 1991.

1990 Annual Review

Malaysia: Granted GSP competitive need waivers for amending its copyright law.

1989

Thailand: *GSP benefits suspended on $300 million* in Thai imports for lack of progress in patents and copyrights area.

1987

Indonesia: Passed new copyright law, promised to enter into bilateral copyright agreement with U.S.

1986 GSP General Review

Singapore: Committed to improving and passing of copyright law; Singapore's level of benefits increased 11% as result.

Taiwan: Improved intellectual property protection and market access for motion pictures.

Philippines: Made progress in improving enforcement of intellectual property rights.

Yugoslavia: Extended patent terms.

C. EXPROPRIATION

Ethiopia: Requested redesignation as beneficiary in June 1992. Ethiopia had been deleted from the list of eligible countries in 1980 because of its failure to meet the GSP law's expropriation criteria. The President designated it as a beneficiary developing country for the purposes of GSP in December 1992.

1992 Annual Review

Peru: A review of Peru was extended from the 1991 Annual Review pending a final settlement with AIG. In June 1992, it was decided to grant three requests filed by Peru to add items to GSP, but to defer implementation until such time as determined by the USTR. In September 1993, *the petitioner withdrew its petition after satisfactory resolution* of the subject dispute, and the review was terminated.

1990 Annual Review

Peru: The review of Peru was reinitiated and it was decided to continue the review until 1991. AIG favored pending because the company thought prospects for further progress were good.

1989 Annual Review

Peru: At the request of AIG, the review was terminated without prejudice. AIG noted the parties were engaged in good faith negotiations and the company was hopeful of a satisfactory resolution of the claim.

Venezuela: The review was terminated when Occidental Petroleum and Venezuela reached a mutually satisfactory settlement of the claim. The review had been extended from the 1988 Annual Review to allow the Expro Group to make a formal finding.

Mr. DAMOND. I would say the most prominent examples, and this is just the past year under the current administration, would be

Venezuela. In fact, there was a petition that was withdrawn by the intellectual property industry on the basis of a new law passed by Venezuela.

There has been progress in Thailand, Egypt in the copyright area. Guatemala where we have just about ended piracy in the cable TV sector in the past year in the course of a GSP review. And Cypress passed a comprehensive new copyright law in just the past year and is apparently enforcing it quite well.

Senator BAUCUS. Right. Now are those examples where it was GSP alone which was a lever or were there other levers?

Ambassador YERXA. Well, this is part of a combination of measures that we employ. As you know, we also have the special 301 process, which is a useful complement to this and a very important complement. But GSP removal is one element in that process.

I think the most important thing here from USTR's point of view is, I think, we have to have some flexibility to deal with individual circumstances. I know there are proposals out there to make the loss of GSP automatic for countries that are not implementing the TRIPS agreement within a short period of time—in other words, an across-the-board removal of GSP for all countries that have no implemented it within a period of time. I believe there is legislation to that effect that has already been introduced in the Senate.

I would counsel against that kind of approach. I think that that could end up actually reducing our leverage rather than increasing it because it makes these matters not subject to negotiation, but subject to an automatic determination.

I think there are certain LDCs that are capable of moving faster than others towards full IPR protection. We want to be able to flexibly focus our resources on the worst offenders which these proposals would not allow us to do.

The current law allows us to ratchet our actions against offenders which can be very effective. But in an across-the-board automatic removal of benefits as we have seen in other contexts, Mr. Chairman, I do not think would be the best way to proceed.

Senator BAUCUS. Thank you.

I would like to now turn to Senator Conrad who has been waiting very patiently. Senator Conrad?

Senator CONRAD. Thank you, Mr. Chairman.

Welcome, Ambassador Yerxa and Mr. Damond. Can you give us some estimate with respect to the changes in the competitive need requirements and the per capita income requirements, what will be the result of those changes in terms of the amount of trade,the volume of trade that comes under GSP?

Ambassador YERXA. Let me ask Mr. Damond. As I understand it most of the major beneficiaries now—of course, Mexico is no longer a GSP beneficiary and many of the more advanced Asian economies are no longer beneficiaries. As I understand it, most of the beneficiaries are still quite a bit below the per capita GNP limit.

Competitive need limits, of course, are done on a product-by-product basis. So it really depends on the product and the country. But let me ask Mr. Damond.

Mr. DAMOND. Well, with respect to the lowering of the competitive need limits, there is about, as was mentioned, about $15 billion that is currently eligible for GSP. And lowering the limits from

where they are now, which is about $108 million per item to our proposal which is $75 million would probably capture another $1 billion to $1.5 billion of trade a year. That would be subject to these lower limits and, therefore, could lose its GSP.

Countries are still allowed to come in and request a waiver of those limits or an exception of those limits. But if they did not and if a waiver were not granted, then about probably another 10 percent or so each year of items under GSP could lose eligibility.

Senator CONRAD. Can I go back to the question of how we are going to pay for this? I know that Senator Baucus asked the question. I would like to go back to it because we have an awful lot of things around here we are trying to find money for. We have health care. We have GATT. We have GSP.

Senator BAUCUS. Welfare reform.

Senator CONRAD. Welfare reform, well, hopefully, we do not have to tackle that until next year, but that will be on the table.

It gets to be a pretty daunting challenge where this money is going to come from. And very frankly, every time we turn around we hear agriculture being targeted for welfare reform or GATT. Can you put my mind at ease with respect to alternatives you have looked at with respect to GSP reauthorization?

Ambassador YERXA. We have proposed that the GSP reauthorization extension be included as part of the Uruguay Round implementing bill. So we have not been looking at separate funding proposals for GSP. We have been looking at them for the entire package.

I am not sure, Senator Conrad, what the current numbers are. I know that the estimate went down, the CBO estimates went down somewhat. And quite honestly there are still a whole range of options that are being discussed but I do not think the administration has settled on any one proposal or series of proposals.

In any event, I think Director Panetta and Secretary Bentsen have indicated these are things we have to come up and talk with the committee about. Because if they cannot be worked out with the committee on a bipartisan basis our sense is that they are not going to fly.

So I think the short answer to your question is, it is part of the Uruguay Round package and the same proposals that you have seen floating around for the Uruguay Round would be the ones that are under consideration.

Senator CONRAD. I was afraid of that. There are some very bad ideas on that list.

Ambassador YERXA. Well, that is the purpose of the consultations.

Senator CONRAD. Let me just suggest that the message get carried back that, you know, agriculture took a disproportionate share of the cut in 1990. It was right at the top of the list; in terms of the proportion of the cut, agriculture was number one. Nobody is even close in terms of percentage of cut that agriculture took in the 1990 budget deal.

In last year's budget deal, agriculture was number one. Nobody was even close with respect to agriculture. So I would hope when they are putting together these plans that agriculture not again be asked to take a disproportionate part of the load.

Does that mean we take nothing? Well, I do not think that necessarily follows. If there are savings with respect to the agriculture sector that result naturally from a change in the agreement, then maybe that should be considered.

Let me ask you this. On the funding question, how much attention has been given to the notion of a budget waiver given the fact virtually every economist has told us that the so-called loss in GATT is not a loss at all? Our static models and the pay-go provisions of the budget require us to come up with these savings somewhere else. But in any economic terms there is not a loss to the United States, there is a gain.

Ambassador Yerxa, can you tell us, has there been any consideration of coming up here and talking about a budget waiver for at least part of what would be required?

Ambassador YERXA. Can I on your first point about disproportionate burden being borne by agriculture? From my point of view and from my boss's point of view, I think share your assessment that agriculture not be asked to bear that burden, that obviously finding a solution that causes the least amount of burden to the fewest number is what the administration is interested in.

Senator CONRAD. Montana coal, for example, would be a possibility.

Ambassador YERXA. We might have to work that one out. But I guess with respect to the broader question, you know, I am a little uncomfortable. This issue is above my level in the administration. I am not here to propose any specific funding proposals to you at this moment.

Consultations are being carried directly by Director Panetta and by Secretary Bentsen. I think you would have to address to them the question of which options they are looking at.

Senator CONRAD. You are very, very wise not to answer that question.

Ambassador YERXA. I have been given the party line, Senator. The party line as I interpret it is that the administration believes that it should follow the rules that the Congress has set and identify for you the offsets that the administration would have in mind. But that the whole fast-track process is one that has to be a consensus between us before the President can submit a bill.

So in order to really get to something that he would feel comfortable introducing it has to be worked out with you, not only the substantive provisions of the legislation, but the funding aspect as well. That means, I guess, that any options that you want to discuss with the administration are perfectly appropriate and would be given serious consideration.

Senator CONRAD. I really raised the question—I did not anticipate you answering it.

Ambassador YERXA. I understand.

Senator CONRAD. And you are wise not to answer it. I asked it to send a signal. I am one who—nobody has voted on more things to reduce the deficit I do not think than I have, nobody has opposed budget waivers more frequently. But in this case we have something that does not make any sense. It makes no sense at all for us to be living with this fiction that we are going to see reduced revenues because of GATT when everyone knows it is going to in-

crease revenues. It is going to increase economic activity. It is going to be better for the economic position of the United States.

If I might, Mr. Chairman, one last question.

Senator BAUCUS. Go ahead.

Senator CONRAD. One of the concerns, Senator Baucus raised the question of intellectual property rights and I just want to echo that. But I want to go to another issue that is along the same lines. That is, workers' rights.

You know, it is one thing to be competing when there is some kind of level playing field with respect to the standards that everybody is required to meet. But in terms of workers' rights, it disturbs me that our workers are being asked to compete with countries that do not have any standard for workers' rights or have a de minimis standard for workers' rights.

So my question is: How does the proposal the administration has put before us promote workers' rights in beneficiary countries?

Ambassador YERXA. Well, the first point I would make is that the administration has not removed the worker right provisions in the law. We think the workers' rights provisions are strong in their current form. Ambassador Kantor has said we are committed to enforcing them actively.

I think our record in the past year does demonstrates the effectiveness. The AFL–CIO itself recently withdrew two workers' rights complaints on Costa Rica and Paraguay on the basis of significant progress. We have obtained results in many other cases as well. We do need some flexibility in enforcing these provisions.

We think proposals limiting that flexibility would be counterproductive. But I think we share the basic objective that you are raising, Senator, that we should definitely move these countries on the road to much, much higher standards. We have proposed improvements in the process of reviewing worker rights petitions that give us more time to assess facts and establish clearer standards for the acceptance of petitions and these are intended to make the process more transparent and predictable for both petitioners and beneficiary countries.

But we will submit to you for your view about three pages of cases in the annual review process and individual countries where we have seen significant progress because of this workers' rights standards.

[The information requested follows:]

KANTOR NOTES CONTINUED PROGRESS IN GSP WORKER RIGHTS, IPR REVIEWS

U.S. Trade Representative Mickey Kantor announced today that considerable progress had been achieved in the GSP worker rights and intellectual property rights (IPR) reviews considered in this year's GSP annual review. "Last year we signalled our resolve in enforcing the worker rights and IPR provisions of the GSP law," Kantor noted. "The outcome this year demonstrates that our approach has yielded substantial results. I am pleased to report significant advances in the vast majority of the worker rights and IPR cases reviewed this year."

This year's GSP annual review included 10 worker rights cases, and eight intellectual property cases. Earlier in the year, the AFL–CIO withdrew its worker rights petitions on Costa Rica and Paraguay on the basis of progress in those countries. Of the remaining 10 countries under review, Kantor noted that progress in five of the cases was sufficient for the Administration to find that the countries were "taking steps to afford internationally recognized worker rights," as required by the GSP law. Those five countries are: Bahrain, El Salvador, Fiji, Oman, and Peru. While progress was also evident in the remaining five countries under review—the Domin-

ican Republic, Guatemala, Maldives, Pakistan, and Thailand—Kantor stated that the Administration was still unable to determine that the countries met the worker rights standard in the GSP law. As a result, the reviews of these countries are being continued for various periods of time, as considered appropriate. "In those worker rights cases that we have continued, we want to reiterate our commitment to ensuring that the worker rights standard in the GSP law is met, and our desire for a quick resolution of outstanding issues," Kantor said.

Kantor also announced the results of the GSP intellectual property reviews of eight countries. "In nearly all of the countries under review for their protection of intellectual property, important gains have been made in the past year," Kantor noted. "On this basis, I am glad to announce that we are able to successfully complete the review of three of these countries, Egypt, Guatemala, and Cyprus." Kantor noted that in the case of Guatemala, the petitioning party, the Motion Picture Export Association of America (MPEAA), had in fact recently withdrawn its complaint.

Kantor also announced that the IPR reviews of the remaining five countries—Dominican Republic, Honduras, El Salvador, Poland, and Turkey—would be continued. "In some of these countries, we are very close to resolving the outstanding issues, and would be prepared to complete these reviews as soon as that occurs. In other cases, progress has been slower than we would like, and while we are willing to grant more time, the lack of sufficient progress will make it harder to continue to justify the continuation of full GSP treatment for these countries," Kantor said.

The U.S. Trade Representative then summarized briefly the Administration's findings in each worker rights and IPR review:

Worker Rights Reviews

The GSP law requires that countries be "taking steps to afford internationally recognized worker rights" order to retain their eligibility for benefits. However, Kantor noted: "That does not necessarily mean in cases where we find a country to be taking such steps that more should not be done to advance worker rights. In all of these cases, we encourage countries to continue the progress they have made in bringing their law and practice into closer conformity with international labor standards. We have found the following five countries to be in compliance with the worker rights provisions of the GSP law.

Bahrain: "Bahrain has issued regulations expanding the access of various classes of workers to its labor law, has shown that workers in key sectors are effectively represented in bargaining with employers, and has demonstrated that agreements reached between labor and management are fully enforceable by law. In addition, it is considering an expansion of its labor relations system. On the basis of these measures, we find that Bahrain is 'taking steps', and we hope that Bahrain continues to bring its system into closer compliance with international norms, particularly in the area of right of association."

El Salvador: "After several years of review, El Salvador has finally enacted a reformed labor law after close consultation with the ILO, which brings its labor laws into much closer conformity with international standards. Violence against workers has also abated in recent years. In light of these actions, we find that El Salvador is 'taking steps' and stress the importance of effective enforcement of its labor laws."

Fiji: "Fiji has taken concrete actions to fulfill nearly all ILO recommendations that bring its labor laws and regulations into closer conformity with ILO norms. On the basis of these actions, we find that Fiji is 'taking steps' as required by the GSP law."

Oman: "Oman has joined the ILO, and has asked for ILO technical assistance in the drafting of a new labor code. In addition, it has informed us that the legal prohibition on strikes will be eliminated, and there is evidence that strikes are being permitted. These are important actions that advance Oman's process of more fully meeting international labor standards, and on this basis we find that Oman is 'taking steps.' We look forward to Oman's continued progress in these efforts."

Peru: "This year's review centered primarly on the impact of decrees issued in 1992 that could have an impact on worker rights. We determined that while the decrees had the potential to limit the exercise of worker rights in Peru, there was no concrete evidence that they were being implemented in a way that had this effect. This conclusion, and the fact that labor rights are otherwise generally respected in Peru led to the conclusion that Peru is 'taking steps' at this time."

The U.S. Trade Representative also noted that advances in the labor area had also been evident in the five remaining worker rights reviews, but that the Administration had not yet been able to positively determine that these countries were yet "taking steps" as required by the GSP law. As a result, these cases would be continued for varying periods as deemed appropriate in each case. Specifically:

Dominican Republic: "The Dominican Republic has established mechanisms designed to improve the enforcement of labor laws in its export processing zones. There is some evidence that these mechanisms will be effective, but in order to make a more definitive finding, we are continuing this review for 90 days."

Guatemala: "Guatemala has taken several important actions that should improve the government's ability to cite and correct violations of the labor code, and to more quickly register those who would like to form unions. However, the Administration would like a brief amount of additional time in order to be more certain about the efficacy of these measures. Accordingly, we are continuing the review of Guatemala for 90 days."

Maldives: "We are only just beginning what we hope is a productive dialogue with Maldives. To assure that this dialogue is fruitful, we are continuing this review for another year."

Pakistan: "The Government of Pakistan has made clear its commitment to developing and enacting important reforms in the labor area. To have sufficient time to assess the nature and effectiveness of these actions, we are continuing the review of Pakistan for another year, and look forward to continuing a constructive dialogue on these issues."

Thailand: "We made clear previously that the review of Thailand could be satisfactorily completed once proposed legislation and actions that would restore worker rights lost in 1992 was enacted. Such legislation has been introduced by the Thai government before the legislature. As we noted previously, our expectation is that labor legislation will be enacted in the legislative session in which it has been introduced. We still look for a speedy completion of these actions."

Intellectual Property Rights Reviews

Kantor also detailed the results of the eight intellectual property reviews conducted this year under the GSP program:

Cyprus: "We have determined that Cyprus is taking effective action to enforce its new copyright law. Accordingly, we are successfully concluding this review."

Dominican Republic: "The government of the Dominican Republic has made great progress in reducing the piracy of U.S. satellite television signals. Once we are assured that its efforts are fully successful, we are prepared to successfully conclude this review."

Egypt: "Egypt has taken action to provide for the effective legal protection of copyrights. On this basis, we can successfully conclude our review of Egypt."

El Salvador: "El Salvador has made significant progress in improving the legal protection of copyrights. However, these laws are only now coming into effect, and there has not been sufficient time to determine whether enforcement actions against major pirates is being taken. Accordingly, we are continuing our review of El Salvador until such a determination can be made."

Guatemala: "We note that the petitioners recently withdrew their complaint in this case, because of the successful efforts of Guatemala in eliminating the piracy of U.S. satellite television signals. Accordingly, we are successfully concluding this review of Guatemala."

Honduras: "Honduras has made substantial progress in its legal protection of copyrights. However, we are continuing the review at this time pending the resolution of certain primarily technical issues raised with the passage of recent legislation."

Poland: "Poland has made progress in improving its legal protection of copyrights, but clearly more needs to be done. We are continuing our review of Poland for the coming year in order to establish the effectiveness of government IPR enforcement actions, and to encourage further actions to provide world class copyright protection."

Turkey: "We are continuing our review of Turkey to give it more time to adopt new IPR legislation that affords effective protection. We are nonetheless disappointed with the slow pace of progress in Turkey, and urge the Turkish government to more quickly move to resolve outstanding issues in this area."

OFFICE OF THE U.S. TRADE REPRESENTATIVE
COUNTRY PRACTICE PETITIONS DECISIONS
1993 GSP ANNUAL REVIEW

July 1, 1994

CASE NUMBER	PETITIONER(S)	COUNTRY	ACTION	DECISION	STATUS
*001-CP-93	AFL-CIO	BAHRAIN	WR	ACCEPT	Taking Steps
002-CP-93	Int'l Labor Rights Education & Research Fund (ILRERF)	COLOMBIA	WR	REJECT	--
003-CP-93	AFL-CIO	COSTA RICA	WR	ACCEPT	Taking Steps Review Terminated 12/93
004-CP-93	AFL-CIO	DOMINICAN REPUBLIC	WR	ACCEPT	Pend for 90 Days
*005-CP-93	AFL-CIO	EL SALVADOR	WR	ACCEPT	Taking Steps
*006-CP-93	AFL-CIO	FIJI	WR	ACCEPT	Taking Steps
*007-CP-93	AFL-CIO	GUATEMALA	WR	ACCEPT	Pend for 90 Days
008-CP-93	AFL-CIO	HAITI	WR	[1] ACCEPT	See footnote 1
*009-CP-93	Asia Watch; ILRERF	INDONESIA	WR	[2]ACCEPT	Review Suspended See footnote 2
*010-CP-93	AFL-CIO	MALAWI	WR	ACCEPT	Review Terminated 12/93
011-CP-93	AFL-CIO	MALAYSIA	WR	[3] DEFER	See footnote 3
012-CP-93	AFL-CIO	MALDIVES	WR	ACCEPT	Pend
013-CP-93	ILRERF	MEXICO	WR	REJECT	--
014-CP-93	AFL-CIO	MOROCCO	WR	REJECT	--
*015-CP-93	AFL-CIO	OMAN	WR	ACCEPT	Taking Steps
016-CP-93	AFL-CIO; Int'l Human Rights Law; ILRERF	PAKISTAN	WR	ACCEPT	Pend
017-CP-93	AFL-CIO	PARAGUAY	WR	ACCEPT	Taking Steps Review Terminated 12/93
018-CP-93	AFL-CIO	PERU	WR	ACCEPT	Taking Steps
019-CP-93	ILRERF	SRI LANKA	WR	REJECT	--
*020-CP-93	AFL-CIO	THAILAND	WR	ACCEPT	Pend
*021-CP-93	American International Group, Inc.	PERU	EXP	ACCEPT	Petition Withdrawn 9/93

1. Haiti: Active portion of review suspended at this time.

2. Indonesia: Suspension (not termination) of formal review announced 2-16-94. Will assess progress in 6 months.

3. Malaysia: Decision on whether to accept the petition has been deferred.

CASE NUMBER	PETITIONER(S)	COUNTRY	ACTION	DECISION	STATUS
022-CP-93	Int'l Intellectual Property Alliance (IIPA)	CYPRUS	IPR	[4] ACCEPT	Review Terminated
*023-CP-93	Motion Picture Export Assoc. of America (MPEAA))	DOMINICAN REPUBLIC	IPR	ACCEPT	Pend
024-CP-93	IIPA	EGYPT	IPR	ACCEPT	Review Terminated
025-CP-93	IIPA	EL SALVADOR	IPR	ACCEPT	Pend
*026-CP-93	MPEAA	GUATEMALA	IPR	ACCEPT	Petition Withdrawn 6/94
*027-CP-93	MPEAA	HONDURAS	IPR	ACCEPT	Pend
028-CP-93	IIPA	POLAND	IPR	ACCEPT	Pend
029-CP-93	IIPA	TURKEY	IPR	ACCEPT	Pend
030-CP-93	IIPA	VENEZUELA	IPR	[5] ACCEPT	Petition Withdrawn 10-1-93

* Review extended from 1992 Annual Review

WR = Worker Rights IPR = Intellectual Property Rights EXP = Expropriation

4. Cyprus: EXPEDITED. SUSPENSION deferred depending on adequate law.

5. Venezuela: Petition WITHDRAWN upon signing of copyright law.

Senator CONRAD. I would just conclude by saying I hope—I understand the administration has underway a review of GSP status for Guatemala on the basis of workers' rights. I hope very much that the administration will continue that review and not back away from a confrontation if Guatemala, in fact, is not taking steps to improve the workers' rights of people in that country.

I thank the Chairman. I thank the panel.

Senator BAUCUS. Thank you very much, Senator.

Ambassador, I am just curious, just following up a little more on an earlier question that Senator Conrad asked you. What, on a net basis, do you anticipate the result to be as a consequence of some of your changes? That is, in the competitive need limit changes and the GDP change and so forth? By result I mean, the total number of tax dollars that the United States will otherwise lose. What is the change going to be? It is at $15 billion now roughly. So how many billion dollars is GSP going to cost us?

Ambassador YERXA. Once you take out Mexico it is about $15 billion. So of the current pool, that is the total we are dealing with. It has been increasing substantially as U.S. exports and imports have been increasing. So I would not want to suggest that you are going to see a lowering of the total value under this. But certainly as a percentage of our total imports because of lower competitive need and graduation, we would probably see about a 10 percent decline.

You know, a lot of this depends on how it is administered. A lot of it depends, for example, on what some of the least developed beneficiaries might do under it. But the largest beneficiaries would probably see about a 10 percent decline.

Senator BAUCUS. What would your reaction be to some kind of an income distribution index? I am just concerned that the benefits tend to go to the wealthiest people in these countries and not to the average person out in the hinterland.

Mr. DAMOND. Obviously, Mr. Chairman, it is difficult to measure something like that.

Senator BAUCUS. Is there any national data on this?

Mr. DAMOND. On distribution of income?

Senator BAUCUS. Yes. On some countries, probably not all.

Mr. DAMOND. On some. One problem is that getting good data for 147 countries is difficult. I think really that is the sort of thing that the workers' rights provisions are aimed at getting at, by making sure that the benefits of the program are distributed down towards the working classes, that people are not being exploited under the program.

Senator BAUCUS. What about reverse preferences? As I understand the current law prevents granting GSP to countries that maintain preferential trade relationships with developed countries that I guess do not extend to the United States.

It is my understanding that the U.S. currently grants GSP status to several Eastern European countries, such as Poland and Hungary, and offer better tariff rates to the European Union than they do to the United States. Is that not a problem under the current statute?

Ambassador YERXA. Well, there is, as you say, a reverse preferences provision. It is quite clear that countries should not gain benefits if they are granting preferential treatment to others on a reverse preference basis.

We succeeded in the past year, just as an example, in getting Poland to suspend some key duties in areas where they had given the European Union a preference. It was an issue brought to us by a number of industries and we did negotiate an overall agreement with Poland, which I think addressed the problem.

But there is a petition procedure now for companies to come in to petition how they would like us to take action with respect to a reverse preference situation. So I do not think an amendment to the current law is necessary. But we will certainly study some of the proposals which have been made.

I know that Mr. Gibbons, for example, has indicated some interest in this issue.

Senator BAUCUS. But you fully intend to enforce the letter and the spirit of that provision?

Ambassador YERXA. Absolutely. We think it is very important not to allow other developed countries to utilize this in a way which would end up denying us or aggravating the discrimination which might exist against U.S. exports.

Senator BAUCUS. Turning back to the environment, at the end of March in an interagency draft proposal on GSP, the administration I understand it actually had a provision that would tie eligibility to environmental criteria. Why is that not now in the administration's proposal?

Ambassador YERXA. I am not going to comment on what might have been some ideas that were during our internal deliberations, Mr. Chairman. In the proposal we have submitted to you, while we

believe obviously progress of countries toward sustainable development is an important overall consideration in our trade relations with them, we are not proposing a specific mechanism.

Senator BAUCUS. Why was that other recommendation rejected? What was the basis?

Ambassador YERXA. Well, as I say, there were certain ideas that were being discussed in our internal deliberations but we have never made such a proposal.

Senator BAUCUS. But why should we not? I mean, have something in there that helps address sustainable development.

Ambassador YERXA. Well, as I said, there are real technical difficulties with it.

Senator BAUCUS. There are technical difficulties with a lot of things. But why not take a better crack at it? Why not make a stab, a try?

Ambassador YERXA. Well, there are technical difficulties with a lot of things. That is true. I think in this case we do not feel that you can effectively utilize this kind of a mechanism. There are other mechanisms we have available to us to deal with trade and environment questions and we believe they ought to be utilized.

But, you know, we cannot achieve everything with every law. There are times when you have to sort of make some decisions about how a particular procedure can be effective. We think that this law has a number of conditions now. It would be important, for example, to have workable criteria in an area like this.

In the area of the environment few specific criteria of a detailed nature exists. I think, you know, we run a risk of overloading the program here.

Senator BAUCUS. I understand what you are saying and there is some merit to what you are saying. But I also ask you to go back in the interim before we actually mark up and pass anything in this area that you think long and hard about a way to address that. Because it is my intention to make an effort here to try to address it. Obviously, the more we are in agreement, the better off we all are.

We have an obligation, frankly. We are stewards on this earth and, you know, I think we have an obligation to in a common sense, reasonable way, you know, attempt to address it.

Ambassador YERXA. We certainly want to sit down and consult with you on it, Mr. Chairman. Maybe if we have a better understanding of one another's concerns, it will lead to a mutually satisfactory solution.

Senator BAUCUS. I guess I will sum up by saying I just urge you to be pretty vigorous in how you enforce this. I think that in some cases we are being taken advantage of. We are not forcing the program as vigorously as we could and should. I credit this administration for doing a better job, a much better job.

I do not mean to be partisan or political in saying that, but it is my—you know, as objective as I can be—observation that this administration is doing a better job than its predecessor.

But having said that, I just encourage you to maintain the vigilance and that vigorous enforcement because it is there for a purpose and we should use it for the purposes that it was intended.

Ambassador YERXA. I fully agree, Mr. Chairman.

Senator BAUCUS. Thank you. Thank you very much, Ambassador, for your time.

Ambassador YERXA. Thank you, sir.

Senator BAUCUS. We have a new panel here consisting of Mr. Lawrence E. Levinson with Viacom and Paramount Communications; Lynn Greenwalt is vice president of international affairs for the National Wildlife Federation; Mark Anderson with the Task Force on Trade of the AFL–CIO; and Allan Mendelowitz, who is the Managing Director for International Trade, Finance and Competitiveness with the GAO.

Mr. Levinson, will you proceed?

STATEMENT OF LAWRENCE E. LEVINSON, WASHINGTON COUNSEL, VIACOM INC. AND PARAMOUNT COMMUNICATIONS, WASHINGTON, DC

Mr. LEVINSON. Thank you, Mr. Chairman. I am Larry Levinson, Washington Counsel for Viacom and its majority owned subsidiary, Paramount Communications. I am also speaking for the over 1,500 companies in the International Intellectual Property Alliance. That is the group that represents the core of America's copyright community, the motion picture, recording, computer software, music and book publishing industries.

With your permission, we have a more detailed statement to place into the record.

[The prepared statement of Mr. Levinson appears in the appendix.]

Senator BAUCUS. I might say, gentlemen, I would like to ask you to conform to the five-minute time rule.

Mr. LEVINSON. Exactly. I intend to finish within five minutes, sir.

Senator BAUCUS. Thank you very much. And all your statements will be in the record.

Mr. LEVINSON. So within the brief time allotted to me, let me explain why our company and the Alliance favors and indeed strongly favors the reauthorization of the GSP program.

Since its enactment in 1974 under the leadership of one of your distinguished predecessors, Senator Abe Ribicoff, the GSP program has stood the test of time. And, in fact, has been reconfigured over the years to fit the needs and circumstances of the changing world marketplace and the realities of the dynamic copyright industries that have reshaped the course of our own economy.

The 1984 amendments recognize the primacy of intellectual property, not only to America's economic base but to the economies of the developing world and attest to the value of the GSP as a flexible and important instrument of United States trade and foreign policy.

In the tradition of Section 301 GSP also elevates to an unfair trade practices cases where eligible beneficiary nations deny our members the right to secure, exercise and enforce their intellectual property rights.

So as our economy shifts from the post-industrial era into the information age, the centrality of intellectual property to the American economy is reflected, and it is enormous, Mr. Chairman, in accelerating contributions to the nation's gross domestic products—5.6 percent to employment, over 5.5 million people employed

throughout our industries and close to $40 billion in foreign sales of copyrighted products we estimate for 1994.

But as you recognize the very copyrighted materials that are of such major importance to our domestic economy are particularly vulnerable to overseas piracy, particularly within the developing world where we seek to enlarge our stake in the global marketplace, a very fast growing commercial arena that accounts for an ever increasing share of our revenues.

So from GSP eligible countries, like Turkey and Egypt, who are leading book, record, software and video pirates, where satellite signal theft is rampant, to the Philippines which has imposed a confiscatory compulsory license on educational works and to Poland which permits unauthorized public performances of broadcast and video programming and is also one of the most flagrant record and computer software pirates in the world, just to cite a few of the problem countries. We face the threat of ever escalating piracy in the developing world where total losses to America's creators and distributors of copyrighted materials exceed—and this is an estimate we just ran the other day—$2.5 billion a year.

I am going to leave that number with you, Mr. Chairman—$2.5 billion a year in the developing world.

One of the most effective trade weapons at our disposal to combat this onslaught of piracy is the GSP which can reach over 4,300 different articles in over 135 GSP eligible nations.

Since the GSP is a unilateral nonreciprocal program, the United States can deploy the critical leverage that comes from revoking or suspending duty-free status to encourage and, indeed, to require beneficiary nations to enact modern copyright laws, to enforce them, and to keep their markets open and accessible to U.S. intellectual property.

Through the GSP and the cooperation of the USTR we have achieved some remarkable successes throughout the developing world. Just to cite a few cases—Singapore, Venezuela, Indonesia, Cypress and most recently in Guatemala when it comes to cable signal theft.

But it is in the post-Uruguay Round environment that programs like the GSP take on enormous and increasing significance—one of the few pure points of GATT and WTO compatible leverage where we can maintain the sole discretion to reward or penalize a developing country seeking duty-free access to our markets, if they fail to provide adequate and effective protection to intellectual property.

Thus, let me emphasize that because of the more limited retaliatory reach of Section 301 under the new GATT multilateral trading rules, GSP will become an even more valuable tool in the future to encourage developing nations and protect America's exports of intellectual property.

We do have a number of suggestions based on our experience with the GSP program which are aimed at streamlining and facilitating the petition process. We have a more detailed memorandum on some of our proposed regulatory changes which come very close to what Ambassador Yerxa told you about just a little while ago.

Briefly, the two changes we seek in the regulations are to place the GSP and Section 301 petition processes on a common time line.

Second, we urge that GSP petitions be considered at any time if a new emergency situation develops after the filing deadline and threatens to cause severe injury.

Finally, let me say that we and the copyright community appreciate all of your support during the past years. Your important work, Mr. Chairman, has helped to nurture and preserve the competitive and positive contributions of the American copyright community to our balance of payments and to the nation's job and investment base. Reauthorizing GSP as a constructive step, especially in the aftermath of the Uruguay Round.

We believe the GSP will continue to serve the nation in the future as it has over the past decade as a most valuable instrument of trade policy when it comes to safeguarding America's copyright life line throughout the developing world.

I have a couple of samples of what goes on out in the real world. If you have a moment after this panel concludes, we would like to hand up to you some recent examples of pirated videos, pirated CDs, pirated textbooks, pirated software, to give you an idea of what really is going on in the pirates high tech and ingenious environment out there.

So we are not dealing with small business, Mr. Chairman, we are dealing with rather large businesses in small countries. Thank you very much.

Senator BAUCUS. Thank you very much, sir.

Mr. Greenwalt?

STATEMENT OF LYNN A. GREENWALT, VICE PRESIDENT, INTERNATIONAL AFFAIRS DEPARTMENT, NATIONAL WILDLIFE FEDERATION, WASHINGTON, DC

Mr. GREENWALT. Thank you, Mr. Chairman. I am Lynn Greenwalt, vice president for the international affairs department of the National Wildlife Federation. As you know, Mr. Chairman, the Federation is the nation's largest private conservation organization dedicated to the sustainable management of natural resources and the protection of the global environment.

The GSP program is an important instrument for our Nation to assist sustainable development in many countries of the world, particularly those which are the poorest. However, the GSP program as currently constituted pays little attention to the concerns of sustainable development.

I should note that a number of environmental organizations, including the Environmental and Energy Study Institute and several others support environmental amendments to the GSP program.

The testimony following reflects proposals which the National Wildlife Federation and other organizations have developed and it will suggest ways that Congress can rectify this critical flaw in the GSP program.

In addition to presenting those views, I will discuss briefly other important modifications to U.S. trade laws that should be made as a part of any Congressional deliberations on the Uruguay Round implementing bill.

Mr. Chairman, there is no doubt that participation of the United States in the GSP Program can be a critical boost to the development aspirations of countries around the world. Benefits offered by

the GSP Program are a significant complement to the bilateral and multilateral foreign aid programs we support.

However, as with our foreign aid programs, there has been too little attention paid to the environmental impact of the kind of international trade that is encouraged by GSP benefits. In the past, we have conditioned benefits under GSP based on a country's income, whether it is communist, whether it grants access to our exports, whether it is a member of the organization of petroleum, exporting countries and a host of other criteria.

And yet we have never asked a fundamental question—how will the benefits offered under GSP promote sustainable development? If the GSP Program is to help achieve this elusive goal it must incorporate two kinds of reforms. First, we must assure that some form of environmental conditionality is applied to the granting of GSP benefits.

These need not result in a country's adopting U.S. environmental standards, but might be modeled on and more closely resemble the trade and environmental linkages established in NAFTA and its side agreement. Such things as: do citizens in countries seeking eligibility have access to remedies where they have a defined interest in environmental matter; are these procedures in place so that a fair, open and equitable hearing is provided to concerned citizens; have countries seeking to become GSP beneficiaries agreed to prevent the creation of pollution havens; and have they committed themselves to fully enforcing their own environmental laws?

Let me also make it clear that the GSP Program must also be retooled to provide additional economic incentives to eligible countries. What happens in practice is that a minority of countries in the developing world reap the lion's share of benefits from the GSP Program, while others, particularly in strife torn countries of sub—Saharan Africa, for example, are almost completely shut out.

Parenthetically, Mr. Chairman, let me note that the difficulties faced by African States in making use of GSP benefits should be an important focus of the White House Conference on Africa, which is scheduled to be held later this month, June 25 as a matter of fact.

We urge the administration to announce its support at this conference for increasing GSP benefits for African States who want to pursue a more sustainable path of development.

It seems likely that as a part of GSP reauthorization Congress will move to lower the competitive needs limits that apply to GSP imports. It is appropriate and timely to suggest that greater flexibility be provided to the President in the application of such limits, specifically what we would suggest is an allowance for the President to wave or increase competitive need limits, particularly the least developed countries that indicate a commitment to sustainable development.

Mr. Chairman, the environmental message with respect to GSP reauthorization is simply this: We must be assured that any economic activity, be it liberalized trade, increased foreign aid or additional foreign investment, occur in a way to promote sustainable development.

It now seems very likely that the GSP reauthorization will be folded into the legislation related to the Uruguay Round imple-

menting activity. And we think it is appropriate as well that a more general environmental amendment or amendments to U.S. trade law also be included.

We have suggested, Mr. Chairman, some advice, if you will, we have offered in a paper we have developed called "The Environment and Trade Initiative of 1994"—views on the environmental reform of U.S. trade law. As a matter of fact, with your approval, Mr. Chairman, we have included that with the material provided in our longer testimony.

In brief, the paper calls for updating our trade laws to craft negotiating objectives in the area of environment and sustainable development as a means of moving toward a coherent approach to these issues.

Unfortunately, there has been little support from the Clinton Administration for putting in place an important element of what they, themselves, define as an integral part of their trade policy. In spite of their best efforts to take care of some of these difficulties during the Uruguay Round negotiations, our organization cannot and does not presently support the agreement because it fails to pay attention to these concerns.

Mr. Chairman, we encourage members of the Congress to adopt our suggestions for environmental amendments to current U.S. trade law and hope the administration will do likewise.

Thank you again, Mr. Chairman, as always, for the opportunity to appear before you.

Senator BAUCUS. Thank you again, Mr. Greenwalt.

[The prepared statement of Mr. Greenwalt appears in the appendix.]

Senator BAUCUS. Mr. Anderson?

STATEMENT OF MARK A. ANDERSON, DIRECTOR, TASK FORCE ON TRADE, AFL–CIO, WASHINGTON, DC

Mr. ANDERSON. Thank you, Mr. Chairman. The AFL–CIO appreciates this opportunity to testify on the proposed extension of the generalized system of preferences, and particularly on the worker rights conditionality contained in the statute.

The linkage of worker rights to trade benefits under GSP can be a powerful instrument to encourage the adoption of internationally recognized labor rights and standards and thus support the basic premise of this program to promote equitable economic growth and social progress in the less developed world.

We are concerned, however, that the linkage between worker rights and trade is often ignored in deference to short-term foreign policy objectives or to ensure that the financial benefits provided to U.S. and foreign multi—national corporations through the granting of zero tariffs is uninterrupted.

For this reason, the AFL–CIO strongly believes that the GSP extension should not be part of the GATT implementing legislation since it requires a careful review, a review that you have begun here today, Mr. Chairman, and revision by amendment that is precluded by the fast track process.

Further, as Ambassador Yerxa suggested in his testimony earlier, the administration may propose only a 1-year extension of the GSP in the GATT implementing bill because of funding problems

and then seek a multi—year renewal of this program next year in the reconciliation process that will again preclude Congressional amendments to this legislation.

Mr. Chairman, for the same reasons, the AFL–CIO is also opposed to the administration's proposals that would include fast track negotiating authority and CBI parity in the GATT implementing legislation. We believe all of these programs are important and need to stand on their own for your careful consideration.

Mr. Chairman, in 1984 Congress amended GSP by adding worker rights conditionality because it was felt that the initial program failed to accomplish any measurable development goals and that the benefits of the program were restricted the privileged elites in the beneficiary developing countries.

Under those amendments a country must be "taking steps" to comply with internationally recognized worker rights. This provision was designed to improve the situation for workers in beneficiary developing countries who could be expected to gain a greater share of the economic benefits flowing from the GSP Program. In other words, to try to improve the income distribution in those countries as you earlier suggested in the question and answer period with Ambassador Yerxa.

The AFL–CIO believes that the 1984 amendments, while very, very important, have not been as effective as intended in achieving the development goals of the program. Since 1985 there have been a total of 95 petitions concerning worker rights eligibility under GSP. Of this number 34 were summarily rejected by the administration and, therefore, not subject to any review; 39 were accepted review; and another 22 were petitions on cases already accepted but continued over multiple petition periods.

As a result of this 8 years of activity, seven countries experienced a withdrawal of benefits on worker rights grounds. Another three saw those benefits withdrawn as a result of the Executive Branch general review in 1987.

Today only five economically weak countries—Burma, Moratania, Liberia, Sudan and Syria—continue to be denied preferential access. The Federation believes that a far greater number of countries are not adhering to internationally recognized worker rights and their continued eligibility is due to a failure to apply clear standards and a review process that is opaque and inconsistent.

Let me briefly raise five areas where improvements are needed. First, I think we need to clarify the standard of "internationally recognized worker rights." The discretion to determine whether a country has been taking steps has been used by the Executive Branch to avoid implementation of the worker rights provision. This has allowed countries who abuse worker rights to continue receiving millions of dollars of GSP benefits without fulfilling the requirements of the statute.

The AFL–CIO believes and supports your comments in your opening remarks, Mr. Chairman, that the taking steps language should be deleted and the phrase "has adopted and is enforcing" laws that protect internationally recognized worker rights be substituted.

This change will provide a clear standard upon which judgments can be made while still leaving the President the discretion to continue GSP benefits.

Second, we believe that improvements in the procedures for the GSP review process are essential. At minimum we think regulations should be promulgated that would include that any petition filed shall be accepted for review unless there is a specific finding that the petition is frivolous, that any person may file a petition seeking the withdrawal of the designation as a BDC for failing to meet worker rights criteria and that failure to meet the worker rights criteria in specific sectors of the economy can result in the partial withdrawal of benefits.

Concerning competitive need limits, Mr. Chairman, the administration has indeed proposed to lower the competitive dollar limit, an amendment we support. But at the same time they have expanded the ability of the President to waive this requirement. The AFL–CIO believes that the waiver authority has been abused in the past and should be further circumscribed, not expanded.

For example, we are informed that the administration will soon grant waivers for hundreds of millions of dollars of products from Malaysia, already one of the largest beneficiary developing countries.

Finally, Mr. Chairman, we are concerned about the possible eligibility of China for GSP benefits. The administration's proposal would allow any country with MFN status to be eligible for GSP benefits. If adopted, this language would make China eligible for GSP designation. To ensure that this possibility does not occur, the AFL–CIO urges that China be added to the list of GSP ineligible countries currently found in Section 502.

Thank you very much, Mr. Chairman.

Senator BAUCUS. Thank you very much, Mr. Anderson.

[The prepared statement of Mr. Anderson appears in the appendix.]

Senator BAUCUS. Dr. Mendelowtiz?

STATEMENT OF ALLAN I. MENDELOWITZ, PH.D., MANAGING DIRECTOR, INTERNATIONAL TRADE, FINANCE AND COMPETITIVENESS ISSUES, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, DC

Dr. MENDELOWITZ. Thank you, Mr. Chairman. I want to express my appreciation for the opportunity to appear at this hearing and to discuss GAO's assessment of the GSP Program. This particular review was undertaken at the request of Senators Harris Wofford and Byron Dorgan and Representatives Steve Gunderson, William Hughes, David Obey and Collin Peterson.

For the record, I would also like to recognize the staff who worked very hard on this particular assignment: Curt Turnbow, the Assistant Director in charge of the project; the Evaluator-in-Charge, Leyla Kazaz and her principle staffer, Leslie Holen.

The goal of GSP is to help developing countries by giving them better access to the U.S. market without unduly harming U.S. industry. GSP benefits are extended to more than 145 countries and potentially provide duty-free access to more than $35 or $36 billion in imports to the United States.

In operation, however, only about half of the eligible duty-free products actually enter duty-free under GSP. Over half of the remaining items do not get duty-free status under GSP because of administrative exclusions and almost half are excluded because of competitive need limits.

Furthermore, despite the large number of countries who are eligible, 10 more advanced developing countries actually account for about 85 percent of the benefits received under GSP.

If reauthorized, benefits under GSP and the leverage we have for dealing with countries whose behavior we wish to change in fact will decline. Mexico, which was the largest beneficiary under GSP and accounted for about 30 percent of the benefits, graduated from GSP with implementation of NAFTA, and the Uruguay Round Agreement, if enacted by the Congress, will further reduce leverage under the program because the value of tariff relief on GSP eligible products will be reduced by about 40 percent.

We have a number of suggestions for improving the administration and structure of the GSP Program. For example, we think it would be worthwhile to modify the rule of origin that is used to determine the eligibility of products from beneficiary countries in a way that does not penalize those countries for using parts and components that come from the United States.

We think it would be worthwhile to extend the amount of time before CNL exclusions take effect. It will prove less disruptive to business and I think it will also provide for a better assessment of the competitiveness of the products that would be subject to the CNL exclusion. We looked at, for example, the CNL exclusions put in place in 1990 and 1991 to determine if events following the exclusion bore out that products excluded from the program were, in fact, competitive. We found that two-thirds of the excluded items, in fact, lost exports to the United States and lost market share once they were excluded from GSP benefits.

We think that the decisionmaking process requires more publicly available information, including items such as guidelines on interpreting such key provisions as "import sensitive" and "sufficiently competitive," as well as more information about decisions that are made on accepting or denying petitions.

We think that incomplete petitions should be rejected. They place an undue burden on U.S. industry. One of the objectives of this program is to balance the benefits that the developed countries receive with the interests of U.S. industry. We believe that the administration's proposal is, in fact, moving to respond to this particular concern. We think that the 3-year rule needs to be strengthened with respect to considering product additions so that the process is not unduly burdensome on U.S. industry.

With respect to country practice provisions, we think, in fact, they should proceed on a different cycle than is currently the case. They are currently considered on the same cycle as the product addition reviews and we do not think it is really appropriate to handling country practice issues. We need more flexibility with respect to country practice provisions so the United States can be responsive to circumstances in a timely manner. For example, as when commitments that are made to overcome certain noncompliance

with accepted standards on IPR and worker rights are, in fact, not fulfilled.

I think that we also need to be more flexible with respect to the type of sanctions we apply. Rather than making a country ineligible for GSP, in response to country practice violations, we think that partial revocation of GSP benefits would be an extremely valuable alternative to sanctions. First, partial revocation is more likely to be used than complete revocation. And second, based on our rather extensive work on the impact of sanctions over the years, we found that partial sanctions with the threat of more severe sanctions down the road actually tends to work much better than dropping the full force of the maximum sanction on the intended target all at once.

Finally, recognizing the declining benefit levels under GSP because of the countries being graduated for specific products and because of the tariff reduction provisions in the Uruguay Round Agreement, the truth is, GSP gives the United States fairly limited leverage to affect the behavior of beneficiary countries.

As a practical matter, we have a concern that adding additional country practice provisions might further dilute available leverage with respect to IPR and worker rights. If too much is asked of the beneficiary developing countries relative to the benefits they receive, they may decide to just pass up the benefits. In that case we would, in fact, unfortunately lose whatever leverage we have under the program to improve behavior with respect to country practice issues.

Thank you.

Senator BAUCUS. Thank you very much, Doctor.

[The prepared statement of Dr. Mendelowitz appears in the appendix.]

Senator BAUCUS. Mr. Levinson, you said earlier that you felt GSP is a better lever now than Special 301. Is that correct?

Mr. LEVINSON. I would not say it was better. I think what I meant to say was they are both complimentary. You know, you have been really one of the architects of Special 301. You recognize that intellectual property essentially is a perishable good. That is, if we lose a market window in any particular market our product is destroyed for all practical purposes.

Some of the examples that I brought around, hopefully that I can hand up to you, will show you why we live in a perishable creative world.

Here is a pirated copy of Jurassic Park. This was developed by a pirate factory in India and smuggled and transshipped through to other parts of the world. Jurassic Park is not available today, Mr. Chairman, in the United States in this form. It has already been transshipped throughout the developed world.

Senator BAUCUS. Why is Jurassic Park not available today?

Mr. LEVINSON. The release window is not open yet.

Senator BAUCUS. When is it going to open?

Mr. LEVINSON. A couple months. It has been in the movies but you cannot see it in your home yet until October of 1994. The pirates have already beaten Universal to the punch overseas. It is really probably one of the more startling examples of a high tech operation that we talked about.

There are lots of abstractions to this process. But you can see it firsthand in terms of heavily duplicated popular cassettes of Genesis, Michael Jackson, Purple Rain and unauthorized copies of translations of books on seed technology. Look at this, a computer program down to the end, all done by a kind of high speed, high tech laser factory operation.

Senator BAUCUS. There is a lot out there, I grant you. I know there is a lot out there. That is true.

Mr. LEVINSON. Some very sophisticated. The answer to your question earlier was that I think both are complementary. Special 301 has provided an accelerated process recognizing the rapid window in which all of our products close now.

Senator BAUCUS. Can you give us a better sense of just when, under what circumstances GSP works whereas Special 301 does not and vice versa?

Mr. LEVINSON. Special 301 may have some truncations as a result of accession to GATT and to the WTO, that is the scope of retaliation in areas may be somewhat limited. I am not sure to what degree the limitation will render it less effective than it has in the past.

But the one thing we do know about the GSP as you have referred to it earlier in your opening remarks, it is unilateral, it is nonreciprocal. And as a result of the combination of forces, GSP remains a very powerful tool and with the administrative suggestions we made for streamlining the petition process, I think we would have a very effective weapon going forward.

Senator BAUCUS. What about Dr. Mendelowitz's suggestion that there would be more flexibility here, you know, partial revocation or partial extension rather than——

Mr. LEVINSON. I think in any negotiation the fact that you can graduate, if you will, activity always helps you in the end. I mean, our objective after all is to have adequate and effective enforcement throughout the world, beyond even the base line of the TRIPS standard. I think that as a negotiating technique if it is not an all or none proposition it may be more efficacious.

Senator BAUCUS. Now, do you think this administration is enforcing the elected proper provisions of GSP as vigorously as it can or could or should?

Mr. LEVINSON. Well, I can only say based on our experience we have had very outstanding experience with the trade policy committee, Mr. Damond, and as far as we are concerned, we had good cooperation in the past.

But I think it is accelerating with a much stricter recognition that loss of intellectual property overseas translates into loss of jobs and an economic base here in the United States. So for the $2.5 billion of pirated material in the developing world, think of what that would have meant if we were able to have an equivalent amount of sales and exports, that quantity of copyrighted products in terms of our job and investment base.

Senator BAUCUS. Is there a correlation between the countries that get the greatest benefits and the countries that conduct the most pirating?

Mr. LEVINSON. I am not sure we have done a grid on that. I think in my statement I refer to three problem countries today, which are Turkey, Poland and Egypt. Poland is beginning to make some progress. Egypt provides at least one example of unauthorized translations.

The answer is, I am not sure that we have compared the two. I would say over the last year or two we have gotten some excellent support from the general counsel of USTR, Ira Shapiro, and the group that Mr. Damond operates. The suggestions for petition processing streamlining can be undertaken in the regulatory reform of GSP. I think we have come a long way.

Our major concern is to have a 301 petition filed at the same time with the GSP petition. That would allow us to make the arguments under both branches and both weapons in our arsenal at the same time rather than have them divided into two different sequences.

Senator BAUCUS. So are you saying that any countries that are on, say, a 301 watch list should be the same countries that would be on a GSP watch line?

Mr. LEVINSON. There could be a parallelism, assuming, of course, that the developing countries fall within the GSP. But there are a lot of countries that do not fall under GSP eligibility which are subject to 301 sanctions. So in a sense, the two become complementary, both Special 301 and GSP.

Senator BAUCUS. I understand that. So there is a complementary. But on the GSP side, are there any countries which you think should qualify roughly informally on a priority status of some kind? You mentioned Egypt, and Turkey, and Poland.

Mr. LEVINSON. Egypt and Turkey and I believe we have submitted to the USTR a request that Turkey become a priority watch list country, that Poland stay on the watch list, and that Egypt also stay on the watch list. I use the word complementarian as the only word that can describe it. To some degree 301 reaches beyond GSP and to some degree GSP reaches beyond 301.

Senator BAUCUS. Now you answered those countries. Are there certain intellectual property violations with some products in some countries compared to others? I cannot believe they are all the same with respect to all of them.

Mr. LEVINSON. They are not as a matter of fact. Appending to our testimony, I think you will see a grid of 36 or 37 nations, some of whom are GSP nations, some of whom are 301.

Senator BAUCUS. I am talking about products.

Mr. LEVINSON. The largest quantity of theft, and it varies from place to place, would be in the area of computer programs with motion pictures second, records and music third, and books fourth, in that order of descending amounts.

Cable satellite signal theft has been prevalent as I think you know throughout the Caribbean because of the satellite footprint that falls into all of those areas. We are making some progress, as you know, in Guatemala.

Senator BAUCUS. Why should there not be a little tighter standard written into GSP with respect to intellectual property, like say the TRIPS provision in the GATT agreement?

Mr. LEVINSON. I am not sure the TRIPS agreement gets us as far as the adequate and effective standard in 301 and GSP. Our concern is that TRIPS becomes a base line rather than the absolute standard, particularly, one, in connection with the new technologies that are emerging; and number two, TRIPS did not grant to United States copyright holders a full national treatment provision such as that found in the NAFTA.

So our sense is that although TRIPS is extraordinarily important and useful, it does not set the ceiling on enforcement and rather gives us a floor to work upward in bilateral negotiations.

Senator BAUCUS. Is that a view that is shared universally in the intellectual property community?

Mr. LEVINSON. Yes, I believe that is so. And hopefully in the implementing GATT legislation that point can be raised and discussed with you all.

Senator BAUCUS. Thank you.

Mr. Greenwalt, you heard Ambassador Yerxa say, you know, it is awfully complicated to try to figure out some kind of—if not environmental—maybe sustainable development standard here in GSP. What is your reaction to that?

Mr. GREENWALT. Well, I have great respect for my friend Ambassador Yerxa. Life is full of complications and I think of the effort that was made and the successes that were achieved in NAFTA and in the side agreement. That can be done.

I think some of the reactions sometimes are that we are attempting to measure with a micrometer that which we may carve out with an ax. Said another way, some may be seeking more detail than is absolutely necessary in some of these matters.

I think fundamental environmental standards or requirements are fairly simple and can be rather simply enunciated, things like determining whether a nation has a set of environmental laws and if so, how well they are enforced as is possible; that there is an opportunity, as I suggested in my testimony, for citizens to get involved in the action, that there be some transparency about that action.

I do not see this as being so complex as to suggest the need to walk away from it. Far from it. I think we simply address these problems and overcome them.

Senator BAUCUS. And, of course, there is another dimension here. It is not just human health is important as human health is in environmental standards, including aesthetics. But there is also a very strong economic dimension here.

Mr. GREENWALT. Oh, absolutely. No question.

Senator BAUCUS. That is, when we encouraged Mexico, for example, to raise its environmental standards, that adheres to the direct and very positive economic benefit of the United States because those companies no longer have—in Mexico anyway, would have quite the same comparative advantage that they otherwise would have.

So there is a very, very strong, in fact, maybe even as strong an economic dimension to this as there is environmental.

Mr. GREENWALT. Not to mention the fact that some of the resolution of those problems may involve the purchase of American made equipment to resolve environmental problems.

Senator BAUCUS. I appreciate your testimony. Thank you.

Mr. Anderson, you make a very good point about the problems of putting GSP on the fast track along with perhaps the Uruguay Round Agreement. We have fast track obviously with respect to international trade agreements because we are a nonparliamentary form of government.

It is very hard for the United States Executive Branch to negotiate trade agreements with other countries when it cannot control the Congress, for example, which is not the case of most every other country.

But on the other hand, the United States goes around the world and has a GSP agreement with other countries. Could you expand on that? Why do you think it is better for GSP not to be included in the Uruguay Round?

Mr. ANDERSON. I think basically, Mr. Chairman,the very process itself that the fast track implies makes it difficult, I think, not impossible I would argue, but certainly makes it much more difficult to have an open airing of the concerns that the members of the Congress and the public may have on the operation of this statute.

We are not afforded the kind of public debate and discussion that I think these kinds of programs deserve and require. As such, we think we would all be much better served with putting off a consideration of reform of the program until next year at which time you would be in a position to better explain the kinds of changes that are needed and get input from a wide variety of people.

Senator BAUCUS. Some suggest that this administration has been more vigorous in enforcing the worker rights provisions of GSP. Would you share that assessment or not? Or to state it differently, has there been pretty vigorous enforcement or has it been pretty lax in your view?

Mr. ANDERSON. No. I think certainly the Clinton Administration, the committee headed by Joe Damond at USTR has been very assiduous in trying to apply the statute as they see it. Unfortunately, in this situation, as in so many others, as that decision making process goes up the administration ladder, all other kinds of considerations are brought into play.

The least of which I think becomes the application of the standards that are in the statute. Certainly we are concerned that a variety of petitions that we as an institution have put forward on worker rights grounds, that we think are very, very solid and very good have not yet been acted on and I think quite frankly for reasons that have absolutely nothing to do with the GSP statute or with the conditions of workers in the countries in question.

That, is in large measure why we think it very important to clarify the nature of the worker right standards and eliminate the ambiguity of the phrase "taking steps." That leaves so many windows for so many people to avoid doing what the statute requires. I think that step would probably be the most important change that could be made in the program.

Senator BAUCUS. Then you would agree with Mr. Greenwalt that perhaps a little more prescriptive language, some more specificity would be helpful, just as he is suggesting environmental provisions.

Mr. ANDERSON. We are confronted with a situation, for example, today on a petition we filed on worker rights grounds on Malaysia.

That has not yet even been accepted for review. It is in sort of a petition never—never land. I am not entirely sure where it is.

The situation there is quite clear, that workers in the export electronics sector of Malaysia are not today, by government policy, allowed to join unions of their own choosing. This is a situation that has been going on now for 5 or 6 years with little prospect of conclusion. Those are the kinds of things that I think need to be clarified in a reform of the law.

Senator BAUCUS. Just as failure to enforce environmental standards has an anti-competitive effect on American business and American jobs, can you give us some examples of where lower worker rights provisions or lower working standards in other countries have had an adverse effect on American incomes, American jobs?

Mr. ANDERSON. Well, all too sadly, Mr. Chairman, those examples are legion. It is very, very difficult for a U.S. worker in this day and age to compete with workers who are so poor and so desperate that they are forced to work for 50 cents, 35 cents an hour.

Those wage rates are coupled with the ability of companies to transfer plant and equipment, to transfer technology so that the workers' productivity levels are not particularly different. This is a very fundamental problem, I think, that we have to come to grips with.

I think the debate began on this issue during the discussion last year over NAFTA. I think some steps were made in the right direction with the negotiation of the labor and environmental side accords. Obviously, we did not believe they went far enough. But I think they went in the direction that we need to go.

Yet this statute affords us an opportunity to use the unilateral grant of preference to uplift standards in many less developing countries, not only for the workers in those countries because it is the right thing to do, but it also helps workers in this country because it provides a greater market for the goods that we produce here and export there.

Senator BAUCUS. So what you are saying is, that even though capital is going to move around the world, and to some degree even though capital does not respect national boundaries, and it travels the speed of light, when it comes to workers' rights and working standards, that there ought to be a better, you know, more level playing field because that is something that is basic and it is something that we can have some handle on.

Mr. ANDERSON. I think you are certainly correct, Mr. Chairman. I think certainly the Uruguay Round, the 8 years of the Uruguay Round, was an effort to negotiate a rules based international trading system. it addressed all kinds of questions on the capital side of the production equation yet ignored the people side of the production equation.

We very much support and hope for the success of the administration's proposal to establish a working party on worker rights and trade in the new world trade organization as a means of trying to address this most important issue, some basic minimal rules for workers in the international economy. GSP, if properly done, I think can lead the way in that arena.

Senator BAUCUS. Dr. Mendelowitz, at what point does this get too loaded up? I know that is a hard question for you to answer. But I am just curious as to what your thoughts are.

Dr. MENDELOWITZ. I suppose you can do an econometric analysis and figure out what the benefits are on a country-by-country basis, and then do a cost assessment about what it would cost to comply with all the country practice provisions. When the costs exceed the benefits, I guess you could say that is the point at which for sure the country is going to drop out of the program.

As I was sitting here listening to the discussion, I began thinking about the different country practice provisions in terms of not just what the burden might be relative to the benefits they receive under GSP, but also with regard to the best ways to achieve the objectives of the country practice provisions.

When you talk about intellectual property rights, you are talking about a fundamental element of a market economy. If you do not have perfected property rights, whether it be physical property or intellectual property, markets do not work. You can not have a functioning market economy. So in a sense, intellectual property rights are absolutely essential.

And when you talk about worker rights, you are talking about something that is essential to the basic structure of a market economy in a democratic society. Anyone familiar with the history of the 1980's knows the important role played by free organized labor: in Chile in bringing down a dictatorship of the right and in Poland in bringing down a dictatorship of the left. Both of those efforts received tremendous assistance from the AFL–CIO.

So you need property rights to make a market economy work. You need worker rights for the kind of democratic structure that must go along with a market economy. On the issue of protecting the environment, you are dealing with something which is not a fundamental system issue, but you are dealing with something that is fundamental to the future survivability of the world.

Given that, you can sort of prod countries who have low income to move toward worker rights and intellectual property rights because they need to in order to make their societies and their markets work and their economics grow. In the case of the environment, you know, maybe a better approach is with the kind of bilateral environmental assistance programs that AID has adopted with respect to a number of countries where we provide a mix of technical expertise and assistance to purchase U.S. environmental protection capital equipment, which both aids our exports of environmental technology, and also provides an added incentive to protect the environment.

So really it is not a question of whether one goal is more desirable than another. It is really a question of what is the instrument or the tool that is best able to achieve the desired objective.

Senator BAUCUS. Those are interesting points. But, of course, one reason—I mean, it is true that environment does not fall neatly in the category of either intellectual property or labor standards and it is for that reason to some degree they are not protected.

Dr. MENDELOWITZ. No, absolutely.

Senator BAUCUS. So the question is, at what point do we begin to try to find some appropriate lever.

Dr. MENDELOWITZ. One of the facts I think is abundantly clear is that there is almost a perfect positive correlation between GNP per capita and efforts to protect the environment. The richer a country is, the more of its resources it spends on protecting the environment. The poorer a country is, the less it can afford to spend because it is dealing with basic issues of food, nutrition, health, and basic infrastructure.

So because of the limited economic capacity of many developing countries and the importance of environmental protection in terms of the costs and the benefits to the world as a whole, it may be an area where the most effective lever is foreign assistance rather than the threat of punitive sanctions.

Senator BAUCUS. This has been a helpful discussion. I want to thank you all very, very much. We are not going to solve all the world's problems here, even though we will take a crack at it. Thank you very much for your time.

The hearing is adjourned.

[Whereupon, at 3:10 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF MARK A. ANDERSON

The AFL–CIO appreciates the opportunity to testify on the proposed extension of the Generalized System of Preferences (GSP) and particularly on the worker rights conditionality contained in the statute.

The linkage of worker rights to trade benefits under the GSP can be a powerful instrument to encourage the adoption of internationally recognized labor rights and standards, and thus support the basic premise of this government program to promote equitable economic growth and social progress in the less developed world. We are concerned however, that the program is often operated as an expensive foreign aid program to support short-term foreign policy objectives and to provide financial benefits for U.S. and foreign multinational corporations through the granting of zero tariffs for their products entering the U.S. market.

For this reason the AFL–CIO strongly believes that the GSP extension should not be part of the GATT implementing legislation since it requires a careful review and revision by amendment that is precluded by the fast track process. Further, we are informed that while the administration will propose only a one-year extension of GSP in the GATT implementating legislation because of funding problems, it is their intention to seek a multi-year renewal of this program next year in the reconciliation process that will again preclude congressional amendments to this legislation.

For these same reasons, the AFL–CIO is opposed to Administration proposals that would include fast track negotiating authority, and so-called CBI Parity in the GATT implementing legislation.

Before turning to our specific recommendations on GSP, let me give you some background.

The Generalized System of Preferences, enacted by Congress in 1974, provides duty-free treatment for eligible articles exported to the U.S. from "beneficiary developing countries" ("BDCs"). The guiding principle of the program, reflected in the original legislative history, is that giving BDCs a temporary trading advantage through duty-free treatment of exports would encourage long-term, sustainable development, thereby reducing the need for unilateral U.S. aid and increasing demand for U.S. products. The initial program failed to accomplish any measurable development goals. As Congress expressed in the legislative history to the first renewal of GSP in 1984, the benefits of the program were largely restricted to the "privileged elites" in the developing countries. To solve this problem, Congress amended GSP in 1984 by adding a new requirement for eligibility as a BDC—now a country must be "taking steps" to comply with "internationally recognized worker rights." This provision was designed to improve the situation for workers in BDCs, who could be expected to gain a greater share of the economic benefits flowing from the GSP program. In addition, Congress was concerned that the lack of worker rights acted as an inducement for U.S.-based firms to transfer production to BDCs, thereby displacing U.S. workers.

The AFL–CIO believes, the 1984 amendments have not been as effective as intended in achieving the development goals of GSP. Since 1985, there have been a total of 95 petitions concerning worker right's eligibility under GSP. Of this number, 34 were summarily rejected by the Administration, and therefore not subject to any review. Thirty-nine were accepted for review and the other 22 were petitions on cases already accepted but continued over multiple petition periods.

As a result of eight years of activity, seven countries experienced a withdrawal of benefits on worker rights grounds. Another three saw these benefits withdrawn

as a result of the Executive Branch's general review in 1987. Today only five, economically weak countries—Burma, Mauritania, Liberia, Sudan, and Syria continue to be denied preferential access.

The AFL–CIO believes that a far greater number of countries are not adhering to internationally recognized worker rights and their continued eligibility is due to a failure to apply clear standards, and a review process that is opaque and inconsistent.

The Clinton Administration's proposal continues the GSP program without substantial change. Amendments are necessary to ensure appropriate enforcement of the worker rights provision and to implement the intent of Congress in passing the original GSP program.

CLARIFYING THE STANDARD OF "INTERNATIONALLY RECOGNIZED WORKER RIGHTS"

The discretion to determine whether a country has been "taking steps" has been used by the Executive Branch to avoid implementation of the worker rights provision. This has allowed countries who abuse worker rights to continue receiving millions of dollars in GSP benefits without fulfilling the requirements of the statute. For example, two countries—The Dominican Republic and Malaysia—currently subject to AFL–CIO petitions—have been found over the years to be "taking steps, " while still denying workers their basic rights.

The worker rights provision is the only condition to GSP eligibility that includes the "taking steps" language. By way of contrast, the provision to protect intellectual property rights requires a country to provide "adequate and effective means under its laws." The "taking steps" language should be deleted and the phrase, "has adopted and is enforcing laws" that protect internationally recognized worker rights be substituted. This change will provide a similar level of protection for worker rights, as is provided to intellectual property rights, as well as providing a clear standard upon which judgements can be made.

This change will still leave the President with discretion to continue GSP benefits, notwithstanding a country's failure to meet the requirements, after the President reports to the Congress his determination that it is in the economic interests of the U.S. to do so.

IMPROVING THE PROCEDURES OF THE GSP REVIEW PROCESS

There is general agreement that the present GSP review has suffered from arbitrary determinations, largely due to the lack of clear rules. The AFL–CIO believes that new regulations are needed to make the review process more transparent, predictable and consistent. We are particularly concerned that more than one-third of the worker rights petitions submitted over the last eight years were not even reviewed.

The Administration's bill includes several pages of discussion on the need to improve procedures, but falls short of what is needed. Their proposal to restructure and lengthen the acceptance and review process is particularly ill considered. The process needs to be speeded up, not slowed down.

At minimum, new regulations should include the following elements:

- Any petition filed shall be accepted for review unless there is a specific finding that the petition is frivolous.
- Any person may file a petition seeking the withdrawal of the designation as a beneficiary developing country for failing to meet the worker rights criteria of the statute.
- Failure to meet the worker rights criteria in specific sectors can result in a partial withdrawal of benefits.

GENERAL REVIEW

The Administration's proposal eliminates, in Sec. 504, the general review of conditions in all recipient nations. The AFL–CIO believes that this would be a serious mistake. The best way to judge whether any nation meets or fails to meet the eligibility requirements of this statute is through continued review. Most nations which are currently judged to be eligible to receive GSP have not been subject to a comprehensive review. The AFL–CIO believes that a review of conditions in beneficiary developing countries should be required every three years.

COMPETITIVE NEED LIMITS

Competitive need limits were originally legislated to spread GSP benefits among beneficiary developing countries and to prevent undue harm to domestic industries from competitive products receiving duty free treatment. Under certain cir-

cumstances, the President can waive the dollar and import share competitive need limits.

The Administration has proposed to lower the competitive dollar limit, an amendment we support, but at the same time expand the ability of the President to waive this requirement.

The AFL–CIO believes that the waiver authority has been abused in the past, and should be further circumscribed, not expanded. For example, we are informed that the Administration will soon grant waivers for hundreds of millions of dollars of products from Malaysia, ignoring the intent of Congress. Lowering the dollar limit will do no good, if the Administration regularly waives its requirements.

CHINA AND GSP

Under current law,the President is prohibited from designating as a BDC a country which is communist; unless its goods receive MFN treatment, is a GATT contracting Party and a member of the IMF, and is not controlled by international communism. The Administration's proposal would allow any country with MFN status to be eligible for GSP benefits. If adopted, this language would make China eligible for GSP designation. To ensure that this possibility does not occur, the AFL–CIO urges that China be added to the list of GSP ineligible countries found in Sec. 502.

Mr. Chairman, the GSP continues to hold out the promise of promoting equitable social and economic development. These needed changes will bring us closer to realizing that goal.

PREPARED STATEMENT OF CONGRESSMAN GEORGE E. BROWN, JR.

INTRODUCTION

Mr. Chairman, I am today introducing with my colleague, Congressman John La Falce, comprehensive legislation to extend and make badly-needed improvements in the most important trade program governing U.S. relations with developing nations on the Third World—the Generalized System of Preferences (GSP) Program.

The GSP law was substantially amended in 1984 to increase trade with developing countries and to spread the benefits of trade more broadly within every trading nation in order to stimulate long-term, sustainable development. The goal was to bring GSP implementation more into concert with the fundamental premise of the founding of the GATT in 1948–49.

Specifically, the GATT Preamble states, "Relations among countries in the field of trade and economic endeavor should be conducted with a view to raising standards of living and ensuring full employment." The subsequent generation of knee-jerk free traders seem to have forgotten this underlying purpose of trade liberalization. Trade is not an end in itself, but a mechanism for improving the standard of living for people, most of whom are workers.

The guiding assumption underpinning the GSP program and reflected in its original legislative history has been that giving developing countries temporary trading preferences through duty-free treatment of many of their exports would encourage long-term, sustainable development, thereby reducing the need for unilateral U.S. aid.

The original GSP program was quite simple in its operation, but it failed to achieve its primary development objective. The program permitted countries identified as "beneficiary developing countries" (BDCs) to export to the U.S. duty-free any products listed as eligible articles. Providing duty-free access to the U.S. market, GSP was expected to increase exports from BDCs and provide an incentive for investors to locate new plants in BDCs, thus creating jobs, stimulating the local economies, and gradually reducing the need for traditional forms of direct development aid. These surface economic goals were partly achieved, but broad-based development was quite limited.

As Congress expressly indicated in the legislative history to the first re-authorization of GSP in 1984, which resulted in amendments to attempt to rectify the failure of the program to achieve the development objectives, the benefits of the program were largely restricted to the "privileged elites" in a handful of newly-industrialized developing countries.[1] There was also increasing evidence that the GSP program was providing a strong incentive for U.S. employers to relocate to developing coun-

[1] *H.R. Rep. No. 98–1090,* 98th Cong., 2d Sess. 11, *reprinted in, Committee Report* at 5111.

tries, where they could take advantage of the absence of fundamental worker rights and substandard labor conditions coupled with duty-free access to U.S. markets.[2]

THE 1984 GSP AMENDMENTS REQUIRED COMPLIANCE WITH WORKER RIGHTS TO BE ELIGIBLE FOR GSP BENEFITS, BUT THE PAST TWO ADMINISTRATIONS DISAGREED WITH THE POLICY AND FAILED IN FUNDAMENTAL WAYS TO ENFORCE THE LAW

Rather than abolish the GSP program, or simply accept the Reagan Administration's recommendation to transform the program in ways to browbeat developing countries about counterfeiting and market access,[3] Congress also tackled the problems associated with the systematic exploitation of workers in BDCs. We wrote into the mandatory and discretionary eligibility criteria for GSP benefits whether a country is "taking steps to afford internationally recognized worker rights to its workers." With the added requirement that BDCs must comply with internationally recognized worker rights, the benefits of GSP could be expected to reach more of the impoverished workers, who would finally be able to bargain for a fair share of the benefits of increased trade. In addition, by improving worker rights in developing countries, U.S. companies would be less likely to make investment decisions based upon the availability of duty-free access to the U.S. market from countries that were able to offer labor made artificially cheap due to the systematic suppression of worker rights.

For reasons that will be discussed in detail, the goals of Congress in passing the 1984 amendments have been largely unrealized due to the failure of the Reagan and Bush Administrations to properly implements and enforce the GSP worker rights provisions. The main problem arose because too much discretion was left to the executive branch in determining whether a BDC was in compliance with the worker rights provisions. Accordingly, the Reagan and Bush Administrations undermined enforcement of the worker rights provisions. They pursued a policy of promoting trade with the overriding goal of increasing the volume of GSP trade, leaving concerns as to whether the workers benefitted to the whims of employers to share their bounty and to a belief in the failed policy of "trickle down" economics. This was the policy approach that Congress sought to change in passing the 1984 amendments—the benefits of increased trade through the original GSP program had not resulted in any measurable improvement in conditions for workers, so Congress took the step of requiring that specific standards were enforced to release the flow of benefits that had previously been trickling down drop by drop without any broad-based impact.

Disagreement with the goals of the 1984 amendments, coupled with broad enforcement discretion, allowed the Reagan and Bush Administrations to substantially negate congressional intent. Enforcement was neglected to such an extreme degree that all of the parties that had ever petitioned in the annual GSP administrative review for stronger enforcement of the GSP worker rights provisions banded together and filed suit against the Bush Administration, seeking a judicial order requiring the executive branch to enforce the GSP law consistent with the intent of Congress.[4] The case, *International Labor Rights Education and Research Fund et al* v. *George Bush et al*,[5] resulted in a split decision in the Court of Appeals for the District of Columbia Circuit in which the judges expressed differing rationales, but

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[2] *Id* at 5111-12; 130 *Cong. Rec.* at 977-79.

[3] The Reagan administration proposed a ten-year extension of GSP with no substantial change except provisions for greater access to foreign markets. 130 *Cong. Rec.* at E977. Congressman Pease, the sponsor of the 1984 amendment bill, stated in reference to the bill proposed by the Reagan administration, "[a]s is customary with the Reagan administration's trade policy, there is nothing in the President's bill that recognizes the impact of a program like GSP upon American workers . . ." 130 *Cong. Rec.* at E978.

[4] There were a total of 23 parties who joined together to challenge the failure of the Bush administration to enforce the worker rights provision consistent with the intent of Congress: The International Labor Rights Education and Research Fund; The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); International Union of Electronic, Electrical, Salaried, Machine, and Furniture Workers; International Union, United Automobile, Aerospace and Agricultural Implement Workers of America; American Federation of State, County and Municipal Workers; United Steelworkers of America; International Longshoremen's and Warehousemen's Union; International Ladies Garment Workers Union; Amalgamated Clothing and Textile Workers Union; Communications Workers of America; International Association of Machinists and Aerospace Workers; United Electrical Workers; Human Rights Watch; North American Coalition for Human Rights in Korea; Lawyers Committee for Human Rights; Council on Hemispheric Affairs; Institute for Policy Studies; Indochina Resource Center, Inc. d/b/a/ Asia Resource Center; Washington Office on Haiti; Massachusetts Labor Committee in Support of Democracy, Human Rights and—Non-Intervention in Central America; American-Arab Anti-Discrimination Committee; Columbian Fathers Justice and Peace Office, and Bread for the World.

[5] 752 F. Supp. 495 (D.D.C. 1990), *aff'd by a divided opinion,* 954 F. 2d 745 (D.C. Cir 1992).

left standing a lower court ruling that the present GSP law leaves broad discretion in the hands of the executive branch and that the Congress would need to amend it in order to achieve its expressed statutory purposes.

If we don't enact amendments now to further clarify congressional intent, the substantial GSP benefits of duty-free access to U.S. markets will continue to be available to countries that systematically deny internationally recognized worker rights. The past decade has shown that the executive branch will continue to be exercised in ways that minimize the impact of the GSP worker rights provisions. This will allow countries that are among the worst offenders of worker rights, and many large U.S.-based multinational corporations operating in such countries, often to take advantage of unprotected labor kept cheap by the suppression of worker rights, to continue receiving billions of dollars in GSP benefits without fulfilling the reciprocal responsibility of allowing workers to share more fully in those benefits. Without improved specific, enforceable provisions requiring that BDCs respect internationally recognized worker rights, the goal of encouraging sustainable, broad-based economic development will not be achieved.

FURTHER AMENDMENTS ARE NEEDED TO REALIZE THE ORIGINAL DEVELOPMENT GOALS OF THE GSP PROGRAM

It is now up to the Congress to take the required steps to restore the original goal of the GSP program. The 1994 GSP Renewal and Reform Act seeks to more nearly fulfill the intent of Congress in enacting the worker rights provisions a decade ago. By improving BDC compliance with internationally recognized worker rights, this legislation will ensure that BDCs spread the benefits of the GSP program to a broader base of citizens. This will directly encourage sustainable development and will allow workers to finally begin to purchase some of the products they make, increasing global demand.

In addition, improved compliance with worker rights in BDCs will help curb the loss of U.S. jobs by reducing the gap between worker rights and labor costs in the U.S. and developing countries, thus allowing legitimate comparative advantages to guide investment decisions and discouraging the practice of rewarding countries that are the most willing to deny worker rights and maintain wages that are artificially constrained.

THE GSP ADMINISTRATIVE REVIEW AND ENFORCEMENT PROCESSES MUST BE IMPROVED

A brief history of the evolution of the GSP administrative review and enforcement processes are necessary to understand why changes are needed.

Shortly after the 1984 GSP amendments were enacted, the GSP Subcommittee (the GSP Comm.) within the Office of the U.S. Trade Representative (USTR), which is comprised of representatives from USTR and the Departments of Agriculture, Interior, Labor, State and Treasury, drafted and implemented new.regulations to establish new procedures under which an "interested party" may petition the GSP Comm. to review whether a country is in compliance with the worker rights provisions and other eligibility criteria that apply to designation of BDCs or eligible articles under the GSP program.[6] This was in furtherance of Congress' expressed intent to allow "parties interested in the implementation and protection of . . . worker rights" to participate fully in the review process to the same extent as "parties having a significant economic interest."[7]

The current administrative review process thus requires an interested party to file a petition with the USTR that documents alleged violations of internationally recognized worker rights within a GSP beneficiary country. The GSP Comm. then makes a determination as to whether to summarily deny the petition or whether to accept it for investigation and public hearing.

From the 1984 enactment of the worker rights provisions, their enforcement was politicized and undermined by the Reagan and Bush Administrations, thus permitting many of the most serious offenders of worker rights to continue receiving GSP benefits.

The list of countries that were first cited by labor and human rights experts as serious violators of worker rights and the subject of GSP petitions was relatively

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[6] 615 C.F.R. Part 2007.

[7] *Committee Report* at 5125–26. GSP decisions are made presently by the GSP Comm. on a yearly cycle. The regulations require that a petition be filed and accepted for review before the enforcement process can begin. Petitions must be filed on June 1, the announcement of petitions that are accepted for review is made on July 15, public hearings on the accepted petitions are held in September, followed by a period of investigation. Findings either that the countries under review have complied or are being removed from the program are announced on April 1 of the following year.

short: Guatemala, Dominican Republic, El Salvador, Indonesia, Malaysia, Mexico, the Philippines, and Thailand. Yet, those countries escaped enforcement of the GSP worker rights provisions, in no small part due to pressure brought upon USTR by U.S.-based multinational corporations with large-scale investments and production in those countries and the duty-free access to the U.S. market afforded their exports to the U.S. via the GSP program.

The following specific regulatory practices have allowed the GSP Comm. to avoid proper enforcement of the GSP worker rights provisions:

- *The GSP Comm. has declined to take a pro-active role in enforcing the worker rights provisions*

Rather than take an active role in enforcing the worker rights provisions of this program, the GSP Comm. has transformed the worker rights review process de facto into an adversarial proceeding in which the GSP Comm. assumes the role of counsel to the BDC that was the subject of a worker rights petition and effectively requires the petitioners to bear the burden of proving a BDC's ineligibility for GSP benefits. In many cases, the U.S. Government, through its embassy in a BDC or through the annual report on worker rights required by GSP law,[8] has independent knowledge of systemic worker rights violations in that country yet the GSP Comm. has never taken action unless a petition has been filed by an outside party and, in some cases, the GSP Comm. has suppressed internally-developed information if it was not independently developed by an outside petitioner.

This practice conflicts with the expressed language of the statute, which places an affirmative burden on the GSP Comm. to remove a BDC from the program if it fails to comply with the worker rights and other mandatory eligibility criteria. The statute does not condition the required action on whether an outside party does or does not file a petition. Section 2462 (b) of GSP provides that "the President *shall not designate* any country a [BDC] . . . if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country . . .[9] Section 2464 (b) similarly provides that "the President *shall . . . withdraw or suspend* the designation of any country if . . . as a result of changed circumstances such country would be barred from designation as a [BDC] . . .[10]

The language of these provisions requires the President, acting through the GSP Comm., to make determinations based on whatever information is available, including information that the GSP Comm. or other executive agencies have discovered themselves. The statutory command is quite clear—if a BDC does not meet the standard, the President must deny GSP benefits.

The GSP process was intended to identify those BDCs that have failed to meet the statutory requirements, including compliance with the worker rights provisions. Nothing in the statute or the legislative history supports the GSP Comm.'s truncated practices. In fact, section 2007.0 (f) of the regulations expressly permits unilateral action, but this has never been done at least with respect to enforcing the worker rights provisions.

Thus, the problem has been that the GSP Comm. has adopted a presumptive practice of exercising discretion to enforce the law. While in some contexts, administrative bodies given this authority must have the ability to make judgements on which cases to pursue, the GSP law did not give USTR this authority. The law clearly requires mandatory action to deny GSP benefits to any country that fails to meet the standard.

These proposed amendments to GSP clarify the duty of the USTR to review all beneficiary countries for each of the madatory eligibility criteria, including worker rights violations, based upon information readily available to them and not just in response to information contained in petitions filed by outside parties.

- *The GSP Comm. has imposed a "new information" requirement in the regulations which has been utilized to immunize known violators of the worker rights standard from further review*

Sections 2007.0(b)(5) and 20O7.l(a)(4) of the GSP Comm.'s current regulations require that a petition include "substantial new information" before a previously reviewed country will be reviewed again, regardless of whether the country is in fact in violation of the statute.[11] In practice, the GSP Comm. has refused to review serious, undisputed violations of the statute if similar allegations were made in a previous petition that was denied even though the violations may not have stopped.

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[8] 19 U.S.C. §2465 (c).
[9] 19 U.S.C. §2462(b) (emphasis added).
[10] Id. §2464(b) (emphasis added).
[11] 15 C.F.R. §§2007.0(b)(5) & 2007.1(a)(4).

Although there are numerous examples of this practice, perhaps the clearest illustration of how far the Bush Administration went to undermine the GSP worker rights provision using the "new information" requirement as a screening device was provided by the refusal to review Malaysia's worker rights practices. In 1988 the AFL–CIO filed a worker rights petition against Malaysia, alleging primarily that Malaysia failed to provide the rights to associate and collectively bargain, did not have a nationally applicable minimum wage law, and used forced labor.[12] After accepting the petition for review, the GSP Comm. issued a decision in 1989 which recited the allegations and concluded without applying any discernible standard that Malaysia was "taking steps.[13]

Following the issuance of the decision, the USTR at the time, Carla Hills, then wrote a letter to the Malaysian Minister of Trade and Finance informing him that she recommended the finding that Malaysia was "taking steps," but she went on to say:

> Our review finds that your government does not allow full freedom for workers to associate and form the labor organizations of their own choosing in certain export industries such as the electronics industry. We also find that certain aspects of your government's Pioneer Industries Program restrict some collective bargaining issues between workers and management at firms with foreign investment.
>
> Besides being inherently objectionable, these practices impede our efforts to obtain a consensus for open markets and liberal trade policies. I urge you to consult with your colleagues in government and the private sector and urge you to look toward the amendment or elimination of these measures. Taking action to modify these practices now can prevent these issues from becoming a focal point . . . in the future.[14]

Thus, the official U.S. Government position expressly found that Malaysia, although cleared for that year, had serious on-going worker rights problems that did not comply with U.S. law and that warranted further steps.

In 1990, the International Labor Rights Education and Research Fund and the AFL–CIO filed additional petitions documenting that Malaysia had not taken further steps with respect to the rights to associate and collectively bargain and that both rights continued to be denied.[15] While the petitions also demonstrated that Malaysia likewise had not enacted a minimum wage law and still utilized forced labor, the primary focus was on the rights to associate and collectively bargain, both because these were the issues that USTR Hills had flagged as needing further steps, and because these two rights are the most essential of the specific rights enumerated in the GSP worker rights standard. Congress acknowledged this by saying that "[t]he capacity to form unions and bargain collectively to achieve higher wages and better working conditions is essential for workers in developing countries to attain decent living standards and to overcome hunger and-poverty."[16]

The GSP Comm. summarily rejected the later petitions, stating that the allegations made had been previously reviewed, and therefore there was no "new information."[17] Thus, Malaysia was effectively immunized from any future scrutiny as long as the acknowledged problems with the denial of basic worker rights didn't get worse. According to the GSP Comm.'s tortured and nonsensical interpretation of the statute, the failure to take further steps does not violate the statute under any circumstances because there is no "new information" if conditions remain the same. The USTR's own concerns with Malaysia's failure to recognize the essential rights to associate and collectively bargain could not be revisited, nor could there be a review of whether additional steps had been taken as required by the statute, and whether Malaysia's economic growth, while fueled by substantial GSP benefits, had actually translated in any way to improved worker rights.[18]

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[12] The petition is available at the office of the USTR.

[13] The decision is available at the office of USTR.

[14] A copy of the letter is on file with the International Labor Rights Education and Research Fund.

[15] The petitions are available at the office of the USTR.

[16] *Committee Report, supra* note 2, at 5111. Appendix B to the State Department's annual report on worker rights likewise states that "no flexibility is permitted" concerning these rights. *Country Reports on Human Rights Practices For 1990: Report to the House Comm. on Foreign Affairs and the Senate Comm. on Foreign Relations,* 101st Cong., 2d Sess. at 1694 (1990) [hereinafter "Country Report"].

[17] Case No. 005-CP-90. The decision is available at the office of the USTR.

[18] Based on traditional economic indicators, Malaysia has made remarkable economic progress since 1987, the year that most of the information for the 1988 petition was based on. GNP in-

Continued

This practice of the GSP Comm. produces the absurd result that countries with the worst records on worker rights are effectively immunized from "taking steps" as long as conditions remain the same, regardless of economic progress or the lack thereof or the lack of any reason for failing to take further steps. While the practice is inconsistent with the congressional intent of the GSP statute, which already directs that previously designated BDCs must be removed from GSP eligibility "as a result of changed circumstances,"[19] in order to ensure that this practice does not continue, the statutory language must be further revised. The proposed amendments in this bill provide for mandatory review of all petitions, with a carefully -restricted right to dismiss a "frivolous" petition. This change will ensure that all serious allegations are reviewed to ensure that countries failing to meet the mandatory eligibility criteria are not permitted to receive the GSP benefits.

- *The present procedures have been construed by USTR to allow only for the most extreme remedy of disqualifying the entire country from GSP, and this has discouraged enforcement actions*

Under the current GSP enforcement procedures and interpretation of regulations, the only remedy practically available following a successful petition is that the BDC is to be completely disqualified from receiving GSP benefits. This has caused the GSP. Comm. to be very reluctant to enforce the law. Yet, in some cases, there is a single industry within a beneficiary developing country sometimes dominated by foreign investors, where the most egregious worker rights violations are found. The host BDC is, as a practical matter, powerless to insist upon enforcement due to the threat that the industry will simply relocate to a more friendly country.

This legislation changes the "all or nothing" quality of the petitioning process and makes clear that a petition can be filed against an entire country, in cases of widespread, government-encouraged worker rights violations, an entire industry, in cases where one industry dominates worker rights abuses, or even a specific product. This will remedy problems associated with forcing a BDC to defend against charges of worker rights violations and non-compliance with other eligibility criteria in order to avoid losing GSP benefits for the entire country even though a particular industry or company is clearly the main culprit.

CLARIFICATION OF THE INTERNATIONALLY RECOGNIZED WORKER RIGHTS STANDARD

In adding the worker rights provisions to the GSP program in the 1984 amendments, Congress provided a precise five-factor definition of "internationally recognized worker rights:"

> (A) the right of association, (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.[20]

The most serious problem with enforcement of the GSP worker rights provisions to date has been the absolute failure of the executive branch to apply any consistent standards for the practical application and steady improvement of worker rights over time. The erratic and arbitrary application of the worker rights provisions has drawn the most serious criticism of the administration of the GSP program.

One of the most basic principles of administrative law is that agency determinations must include a clear standard and a reasoned analysis.[21] The GSP Comm.'s record to date falls far short of this requirement. The only written effort to provide an official interpretation of the meaning of "internationally recognized worker rights" is included as Appendix B in the State Department's Annual *Human Rights Country Reports.* That official position makes clear that the basic worker rights cited in the GSP statute are absolute: "no flexibility is permitted concerning the acceptance of the basic principles contained in human rights standards, i.e., freedom of

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creased from 74,729 million Malaysian Ringgit (M$) to 95,150 million M$ in 1989, and per capita GDP increased from M$ 3,686 to M $4,103 during the same period. Finally, and perhaps most important, exports to the U.S. increased from 44,733 million M$ to 65,777 million M$. *Country Reports on Economic Policy and Trade Practices. Report to the Senate Committees on Foreign Relations and Finance and the House Committees on Foreign Affairs and Ways and Means,* 101st Cong., 2d Sess. 302 (1990). Congress was quite clear in stating that economic progress required additional steps to comply with the worker rights standard.

[19] 19 U.S.C. §2464(b).

[20] 19 U.S.C. §2462(a)(4).

[21] *see, e.g., Motor Vehicles Mfrs. Ass'n.* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 43 (1983); *Amalgamated Transit Union International* v. *Donovan,* 767 F. 2d 939 (D.C. Cir. 1985), *cert. denied* 475 U.S. 1046 (1986).

association, the right to organize and bargain collectively, the prohibition of forced labor, and the absence of discrimination."[22]

Yet, that official position has never been fully applied in any case reviewed by the GSP Comm., which is in itself a violation of established administrative law principles since an agency is bound to follow its own rules and regulations.[23] While the written record is clear that the GSP Comm. has never applied the Appendix B official position, there are numerous examples of cases that would necessarily have been decided differently if USTR had done so For the sake of brevity, the previously discussed example of Malaysia is illustrative. Following the 1988 GSP review, USTR Carla Hills recognized that Malaysia had serious problems and was not in compliance with the fundamental worker rights of freedom of association and the right to form independent unions and bargain collectively. According to the official U.S. Government position as expressed in by the State Department in Appendix B, "no flexibility" is permitted with respect to those two important rights. Yet, despite this prohibition, the GSP Comm. found that Malaysia should not be denied GSP eligibility.

A further failing is that the GSP Comm. consistently ignores internationally-recognized laws and standards that give substance to the five factors of the worker rights provisions in U.S. law. It is this shortcoming that has fueled criticism that USTR's application of the GSP worker rights provisions violates principles of national sovereignty by imposing arbitrary standards upon other states that are not formally binding upon them by virtue either of treaty undertakings or of customary international law.

While the legislative history makes clear that Congress intended to avoid such problems by utilizing universally recognized human rights standards,[24] and even Appendix B expressly notes that ILO standards should be used to define the scope of the protected rights,[25] there is little room to debate that the GSP Comm. has consistently ignored ILO Conventions and specific findings of violations under international law in making its worker rights findings under the GSP law.

In many crucial areas the GSP Comm. has acted in conflict with well established ILO Conventions and rulings. For example, ILO Convention Concerning the Freedom of Association and Protection of the Right to Organize[26] is uniformly interpreted as prohibiting violence or physical threats to workers, recognizing that such conduct is the most extreme and effective deterrent to unionization. Yet, the official position of the GSP Comm. has been that violence against trade unionists is beyond the scope of GSP coverage since it involves violations of "human rights" not "worker rights."[27]

To solve this very basic problem as simply as possible, this legislation incorporates the State' Department's definition of "internationally recognized worker rights" from Appendix B of the Annual Human Rights Country Reports into the GSP statute. Based on the State Department's official position, it makes clear that a BDC must comply with all of the factors pertaining to internationally recognized worker rights and that they are to be applied consistently and objectively, using recognized international standards such as ILO Conventions. These absolute rights include freedom of association, the right to organize and bargain collectively, the prohibition of forced labor and arbitrary discrimination and provision for safe and healthy working conditions and establishment of a minimum age for the employment of children. Furthermore, it makes clear that a country's level of economic development may be taken into account with respect to measuring that country's progress over time with respect to such labor standards as minimum wages and hours of work.

JUDICIAL REVIEW OF GSP COMM. DECISIONS MUST BE PROVIDED FOR SO THAT, LIKE OTHER ADMINISTRATIVE DECISIONS, THE RULE OF LAW WILL GOVERN THIS IMPORTANT AREA

Although in the previously discussed litigation over the enforcement of the worker rights provisions the federal courts ultimately permitted judicial review, this was a

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[22] Country Report at 1694.

[23] *Service* v. *Dulles*, 354 U.S. 363, 372 (1957); *Center for Auto Safety* v. *Dole*, 828 F.2d 799, 803 (D.C. Cir. 1987); *Padula* v. *Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987).

[24] *See* Committee Report at 5112.

[25] *See, e.g.* 1990 *Country Report* at 1693–94.

[26] No. 87 (1948)

[27] While the GSP Comm.'s position is well known, one written example is a letter from former USTR Clayton Yeutter to Holly J. Burkhalter, at the time the Washington Director of Americas Watch, explaining that Americas Watch's El Salvador petition was not accepted for review in part because of its emphasis on human rights issues. The petition documented numerous acts of violence against trade unionists. The letter is on file with the International Labor Rights Education and Research Fund.

ruling that the Bush Administration fought vigorously to avoid. This bill builds upon the federal court findings and expressly provides for judicial review. This will ensure that the decisions of the GSP Comm. are treated like other administrative decisions implementing specific laws of Congress, thus allowing judicial review to reinforce that the intent of Congress is followed.

CONCLUSION

This comprehensive legislation is needed because the GSP law has not yet been implemented consistent with the legislative goals and intent of the Congress. Furthermore, a thoughtful, measured attempt to obtain judicial relief was not successful, so the only remaining course is for Congress to further clarify and improve the GSP law.

The GSP program has not received the media attention of NAFTA or GATT, but it provides a very important and immediate opportunity to put into practice the growing desire among the American people and their elected representatives in the Congress to structure trade programs in law and in practice to spread the benefits of trade more broadly to working people in pursuit of greater economic justice and more sustainable development.

Doctrinaire free trade advocates still resist any effort to link trade and respect for internationally recognized worker rights in developing countries and seek to discredit such efforts by mislabeling and tarring them as "protectionist." But like all sweeping categorizations, this one does a disservice to different voices who question from competing policy perspectives just who is served by traditional, narrow trade agreements as we have come to know them in recent years.

For example, during the NAFTA debate in Congress some members accepted the inevitably of North American economic integration with or without NAFTA, so they focused their attention on whether NAFTA would include enforceable worker rights and labor standards provisions. They sought to induce the Government of Mexico to protect basic worker rights and to link wages to productivity gains, thus hopefully enabling more Mexican workers to earn enough to purchase some of the products they make.

That point was glossed over by those who deliberately sought to oversimplify the policy choice as between those who were for or against free trade. Those who were "for" it now have a massive trade agreement in text that only protects property interests, particularly with respect to intellectual property rights, and provides enforceable rules for uniform trade.

Both NAFTA and GATT negotiations required compromise. Sadly, those compromises once again have come mostly at the expense of workers. The current struggle for the soul of global trade policy parallels much of the policy debate leading up to the enactment of the New Deal in the U.S.

The Hooverites were advocating laissez faire economic policies for business and assured the public that the benefits would eventually produce jobs and prosperity for all,[28] while the New Dealers, led by Franklin D. Roosevelt, argued that without protection for the basic rights of working people and the establishment of minimum national labor standards to prevent cut throat competition between states to attract capital investment, and without corresponding increases in wages and purchasing power for American working families, there would never be a broad-based, sustainable economic recovery from the Great Depression.

The New Dealers were right then and I think there latter-day compatriots who advocate trade-linked worker rights and labor standards are right now. In the 1990s and beyond, however, the economic stakes are even larger as many national governments are pursuing misguided development and trade policies wherein they systematically deny the fundamental rights of their workers and artificially depress wages and other labor standards in a short-sighted quest to attract foreign capital and multinational corporate investment. This GSP legislation will help redress the perverse dynamics of international trade that result in those societies which seek to

[28] One colorful critique of trickle down economics from this period came from a statement by Rep. Lankford:

> The theory of those in power seems to be that if Congress will only help the railroads, the Wall Street bankers, the big manufacturing monopolies, and the immensely rich, enough will ooze through for the laboring man. . . . The contention of the powers that be is that the way to feed a starving dumb brute is to give some thoughtless, selfish man all he desires to eat and perhaps he will have enough bones for the poor dog to gnaw. . . . 65 Cong. Rec. 2570 (Feb. 16, 1924) (Statement of Rep. Lankford).

treat their workers with dignity are put at a disadvantage in the global marketplace by those which prefer to treat their workers with contempt.

PREPARED STATEMENT OF LYNN A. GREENWALT

INTRODUCTION

Good afternoon, Mr. Chairman. I am Lynn A. Greenwalt, Vice President for the International Affairs Division of the National Wildlife Federation (NWF). The Federation is the nation's largest private conservation organization, dedicated to the sustainable management of natural resources and protection of the global environment.

I appreciate the opportunity to testify today regarding Congressional reauthorization of the Generalized System of Trade Preferences (GSP) program; and related environmental issues. The GSP program, under which preferential tariffs are applied to a list of products from eligible countries, is an important instrument for our nation to assist sustainable development in many countries in the world, particularly those that are the poorest.

However, the GSP program as currently constituted pays little attention to the concerns of sustainable development. I should note for the benefit of the Committee that a number of environmental organizations, including the Environmental and Energy Study Institute (EESI), and several others including my own, support environmental amendments to the GSP program. A recent letter sent by EESI to United States Trade Representative Mickey Kantor on behalf of the environmental community describes the problem succinctly: "The GSP program does not promote sustainable development. " The testimony that follows reflects proposals which NWF EESI, and other organizations have developed and it will suggest ways that Congress can rectify' this critical flaw in the GSP program.

In addition to presenting these views I will discuss, briefly, other important modifications to U.S. trade laws that should be made as part of Congressional deliberations on the Uruguay Round implementing bill.

ENVIRONMENTAL REFORM OF THE GSP PROGAM

Mr. Chairman, there is no doubt that participation of the United States in the GSP program can be a critical boost to the development aspirations of countries around the world. In fact, a recent report of the United Nations Conference on Trade and Development (UNCTAD) recognizes that over 160 developing nations and territories have already enjoyed economic benefits from these programs which are operated by the United States and other industrialize countries. In 1992, GSP-assisted exports to the world's developed countries totalled $77 billion, and in 1993 GSP imports into the United States totalled $19.5 billion. Clearly, in dollar terms alone, the trade benefits offered by the GSP program are a significant complement to the bilateral and multilateral foreign aid programs we support.

However, as with our foreign aid programs, there has been too little attention paid to the environmental impact of the kind of international trade that is encourage by GSP benefits. In the past, we have conditioned benefits under GSP based on a country's income, whether the country is Communist, whether it grants access to our exports, whether it is a member of the Organization of Petroleum Exporting Countries, and whether the country has nationalize or expropriated U.S. property. And yet we have never asked a fundamental question: How will the benefits offered under GSP promote sustainable development?

If the GSP program is to help achieve this elusive goal, it must incorporate two kinds of reforms.

First, the National Wildlife Federation believes that we must assure that some form of environmental conditionality apply to the granting of GSP benefits. This conditionality need not result in a country adopting U.S. environmental standards, but might more closely resemble the trade and environment linkages established in the North American Free Trade Agreement (NAFTA), and its side agreement on environment. Do citizens in countries seeking eligibility under GSP, for example, have access to remedies in situations where they have a defined interest in an environmental matter? Are there procedural guarantees in place, in such situations, so that a fair, open, and equitable hearing is provided to concerned citizens? Have countries seeking to become GSP beneficiaries agreed to prevent the creation of pollution havens, and committed themselves to fully enforcing their own environmental laws?

Indeed, environmental conditionality might also involve asking whether basic environmental laws are in place to begin with. And some have suggested linking GSP benefits to countries based on their participation and adherence to international en-

vironmental agreements. Congress should devise mechanisms for conditioning GSP benefits so that this program encourages trade that strengthens environmental protection in the developing countries.

Having made these points on environmental conditionality, let me also make it clear that an approach that rests entirely on environmentally conditionality will be ineffective in encouraging sustainable development in the poorest of the developing countries. To encourage sustainable development, the GSP program must also be retooled to provide additional economic incentives to eligible countries.

One way of doing this will be to change the current list of products that are allowed to be imported into the U.S. under GSP tariff rates. Currently, products like textiles, apparel, leather and other processed commodities, are not eligible for GSP treatment. What happens in practice, as a result of these arbitrary exclusions, is that a minority of countries in the developing world reap the lion's share of benefits from the GSP program. Others, particularly in the strife-torn countries of sub-Saharan Africa, are almost completely shut-out.

You may be interested to know, Mr. Chairman, that the least developed countries in sub-Saharan Africa account for less than one-tenth of one percent of imports coming into the U.S. under the GSP program, according to the latest data we have available. In other words, notwithstanding the critical need for development in these African countries, they receive less than one cent of every one hundred dollars of benefits afforded by the GSP program.

Parenthetically, allow me to note that the difficulties faced by African states in making use of GSP benefits should be an important focus of the White House Conference on Africa which is scheduled to be held on June 25th. We urge the Administration to announce its support, at this conference, for increasing GSP benefits for African states who want to pursue a more sustainable path of development.

As an overall principle, Mr. Chairman, we should evaluate the global allocation of benefits under the current GSP program and, where necessary, reform the program's requirements to assure that the benefits accrue to the least developed countries, rather than a minority of those potentially eligible.

It seems likely that as part of GSP reauthorization, Congress will move to lower the competitive need limits that apply to GSP imports. As you know, these limits basically amount to quotas on the value of products that can be imported into the U.S. under the GSP program. We believe it is appropriate and timely to suggest that greater flexibility be provided to the President in the application of such limits. Specifically, what we would suggest is an allowance for the President to waive, or increase competitive need limits, particularly for the least developed countries that indicate a commitment to sustainable development. This could be an important means of encouraging and providing economic resources to countries striving to pursue a more environmentally sensitive path of development.

Mr. Chairman, the environmental message with respect to GSP reauthorization is simply this: we must be assured that any economic activity, be it liberalized trade, increased foreign aid, or additional foreign investment, occur in such a way as to promote sustainable development. The consitituency for any of our foreign assistance programs, included the granting of trade preferences, is a fragile one in the United States. If we are to encourage our members to support rather than oppose programs like GSP, there must be ample evidence that these programs are designed, and where necessary amended, with sustainable development in mind.

We encourage Congress to make the necessary environmental amendments to GSP as the only way to maintain a healthy consituency for this important program, as well as a means for assuring that its benefits are more available to the countries that need it most.

ENVIRONMENTAL AMENDMENTS TO THE URUGUAY ROUND IMPLEMENTING BILL

Mr. Chairman, there has been some discussion over the past several weeks about whether the bill to implement the Uruguay Round would be a "clean" bill, i.e. without amendments added during the fast-track mark-up process. It now seems very likely that the GSP reauthoriration will be folded into the legislation, and we think it appropriate, as well, that more general environmental amendments to U.S. trade law also be included.

We have provided to you and other members of the Committee a background paper prepared by our Trade and Environment Program entitled, "The Environment and Trade Initiative of 1994: Views on the Environmental Reform of U.S. Trade Law." In brief, the paper calls for updating our trade laws to craft negotiating objectives in the area of environment and sustainable development as a means of moving toward a coherent approach to these difficult issues. In addition to updated negotiat-

ing objectives, we also suggest the need for greater public participation in the negotiation and implementation of trade accords, and a need for appropriate reviews of the potential environmental consequences of both trade and investment agreements we seek with other countries.

Unfortunately, to date there has been little support from the Clinton Administration for putting in place an important element of what they themselves define as an integral part of their trade policy. Clearly, the environment was all but ignored during Uruguay Round negotiations, and despite the best efforts of our negotiators to improve the situation, our organization does not support the agreement because it fails to pay attention to these concerns.

Nevertheless, we are aware, now that GSP will be added to the mix, that a Congressional vote on trade in this session will likely involve issues that go beyond implementation of the Uruguay Round. Given its desire to lessen opposition to the Uruguay Round, we remain perplexed that the Administration has not moved to put its own trade policy in place through appropriate changes to U.S. trade law as part of this implementation bill. It is our hope that members of Congress who understand the important connection between trade and environmental concerns will remind the Administration that these remain important concerns for those weighing their support for the current direction of U.S. trade policy. We encourage members of Congress to adopt our suggestions for environmental amendments to current U.S. trade law, and hope the Administration will do likewise.

In conclusion, Mr. Chairman, it is indeed appropriate, and would serve the cause of those desiring to build a constituency in favor of environmentally oriented and people centered trade, to take this opportunity for bringing our own trade laws up to speed with what will be the preeminent concerns of trade policy over the next several years.

Thank you for the opportunity to discuss these important issues, Mr. Chairman, and I look forward to responding to any questions you may have.

Attachment.

THE ENVIRONMENT AND TRADE INITIATIVE OF 1994 (ETI '94): VIEWS ON THE ENVIRONMENTAL REFORM OF U.S. TRADE LAW

(Stewart Hudson, Senior Legislative Representative, International Programs Division, National Wildlife Federation)

KEY ELEMENTS OF THE ENVIRONMENT AND TRADE INITIATIVE OF 1994

I. AMENDING THE NEGOTIATING OBJECTIVES IN U.S. TRADE LAW

The President of the United States has two legal bases for conducting trade negotiations. The first is under his Constitutional authority to conduct foreign policy. When the President conducts negotiations under this authority, he does so without guidance from Congress. In such situations, the President may reach an agreement and not submit it to Congress because the agreement requires no change in U.S. law (this happens frequently) The President may also submit it as a treaty for formal ratification by the Senate, requiring a two-thirds majority.

The second type of authority involves trade agreements that are likely to require changes in U.S. law, as with the NAFTA and the GATT. In order to avoid crippling amendments to the agreement, or obstructionist debating rules, such as a Senate filibuster, the Executive Branch and Congress struck a deal in 1974. Prior to the negotiation of major trade pacts, the President has agreed to pursue such negotiations in a manner consistent with objectives spelled out by the Congress. In return, Congress votes to approve or reject the implementing legislation without amendment, or unreasonable delay.

This approach, known as "fast track," was first employed for the GATT Tokyo Round agreements in 1979 based on detailed objectives for the United States that had been spelled out in 1974. New authority, with new objectives, was enacted in 1988 for both the Uruguay Round and, subsequently, for NAFTA negotiations. This authority has now expired and therefore the Clinton Administration is likely to seek new "fast track" authority for future trade negotiations, such as an agreement with Chile. Otherwise, once submitted to Congress, these agreements would be subject to amendment and lengthy delay.

The fast track legislation for the NAFTA and the GATT negotiations set out three general trade negotiating objectives, none of which mentioned environmental protec-

tion or sustainable development.[1] There are several options for remedying this deficiency. First, a specific set of objectives for the environment should be proposed. For example, U.S. negotiators might be charged with pursuing trade agreements which:

(a) promote sustainable development;
(b) can be implemented in a manner consistent with domestic and international environmental protection and conservation; and
(c) strengthen the development of environmental laws and regulations.

In addition to these broad environmental objectives, environmental language should be proposed for inclusion in several of the other specific negotiating goals,[2] as a complement to the first option. One might envision adding internalization of environmental costs as an important element of what we seek to achieve in, for example, agricultural negotiations. It would also make sense to spell out new language on trade policy relating to timber and finished wood products, as well as other trade commodities.

Finally, it will be essential to delineate negotiating objectives for specific undertakings, such as U.S. negotiations with other countries seeking to join NAFTA, or as part of continuing discussions within the Asia-Pacific Economic Cooperation forum. Most importantly, U.S. negotiating objectives for GATT negotiations on environmental issues should be established.

Bringing U.S. trade negotiating objectives up to date with today's environmental challenges represents the highest priority in the changes sought by ETI '94.

II. SAFEGUARDING ENVIRONMENTAL PROTECTION EFFORTS

A. Trade Measures

As a nation which consumes more than its fair share of the world's resources, we have an obligation to clean up our environment and reduce our profligate consumption of our earth's natural resources. Otherwise we become partially responsible for the natural resource degradation involved in the production of goods for our markets.

In addition, the failure of our trading partners to enforce their environmental laws, or protect the environment, can undermine our own environmental initiatives, especially when domestic industries, held to high environmental standards at home, are faced with competition from polluting companies overseas.

Environmental protection and the promotion of sustainable development are not limited to national borders, especially given the global reach of most national economies. It is imperative, therefore, that we explore remedies available to the United States in cases where our trading partners fail to enforce their laws effectively and/or where basic standards of environmental protection are not in place.

Trade remedies fall into a few key categories. Some remedies are utilized as action against otherwise *fair* trade practices that are causing serious harm to a domestic industry. Other remedies are taken for *unfair* trade practices that cause injury to domestic industry. Each of these is discussed below, including an exploration of using the trade law's "301 provision" for environmental purposes.

1. Fair Trade Practices Under the GATT, nations are authorized to impose temporary import protection *even when there are no unfair trade practices.* This "escape clause" is activated when the import of a good is increasing rapidly and is causing serious injury to a domestic industry. In the United States, the "escape clause" is also known as Section 201.[3] Under this procedure, a party must bring its case to the International Trade Commission (ITC) which is charged with finding whether there are rapidly increasing imports causing the U.S. industry serious injury. If such a finding is made, the ITC recommends relief to the President, who then has discretion to reject, modify, or adopt the ITC recommendations.

While it appears that Section 201 would be of little utility in protecting the environment, the principles of the "escape clause" might, however, be used for environmental purposes. A safeguard-like measure could be developed and applied to imported products that are made through processes which violate environmental standards. This notion is unprecedented and untested, but should be explored within the United States and internationally.

2. Unfair trade practices Remedies against unfair trade practices include bringing cases to the GATT itself, or bringing unfair trade cases under a nation's domestic law. The latter approach appears to have some potential in the environmental

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[1] USC §2901a. Public Law 100–418, "Omnibus Trade and Competitiveness Act of 1988." August 23, 1988.
[2] Ibid, USC §2901b.
[3] 19 USC §2251.

area. Several applications of domestic unfair trade cases relating to environment are described below.

The first possible action would be under U.S. antidumping laws. Such an action would be brought before both the ITC, where the petitioner must show material injury to the domestic industry arising from the dumped imports, and the International Trade Administration (ITA) of the Department of Commerce, where the petitioner must prove that the product was sold at less than fair value, i.e., dumped. There are two basic ways to prove dumping: (a) the product is being sold in the United States at a lower price than in the country of export, or (b) the product is being sold for less than its cost of production.

Several organizations, such as the World-Wide Fund for Nature, (WWF International) have suggested using anti-dumping laws to assure that domestic industries, which incorporate the price of either complying with environmental laws or installing adequate pollution control technology, are not unfairly undercut by foreign industries which do not comply with environmental regulations. While it is worth exploring this new approach to anti-dumping laws, dumping investigations generally are very complex and expensive to bring, and are particularly difficult in that they require the petitioner to possess fairly detailed knowledge of the relevant industry.

A second approach would be to consider lax enforcement of an environmental regulation an actionable subsidy subject to countervailing duty (CVD) laws. Here again, CVD investigations involve both the International Trade Administration and the International Trade Commission, and as with dumping cases, proof of injury must be established before investigative panels.

There has always been some uncertainty surrounding whether and under what circumstances the failure to act—here the failure to protect the environment—could be considered a subsidy. An amendment of U.S. countervailing duty law stating that failure to enforce an environmental law will be treated as a subsidy might be an appropriate option.

3. Section 301 A third mechanism worth exploring is Section 301.[4] This provision determines U.S. policy in response to a situation in which another nation is acting unreasonably or unfairly in its trade policy. Under Section 301, a private party can petition the United States Trade Representative (USTR) to recommend to the President to withdraw access to the U.S. market in retaliation against another trading partner.

Traditionally, Section 301 has been thought of as applying where another nation refuses to allow or unduly burdens access to its market by U.S. exports, but there is no reason why it could not be used where the unfair practice involves imports. For instance, Representative Gephardt has spoken of a "Green 301"—a measure which would apply to the goods of a nation that is not complying with its own, or with international, environmental standards.

A slightly different remedy could be found under "Super" 301 which was revived by a Presidential Executive Order on March 3, 1994. Basically, Super 301 is a separate way of launching a 301 investigation. It requires the Executive branch to identify countries with a pattern of barriers to trade, to choose two or three of them, and to then seek regular Section 301 remedies against the identified countries. Presumably, an environmental slant (i.e., identifying a country that is not enforcing its environmental laws) could be put on a Super 301 bill.

Decisions about what is "fair" or "unfair" in how a country seeks to protect its environment, especially in situations where multilateral consensus is lacking, raises thorny policy issues. But under current U.S. law, remedies simply do not exist for dealing with trade-related environmental practices in countries with whom we trade. Clearly, some improvements should be explored with respect to U.S. law in this area, even if the final result is multilateral rather than unilateral.

B. Investment Provisions

Over the past several years, the treatment of U.S. investment abroad has been a central feature of bilateral and multilateral trade negotiations. Both the NAFTA and the Uruguay Round's Trade Related Investment Measures (TRIMs) included landmark agreements on investment, though they differed in the extent of their obligations.

The environmental impacts resulting from the increased flow of U.S. investment abroad are largely ignored. The most obvious concern is that foreign governments might lower or fail to enforce their environmental standards in order to attract U.S. investment. This type of bidding -would undermine our ability to maintain high environmental standards here at home, and could contribute to natural resource deg-

[4] 19 USC §2411.

radation in the country where the investment occurs. Another concern is to assure that direct foreign investment from the U.S. does not undermine environmental protection in the country to which it is directed.

The most appropriate means of responding to these concerns would be to include environmental requirements in Bilateral Investment Treaties (BITs). These treaties are often concluded with developing countries in order to ensure that U.S. investments and private ventures are not treated disadvantageously. BITs are a prototype agreement and, for that reason, injecting environmental safeguards into the BIT framework would have a widespread positive effect on other trade and investment agreements.

One example of a BITs requirement on environment would be adoption of provisions, such as those now contained in the NAFTA, which provide for consultations where countries lower or fail to enforce environmental standards as a means of attracting or maintaining investment. In NAFTA, these provisions were also strengthened by the adoption of a supplemental agreement known as the North American Agreement on Environmental Cooperation. Elements of that agreement could also be included as part of BITs, or other investment agreements entered into by the United States.

New negotiating objectives for addressing environmental concerns related to investment should be spelled out by amending the appropriate sections of current U.S. law. Recent recommendations of the USTR's Investment Policy Advisory Committee should be borne in mind. The INPAC noted, "the U.S. Government should seek to expand the NAFTA, with its excellent provisions relating to investment . . ." including those related to environmental protection.

C. Export Controls

Regulating exports for conservation purposes is one means of fostering a more sustainable use of our natural resources. One example of this is the movement to expand a ban on the export of raw logs from the Pacific Northwest by extending the President's authority to do so under the Export Administration Act (EAA)

Unfortunately, this authority is not as clear as some would hope, and may provide too much discretion to the President. One component of ETI '94 would be to provide much needed Congressional guidance in the application of export controls for conservation purposes. The EAA is to be reauthorized this year, offering an excellent' opportunity for examining this issue more fully. Rep. Peter DeFazio has already advanced some important initiatives in this area.

III. ENVIRONMENTAL IMPACT ASSESSMENTS

One of the most divisive issues during the NAFTA debate was whether the USTR should have prepared an environmental impact statement (EIS), consistent with the terms of the National Environmental Policy Act (NEPA). Although the USTR prepared an environmental review of the NAFTA, it refused to do a full-blown EIS, and eventually prevailed in its position in federal court.

Currently, four environmental organizations and a consumer organization are suing the U.S. government to prepare an EIS for the GATT Uruguay Round agreement. It is unlikely that the courts will reverse the final outcome of the NAFTA-EIS case. However, aside from the specific legal details of the requirements of current law, many experts agree that the process of preparing an environmental impact assessment would assist both governmental and public understanding of environmental pros and cons of proposed trade agreements.

Therefore, as an alternative to seeking litigation, ETI '94 would require our government to establish a process for how environmental assessments of future trade and/or investment agreements would be carried out. Such assessments might be prepared *before* negotiations begin, in order to assess different alternatives and guide negotiators towards meeting environmental negotiating objectives. As talks progress, a revision or expanded assessment would allow for mid-course corrections. In general, any assessment prepared by the Administration would go through a public comment period, discuss alternatives and, where necessary, recommend mitigation efforts.

An appropriately-targeted assessment evaluating the environmental impact of a trade agreement is an important aspect of injecting environmental disciplines into U.S. trade policy. To insure that an agreement-specific environmental assessment is prepared properly, ETI '94 would incorporate requirements for the production of environmental assessments as part of U.S. trade law.

IV. ENVIRONMENTAL CONDITIONS RELATING TO THE GSP PROGANN

The Generalized System of Preferences (GSP) is a program under which the United States extends duty-free treatment to imports from certain developing countries. GSP applies to some, but not all of the imports of beneficiary developing countries, and it does not apply to developing countries which do not meet criteria for inclusion in the program.

The country selection process raises the possibility that the President could take into account environmental concerns when extending GSP privileges to other nations. For example, failure of a country to implement its commitments under international agreements like the Montreal Protocol on Ozone Depletion or the Convention on International Trade in Endangered Species (CITES) might affect a country's qualification under the program.

At the same time, modifications of GSP will not be successful if they are based on a purely punitive approach to environment. Expansion of GSP to include environmental standards should be accompanied by incentives for the extra steps taken by developing countries to meet environmental conditions. For example, countries meeting the new criteria might qualify for duty free status for a wider range of traded products than those currently available.

The idea of linking a revised GSP to environmental conditions has been raised by a number of members of Congress, with Rep. George Brown, Jr. taking the lead. If crafted carefully, the environmental provisions in a new GSP program could be a positive move by the U.S. to support sustainable development in many developing countries.

V. EXPORT OF ENVIRONMENTAL TECHNOLOGY

The international market for trade in environmental technology is currently approaching $300 billion per year and could double by the end of the century. The growth of environmental technology opportunities was an important jobs-related environmental aspect of NAFTA, and helped gain that agreement's passage in Congress.

Exploiting these opportunities is important for the competitiveness of the U.S. environmental technology industry, which supports hundreds of thousands of jobs. Congress, in particular Representatives Maria Cantwell, Sam Gejdenson, and others, has identified environmental technology as a key industry worthy of support within the Department of Commerce export programs.[5] Similar provisions might be sought through ETI '94 to promote further openings for our high-tech environmental products on a global scale.

In addition, EM '94 would instruct our negotiators to seek further openings in foreign government procurement policies for U.S.-made environmental technology. This would be consistent with the GATT procurement agreements of 1979 which requires GATT Contracting Parties to open their purchasing procedures to foreign competition.

VI. PUBLIC PARTICIPATION

In formulating trade policy, the Administration seeks the advice of the private sector through a number of advisory committees. The advisory system is headed by the Advisory Committee on Trade Policy Negotiations (ACTPN). The function of the ACTPN is to provide "overall policy advice" on negotiating positions and the operation of trade agreements already in force. One of the most important roles of the advisory committees is to report to Congress on the extent to which U.S. negotiators have succeeded in meeting U.S. negotiation goals in a given agreement.

Currently there is only one representative from the environmental community on the ACTPN, and a handful of environmental representatives on other committees. Increased representation from the environmental community on these committees should be included as part of a package of amendments of current U.S. trade law which specifies the make-up of each advisory committee. These additions would prove a useful complement to the sectoral trade advisory committee on environmental issues recently announced by President Clinton.

CONCLUSION

To send a clear signal to our negotiators, and to our trading partners, U.S. trade law should reflect the priorities of a new bipartisan trade policy which emphasizes environmental concerns and the promotion of sustainable development, as well as worker rights and competitiveness. ETI '94 fills in one component of such a policy,

[5] See e.g. Co-Sponsors' Summary of H.R. 3813, "The Environmental Export Promotion Act."

and when combined with other initiatives lends itself to a comprehensive approach helping make U.S. trade law an apt vehicle for promoting sustainable development in the years to come.

PREPARED STATEMENT OF LAWRENCE E. LEVINSON

It's a pleasure to be here this afternoon to talk about *the* GSP Program. America's copyright industries strongly support the extension of GSP. GSP plays a vital role in America's bilateral trade relations. In the post-Uruguay Round environment multilateral rules govern a much expanded share of U.S. trade relations. Programs such as GSP, where the U.S. maintains sole discretion to reward or penalize a developing country seeking access to our market, take on an increasing significance. Thus, GSP will become an even more valuable tool in the future for encouraging developing countries to protect intellectual property.

I'm Lawrence Levinson, Senior Washington Counsel for Viacom Inc. and Paramount Communications, its majority owned subsidiary We are an American-based, copyright-driven media company. Our businesses take us into worlds of cable network programming like MTV, Nickelodeon, and Showtime and into theatrical films, home video, television and book and software publishing. I'm also speaking more generally for our sister companies in the copyright community—records, computer software and music—all of which are represented by the International Intellectual Property Alliance [The Alliance or IIPA].

The GSP Program provides unilateral, non-reciprocal, duty-free tariff treatment to some 4,300 articles. The goal is to aid economic development through preferential market access. In order to qualify as a recipient of GSP, countries must satisfy a number of eligibility criteria. Among those criteria, the President takes into account whether countries provide adequate and effective protection of intellectual property.

Protection of intellectual property matters. It matters to the U.S. economy, it matters to U.S. industry, and it is essential to developing countries that want to encourage the growth of local industries in their countries which rely on intellectual property.

Let me emphasize the centrality of copyright to the nation's economy. A few statistics tell the story. Together, the copyright industries, including those who create the products and those who deliver them to the consumer:

—Account for 5.6% of the Gross Domestic Product;
—Employ over 5.5 million people or about 50% of the work force;
—Will register close to $40 billion in foreign sales this year;
—Are outpacing the general economy by creating new jobs at over three times the rate of the economy as a whole.

Something else is striking about these numbers. In terms of value added to the Gross Domestic Product the copyright industries contribute *more* to the U.S. economy than most industrial sectors . . . and *more* than any single manufacturing sector.

Behind these statistics are the driving forces of America's copyright community—the talented array of writers, editors, artists, technicians, software developers, and performers—backed by the private sector's investment and production base. But, in the end, it is copyright protection that makes our mission possible. Copyright is the foundation of the creative process.

Our businesses are inherently high risk. Each of our video programs, or films, or books, records, music or software programs, is unique in its own right. Each constitutes a separate creative endeavor and exists in a world of rapidly changing consumer preferences, shifting markets, and swiftly accelerating technology. Many of our films, records, books, and software have relatively short shelf lives. They depend on an orderly sequence of release to achieve the needed return on investment and to reward those men and women who help to bring these creative works to consumers around the globe.

Each is also extraordinarily vulnerable to unauthorized copying. VCRs, photocopiers, personal computers, tape decks and other readily available products do not only make U.S. works accessible to consumers around the world. These new technologies also facilitate theft.

The most successful of our products—the box office hit, or the popular cable network show or software program, or the latest bestseller, for example, are susceptible to international piracy—whether through illegal satellite programming reception, or unauthorized massive duplications of floppy disks, manuals, cassettes or CDs or in a public performance in a mini-theater, or on a broadcast station without receiving the necessary permissions. These invasions of our copyrights disrupt our markets,

deny us a fair return, and in the process cripple local legitimate distributors, retailers and exhibitors.

At the end of my testimony I will pass around some recent, and I think vivid, example of pirated materials—ranging from illegally produced copies of some of our latest hit movies to important educational works.

But, let me first stress that world piracy continues to haunt our copyright industries. In a recent report to the USTR, the Alliance estimated losses from world piracy of films, records, music, computer programs and books in 32 selected nations exceeded a staggering $8 billion in 1993!

Our concern is heightened by the fact that our businesses—through the medium of the new delivery technologies—are becoming increasingly dependent on overseas markets. In the motion picture industry, for example, some 40 percent of its revenues now come from beyond our borders. In the computer software and recording industries, the figure exceeds 50 percent.

If America is to maintain a preeminent role in world markets for the sale and export of intellectual property, copyright protection must be placed high on the nation's trade and foreign policy agenda.

And so from Ankara to Athens . . . from Rome to Rio . . . and from Taipei to Tienammen Square—we face the continuing onslaught of pirate activity. If we think of the $8 billion lost to piracy in those 32 nations—and a total of some $15–17 billion worldwide—imagine the impact on jobs and investment here at home each time a pirate steals our property.

In speaking about offshore piracy, it is no less than global grand larceny. We punish criminal theft severely if it happens in our country. We should expect no less from our trading partners and those developing countries that receive the benefits of foreign aid, GSP, and CBI.

One may legitimately ask, how is the private sector responding to the threat of world piracy? The Motion Picture Export Association, as one example, has a well-organized anti-piracy program. Its members are spending millions of dollars to stem the ever increasing losses from offshore piracy. Last year there were impressive increases in the number of raids, investigations opened, and pirated cassettes seized to counter the more than $1.3 billion in losses due to overseas piracy suffered by the film and television industry.

In a number of problem countries like the PRC, the Russian Federation and Taiwan, the book publishing industry is also maintaining a copyright enforcement program. It has achieved notable successes in some of the Pacific Rim nations, and, as a consequence, legitimate foreign sales of books have surged.

In meeting the challenges of the rampant, illegal duplication of tapes and discs through high-speed copying techniques, the recording industry, too, operates a vigorous, worldwide anti-piracy program. The software industry, through the Business Software Alliance (BSA) also operates a highly effective enforcement program in over 50 countries.

Private enforcement efforts can never fully succeed in their own right, no matter how energetic. The support and cooperation of our government is, therefore, indispensable.

The USTR, through Ambassador Kantor and his predecessor Ambassador Hills, continues to be responsive to our concerns. So are the Commerce and State Departments. In short, protection of America's copyright lifeline has now become one of the cornerstones of the nation's international trade and economic policy.

Our hope is that the Administration will continue its momentum in the war against overseas piracy. By so doing, we will be sending an unmistakable signal to the pirates around the world that the U.S. will simply not tolerate the continued theft of American-made intellectual property.

It is in this overall context that we commend you, Mr. Chairman for working to extend the GSP Program.

The GSP program provides a classic "carrot and stick" for addressing our concerns about intellectual property. And it has worked. The desire to keep GSP benefits has caused a number of countries to improve their intellectual property laws. It has also invigorated the enforcement of those laws. U.S. businesses use the GSP petition process to remind foreign countries that we are watching, that U.S. policy is sensitive to the rights of copyright owners, and that piracy and market access barriers jeopardize GSP benefits.

The Alliance materials that I will submit for the record document the successes that have arisen from GSP. But two recent example bear emphasis. Just last week the Motion Picture Export Association of America [MPEAA] withdrew a GSP Petition against Guatemala. MPEAA filed the petition in 199l because many Guatemalan cable operators were retransmitting up to 40 U.S. television channels, includ-

ing premium movie services such as HBO, Showtime, and The Disney Channel, without authorization.

Thus, U.S. creators were not compensated for the use of the copyrighted works contained within those signals. Since then—

- Guatemala passed a law requiring cable operators to purchase the rights to the signals or programs they retransmit to subscribers.
- Cable operators throughout Guatemala have ceased retransmission of premium movie services like HBO—which has raised theatrical box office revenues for the first time since 1985.
- Many multiple system cable operators have contracted to pay to retransmit U.S. network and superstation signals.

While more needs to be done, we believe that Guatemala has come a long way and that GSP was helpful in getting them there.

Another recent example of the power of GSP involves Cyprus. On June 1, 1991, the MPEAA filed a GSP petition because of widespread video piracy and unauthorized public performances taking place on the island. MPEAA withdrew the petition after Cyprus publicly acknowledged its role as a transshipping center for pirated works. Cyprus also committed to adopting a new copyright law by January 1992. Unfortunately the latter commitment was not met. Instead, U.S. copyright owners endured delays and the suspension of a newly adopted criminal sanction. In view of these developments, IIPA filed another GSP petition in June, 1993.

In September 1993, Ambassador Kantor initiated an "expedited" GSP review of Cyprus and in December suspended their benefits. The suspension was deferred while the U.S. monitored the implementation of the new law. This time, results have been spectacular. Video pirates have been swept off the streets and pirated video tapes have been cleared off the shelves of the tourist shops. Cyprus is no longer the center of video piracy in Europe that it was just 6 months ago. While this action is encouraging, Ambassador Kantor must review his deferral decision in July in light of enforcement progress involving all copyright industries.

Other countries which improved IPR protection after GSP petitions focused attention on inadequate protection of intellectual property include Venezuela, Indonesia, and Singapore. However, other current beneficiaries of the U.S. tariff preferences under GSP continue to abuse the generosity of the United States by stealing U.S. intellectual property. Among the most serious problems are Turkey, Poland, and Honduras.

Our experiences with GSP have enabled us to identify areas where we recommend that current regulations be revised. Again, the Alliance paper appended to my testimony goes into this in greater detail.

Our first recommendation arises from the difference between a "product review" concerning just what products receive GSP benefits and a "country review" that looks at the lack of adequate and effective intellectual property protection on an overall basis.

Challenges against products require a myriad of economic data. If there is sufficient evidence, USTR calls for a full review complete with comments and hearings.

Even though challenges based on intellectual property protection do not involve specific products, we are obligated to go through the same lengthy process as products. That simply does not make sense.

We recommend that petitions to take away GSP benefits be considered at the same time as Special 301 submissions. Both GSP and Special 301 demand "adequate and effective" intellectual property protection. The standard for 301 and GSP is identical and involves the same kind of review procedures and analyses. By considering GSP and Special 301 simultaneously, we would save USTR's scarce resources by reducing overlapping reviews and negotiations.

We have raised this suggestion in the course of our discussions with the Administration regarding the GATT implementing legislation. We are encouraged by their responsiveness. Copyright owners would certainly welcome expressions of support for our proposal from this Committee.

Our second recommendation is to permit GSP petitions to be considered at any time. The fact is that pirates don't have time schedules. Pirate enterprises can spring up without warning. Right now an entity suffering economic harm might have to wait almost a year before the GSP filing deadline. Last year that deadline was June 1. Had we discovered a new compact disc plant in July, we would have faced a uphill battle to seek recourse to GSP leverage to stop the illicit enterprise from disrupting the market in that region.

We urge that USTR's regulations be revised to permit a petition for denial of GSP benefits at any time provided the private industry shows that the unexpected nature

of the copyright problem and the potential for severe harm to U.S. copyright owners necessitates an immediate review.

Mr. Chairman, that concludes my statement. With your permission I have some additional materials [1] on GSP that were prepared by the Alliance that I would like to submit for the record.

[1] A study of Copyright Industries in the U.S. Economy 1993 Perspective by Economists Incorporated. The Alliance chart on "USTR 'Special 301' Decisions for 1994 and Estimated Trade Losses Due to Piracy (1993)."

And now with your further permission I'd like to hand up some of the recent examples of pirated material I referred to earlier, and describe each one in turn.

Thank you.

USTR "SPECIAL 301" DECISIONS FOR 1994 AND IIPA ESTIMATED TRADE LOSSES DUE TO PIRACY (1993)

(in millions)

	Motion Pictures	Records & Music	Computer Programs	Books	Total
** SEE NOTE BELOW **					
People's Republic of China	50	345	322	110	827
India	40	45	81	25	191
Argentina	34	10	55	5	104
Priority Watch List					
Japan	95	NA	854	3	952
Korea	20	20	371	12	423
Saudi Arabia	79	43	57	7	186
Turkey (GSP)	35	12	103	14	164
Thailand	20	12	98	25	155
European Union	NA	NA	NA	NA	NA
Watch List					
Italy	357	38	257	na	652
Spain	53	NA	199	10	262
Poland (GSP)	45	24	159	15	243
Indonesia	45	12	95	40	192
Taiwan	26	6	106	12	150
United Arab Emirates★	7	108	27	2	144
Australia	33	12	70	15	130
Venezuela	40	12	51	20	123
Philippines	23	15	NA	70	108
Greece★	55	15	33	4	107
Egypt (GSP)★	11	4	52	17	84

★: Subject to Out-of-Cycle Review by USTR. April 30, 1994

GSP: GSP review of IPR practices pending.

Note: USTR has delayed a final decision on the identification of the PRC, India and Argentina as "Priority Foreign Countries" until June 30, 1994.

USTR "SPECIAL 301" DECISIONS FOR 1994 AND IIPA ESTIMATED TRADE LOSSES DUE TO PIRACY (1993)
(in millions)

	Motion Pictures	Records & Music	Computer Programs	Books	Total
Watch List - continued					
Pakistan	20	30	3	25	78
Cyprus (GSP)	29	4	3	15	51
Peru	0.2	13	12	10	35.2
El Salvador★(GSP)	1.7	6	NA	1	8.7
Guatemala (GSP)	0.7	1	NA	1	2.7
Chile	NA	NA	NA	NA	NA
Colombia	NA	NA	NA	NA	NA
Subtotal	1119.6	787	3008	458	5372.6
Special Mention					
Germany	53	70	1317	NA	1440
Russian Federation	40	300	49	55	444
Brazil	39	36	190	30	295
Israel	12	9	19	3	43
Singapore	1	3	21	2	27
Paraguay	0.2	NA	8	2	10.2
Panama	1.6	0.5	2	2	6.1
Honduras (GSP)	0.7	0.5	NA	1	2.2
Canada	NA	NA	NA	NA	NA
Subtotal	147.5	419	1606	95	2267.5
Total	1267.1	1206	4614	553	7640.1

Note: Chile, Colombia and Canada were not included in IIPA recommendations to USTR in February 1994 and estimated trade losses are not available at this time.

★: Subject to Out-of-Cycle Review by USTR.
GSP: GSP review of IPR practices pending.

April 30, 1994

PREPARED STATEMENT OF ALLAN I. MENDELOWITZ

Mr. Chairman and Members of the Subcommittee: I am pleased to be here today to testify on our evaluation of the Generalized System of Preferences (GSP) Program and several matters for your consideration during program reauthorization. My statement is based on our forthcoming study of the GSP program. We have given a draft of this study to the Office of the U.S. Trade Representative (USTR) for their review and comments. We have conducted this study at the request of Senators Harris Wofford and Byron Dorgan and Representatives Steve Gunderson, William Hughes, David Obey, and Collin Peterson.

BACKGROUND

The GSP Program eliminates tariffs on certain imports from 145 eligible developing countries in order to promote development through trade rather than through traditional aid programs. In 1992, $16.7 billion, or about 3 percent of total U.S. imports, entered duty free under GSP. U.S. duties foregone on these imports were almost $900 million. However, the cost to the U.S. government is estimated at 75 percent of this amount due to certain tax revenue offsets, according to the Congressional Budget Office. The value of duties foregone would decrease with implementation of the estimated 40-percent tariff reductions negotiated under the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) for products eligible under GSP, if GATT implementing legislation is enacted. Reauthorization of the program, due to expire on September 30, 1994, provides an opportunity to consider the need for changes.

GSP DUTY-FREE BENEFITS DOMINATED BY RELATIVELY FEW BENEFICIARY COUNTRIES

We found that most GSP benefits go to the relatively small number of more advanced or larger developing countries that can produce and export items that meet U.S. market demands. Government officials and business representatives from the six beneficiary countries that we visited—Brazil, the Dominican Republic, Hungary, Malaysia, Thailand, and Turkey—told us that they have realized increased economic development as a result of GSP benefits, even though the level of development attributable to GSP cannot be precisely measured. An indicator of the value of the GSP Program to developing countries can be determined by examining the level and composition of duty-free shipments to the U.S. market.

Duty-free imports under the GSP Program have been dominated by a handful of countries. In 1992, 85 percent of duty-free imports under the GSP Program were from 10 countries. Mexico accounted for 29 percent of GSP duty-free imports, but was graduated from the program when the North American Free Trade Agreement was implemented on January 1, 1994. Other top shippers included Malaysia, Thailand, Brazil, and the Philippines. Most of the GSP duty-free goods by value were industrial goods (such as electrical machinery and equipment), rather than agricultural goods.

Other duty preference options, such as the Caribbean Basin Economic Recovery Act, exist for some beneficiary countries. These options reduce duty-free shipments under the GSP Program. In 1992, $2.9 billion (8 percent) of all GSP-eligible imports entered the United States under a duty preference provision other than GSP. Together with the $16.7 billion that entered duty free under GSP, 55 percent of all GSP-eligible goods received duty-free entry.

LIMITATIONS ON GSP BENEFITS ARE SIGNIFICANT

Not all products that are eligible to enter the United States under GSP actually enter duty free, due to several program provisions that limit benefits. In 1992, while $35.7 billion in imports were eligible under the program, $16.7 billion, or 47 percent, actually received duty-free entry into the United States under GSP. About $16 billion, or 45 percent, of GSP-eligible imports entered with duties. (Another 8 percent of GSP-eligible imports entered duty free under other tariff preference programs.) "Administrative exclusions" (discussed below) accounted for the largest share, 56 percent, of these imports that entered with duties. "Competitive need limit exclusions" (imposed because a country exceeds a limit on import levels) accounted for about 42 percent, and "product graduations" (exclusions from GSP because the country is competitive in shipping that product to the U.S. market) for 2 percent. The relative importance of administrative exclusions should diminish with Mexico's graduation from GSP, since 67 percent of these administrative exclusions were attributable to Mexico. Also, competitive need limit exclusions have been growing quickly for other beneficiary countries such as Malaysia and Thailand.

Administrative exclusions can result when products fail to meet U.S. requirements that (1) the beneficiary country's export contain at least 35-percent domestic content and (2) the product be shipped directly from the beneficiary country. Some trade experts have criticized the beneficiary country domestic content, or "rule of origin," requirement for GSP for lack of predictability. They claim that it is not always clear as to which parts and components in a product imported by the United States can count toward meeting the required 35-percent domestic content. Beneficiary country exporters often have no way of knowing whether their exports will meet the rule of origin requirements until U.S. Customs makes a determination. The U.S. Customs Service is currently considering changing the rule of origin system to one that would be more predictable and simpler to administer, using a "change of tariff classification" system such as that adopted in the North American Free Trade Agreement. The change of tariff classification system confers country origin when imported materials, parts, and components are used to make a new product that falls under a new tariff heading. However, even such a new rule of origin approach would not be problem free. It could make compliance more difficult for GSP beneficiary countries due to the extensive documentation requirements necessary to establish a change of tariff classification, according to an International Trade Commission official.

In addition, importers have criticized another aspect of the rule of origin that does not allow U.S. source material to be considered in meeting the domestic content requirements. Importers have suggested that U.S. components be allowed to apply toward the 35-percent requirement. We agree that GSP items should not be penalized for having U.S. content. Congress may want to consider whether to alter the GSP rule of origin so that items are not penalized for having U.S. content. Other U.S. trade laws provide precedents for (1) including U.S.-origin content of imported goods as part of the exporting country's content and (2) exempting the U.S.-origin content of imported goods from U.S. tariffs.

Other program limitations involve competitive need limits and product graduations. Competitive need limit exclusions are automatically triggered for a country's product when a legislative ceiling on either the dollar value or share of U.S. imports from a country is exceeded in a calendar year. These exclusions accounted for $6.7 billion, or 42 percent, of all exclusions in 1992 and grew rapidly for top shippers like Malaysia and Thailand. Competitive need limit exclusions are based on the assumption that export competitiveness has been demonstrated. However, external factors that may have little to do with the competitiveness of a particular beneficiary country's industry can affect U.S. import levels during the 1-year period used to trigger an exclusion. We found that in a majority of cases examined, a loss of GSP status due to a competitive need limit exclusion was immediately followed by a loss of import market share (although a direct causal relationship could not be established). In addition, the schedule for implementing these exclusions allows beneficiary country exporters and U.S. importers only a few months' notice to adjust business plans before losing GSP benefits.

In reauthorizing the GSP Program, Congress may want to consider altering the competitive need limit process by, for example, extending the amount of time before exclusions under competitive need limits are implemented. This would allow for a more thorough assessment of the competitiveness of the affected imports and permit affected industries more time to adjust.

As for product graduations, in 1992, 2 percent of all exclusions, valued at $276 million, were due to permanent product graduations from the program. Product graduations are discretionary and are implemented after assessing a beneficiary country's competitiveness for a particular product, usually at the request of U.S. producers.

PROCESS TO REVIEW PRODUCT PETITIONS GENERALLY WELL STRUCTURED, BUT SPECIFIC CONCERNS REMAIN

The GSP Program has a generally well-structured administrative process for consideration of petitions to add products to or remove products from GSP coverage. The interagency structure of the GSP Subcommittee [1] (a working group of the Trade Policy Staff Committee) and its consensus decision-making process are designed to ensure that the program's goals are balanced to provide benefits to beneficiary countries while taking care not to unduly harm domestic interests. The annual review process provides for consideration of all interested parties' views. However, we have

[1] The GSP Subcommittee is chaired by the Office of the U.S. Trade Representative and consists of members from the Departments of Agriculture, Commerce, the Interior, Labor, State, and the Treasury.

identified some specific opportunities to promote better program administration such as (1) by disseminating more information on the decision-making process, including guidelines for analysis; and (2) by rejecting incomplete product petitions.

Among the information that petitioners said they would find useful are definitions of key statutory criteria to make decisions on whether to add products to or remove products from GSP coverage. The GSP statute does not define such key criteria as "import sensitivity" or "sufficient competitiveness." Some petitioners have complained that the lack of definition for these criteria allow subjective decision-making on product additions and removals. However, we believe these criteria would be difficult to quantify for use in every case because they are highly qualitative and judgmental. Most observers we talked with said that an attempt to define these criteria statutorily would result in overly rigid definitions that could hamper achievement of program objectives. The GSP Subcommittee has developed some informal guidelines but has not published them. We believe that USTR should make public the guidelines the GSP Subcommittee uses in analyzing product petitions.

We found, based on a review of the decision-making process for 45 case studies, interagency decision documents, and interviews with GSP Subcommittee members, that most petitions have not been controversial and have been routinely decided based on their economic merit. However, we also found that the more controversial the case and the higher in the trade policy structure the case was elevated in order to reach consensus, the more other policy factors became determinative. Fifteen percent of the cases in two review cycles we analyzed had been identified by the Subcommittee as controversial and elevated for resolution.

The GSP Subcommittee has not issued public explanations of program decisions, although by regulation it will respond to a written request for information from petitioners. However, foreign and domestic participants told us that many parties were unaware of their right to request and receive such explanations. We believe that USTR should indicate clearly in Federal Register notices of final decisions on GSP petitions that petitioners can obtain a written explanation of any decision.

Another opportunity to improve the GSP Program's administration would be to refuse to accept incomplete petitions for product additions. GSP product-addition petitions require detailed information such as (1) actual production figures and capacity utilization, and their estimated increase with GSP; and (2) exports to the United States in terms of quantity, value, and price, and considerations that affect the competitiveness of these exports relative to exports by other beneficiary countries. The GSP Subcommittee has on occasion accepted for review product-addition petitions that did not provide all required information, if the Subcommittee believed the petition might have had merit and the petitioner had made a good faith effort to obtain the information. Although this practice is allowed by the regulations, it places domestic producers at a disadvantage in raising objections. Domestic producers complained that acceptance of incomplete petitions effectively shifted the burden of proof on whether to accept a product from the petitioner to those opposing the petition. A new product in the program may be shipped by any beneficiary country, and there may be few sources of information on potential suppliers among beneficiary countries. We believe that USTR should accept only product petitions that include all required information.

Also related to the process of administering product-addition petitions is the "3-year rule." GSP's 3-year rule, which prohibits rejected product-addition petitions from being refiled until 3 years have passed, protects U.S. industry from repeatedly having to come to the defense of their products in program proceedings. Waiver of this rule during the 1991 Special Review for Central and Eastern Europe initiated by the administration undermined the credibility of the program with affected domestic industries. Representatives of these industries said the waiver caused an unfair burden on them by reconsidering the addition of products that had just been rejected. USTR has taken the position that the Trade Policy Staff Committee has the right to waive the 3-year rule since it is its own procedural rule, and the rule did not vest a right in any party. Further, the GSP Director pointed out that the regulations allow the Trade Policy Staff Committee to self-initiate cases "at any time," which can have the same effect. Domestic industries have argued for codifying the 3-year rule with no possibility of a waiver in the GSP statute. However, codifying the 3-year rule alone may not necessarily guarantee strict application of the 3-year rule if the administration still retains the ability to self-initiate cases. If Congress considers codifying the 3-year rule, and a provision disallowing its waiver, in the GSP statute, it should recognize that the Trade Policy Staff Committee's authority to self-initiate cases can have the same effect. Congress may want to consider stipulating whether or not self-initiation of cases should be allowed where it would have the effect of waiving the 3-year rule.

A major concern raised by the requesters of this report was whether it is appropriate and legal to offer different benefits to the various beneficiary countries under a generalized system, which in spirit is like the most-favored-nation principle[2] central to the GATT system. Program benefits are generally extended equally to all beneficiary countries. In some circumstances, however, when a beneficiary country is considered to be sufficiently competitive for a particular product without the GSP benefit, the benefit may be removed. Such permanent product graduations are made at the discretion of the President. We concur with the position taken by USTR that the GSP statute gives the President authority to make such decisions for differential treatment.

COUNTRY PRACTICE PETITIONS ENGENDER CONTROVERSY

When the GSP Program was reauthorized in 1984, new "country practice" eligibility criteria were added. These criteria included requirements that beneficiary countries provide adequate and effective protection of intellectual property rights (IPR) and take steps to observe internationally recognized worker rights. IPR refers to legal rights and enforcement associated with patents, copyrights, and trademarks. Petitions to suspend benefits to beneficiary countries that do not meet these criteria for country practices can be filed as part of the annual review process for GSP eligibility.

There is a split in opinion about the desirability of country practice provisions concerning IPR and worker rights. Beneficiary countries and many trade experts we talked with objected to the presence of country practice provisions in the GSP Program. They said that these conditions contravene the original spirit of GSP, which was to be a trade assistance program that required no reciprocity on the part of the recipient country. Other countries' GSP programs do not have such conditions. While United Nations officials, beneficiary country officials, and many trade experts we talked with acknowledged that IPR and worker rights are important issues, they said these concerns should be addressed in other forums. To a significant degree, we also found a greater acceptance of IPR as a trade issue in contrast to worker rights, which was not generally accepted as a trade issue by those we interviewed. However, advocates of these provisions maintain that the GSP Program's objective of aiding economic development should not be carried out without parallel development of adequate IPR and worker rights standards. They argue that promotion of these rights is important to sustainable economic growth in developing countries.

Administering the IPR and worker rights provisions of GSP within a review process designed for product petitions has resulted in certain administrative problems. Country practice cases are fundamentally different from product cases, since they involve adherence to international standards of behavior rather than evaluation of trade flows. The rigidity of the annual review cycle, where all petitions must be filed by the June 1 deadline or wait until the next review, is not well suited to dealing with IPR- or worker rights-related events. These events can precipitate crises at any time during the year. We believe that country practice cases could be better addressed with separate time frames and review procedures that better fit their different dynamics. Further, acceptance of emergency petitions for review out of cycle when events warrant such action, as well as for expedited review, could improve the timely consideration of and, potentially, the more effective responsiveness to these provisions.

In addition, the GSP law and regulations do not specify the program's policies and standards for accepting country practice petitions for review. The GSP Subcommittee has internal policy guidelines, but few of these have been made public. We believe that USTR should make public the guidelines used in deciding whether or not to accept country practice petitions for full review.

Worker rights advocates have said they disagree with GSP policies (1) classifying certain offenses as human rights issues outside GSP purview and (2) requiring presentation of substantially new information for reconsideration of denied petitions. As currently administered, this "new information" standard has prevented further review of worker rights cases in which a beneficiary country's promised progress in improving worker rights stopped after the GSP review was concluded with a finding favorable to the country. We believe USTR should revise the new information standard to allow acceptance of petitions demonstrating a lack of promised progress.

Finally, the only available sanction in GSP country practice cases is suspension from all GSP benefits. A policy of graduated sanctions, such as suspension of one

[2]The most-favored-nation principle is embodied in article 1 of GATT and provides that countries grant each other treatment as favorable as they give to any country in the application and administration of import duties.

or more industry sectors rather than the entire country, would provide greater flexibility and could improve the effectiveness of these provisions in encouraging changes in country behavior. We believe USTR should expand the range of sanctions that can be taken when beneficiary countries have not met GSP country practice standards in order to include partial sanctions when appropriate.

The differing expectations held by GSP officials and IPR and worker rights advocates are at the root of much of the controversy over administration of country practice provisions. GSP officials generally said that these provisions have been used and have leveraged results from beneficiary countries to the extent possible, given other trade and foreign policy concerns. However, IPR and worker rights advocates said they wanted country practice cases more vigorously prosecuted and sanctions more frequently exercised. Worker rights advocates were particularly concerned. While IPR advocates have more powerful trade law remedies they can pursue, worker rights advocates must depend on the GSP provisions to trigger actions under most of the worker rights provisions in U.S. trade law.

Because GSP benefits are limited, and would decline if the GATT Uruguay Round agreement is enacted, the program provides only a modest degree of leverage to encourage beneficiary country governments to change their country practices. Proposals to add new country practice provisions during program reauthorization, particularly for environmental protection purposes where there are no international standards, were opposed by most GSP trade experts and program participants we interviewed. Because it was beyond the scope of this review, we did not interview representatives of environmental groups. However, we believe that adding new provisions would reduce the leverage of GSP in achieving the objectives of the existing provisions by diluting them with other requirements. Furthermore, if too many conditions are imposed, beneficiary countries may feel the compliance burden is too great. They may then be willing to forgo all benefits, thereby eliminating whatever leverage currently does exist in the program. It should be noted that tariff reductions negotiated in GATT, if implemented, will reduce the value of the GSP's tariff preference by 40 percent and, therefore, the incentive for beneficiary countries to participate in the GSP program.

PREPARED STATEMENT OF SENATOR HARRIS WOFFORD

Mr. Chairman, I commend you for calling this hearing and allowing me the opportunity to comment on the Generalized System of Preferences (GSP) Program.

As you know, the Generalized System of Preference (GSP) Program provides duty free access to the United States for products of developing countries. It was established in 1974, renewed in 1985 and is coming up for reauthorization by September 30, 1994. In anticipation of this renewal and due to the somewhat negative experiences of domestic industry with this program, I asked the General Accounting Office (GAO) to do a comprehensive review of the GSP program in 1992. This was the first such review in over 10 years. I am pleased GAO is testifying today on the draft report.

I initially got involved in this issue in 1991 after the Trade Policy Review Group decided to consider, as part of the Trade Enhancement Initiative for Central and Eastern Europe, new GSP petitions and review prior rejected petitions. Despite GSP regulations that call for a three-year waiting period before rejected petitions can be renewed, this review occurred. While the initial request for my involvement came from agriculture, other industrial sectors quickly joined in calling for a comprehensive review. The economic impact of this review had serious implications for domestic industry.

The experience convinced me we had to review the GSP program to ensure that it both extended the economic benefits to developing countries it was designed to and ensured our domestic industries, which are import sensitive, that they would not be adversely impacted. As a result, I initiated a General Accounting Office review of the program. Attached is a copy of the March 30, 1992 letter requesting the GAO study. The thirteen questions outlined in the letter must be addressed during reauthorization to restore industry and Congressional confidence in the program. I believe the GAO report will be helpful in facilitating needed changes.

The report recognizes the critical balance needed when extending preferential trade benefits to developing countries and the necessity to protect domestic industries that are import sensitive. The most important change needed in the GAO program is to provide greater transparency to the decision-making process and the GSP petition process. This can be accomplished by making public the guidelines the GSP Subcommittee uses to analyze petitions, making it clear that petitioners can get a written explanation of any decision and assuring the rejection of less than complete

applications. If adopted, these changes will restore some of the industry confidence that was lost as a result of their experience during the 1991-92 Trade Enhancement Initiative for Central and Eastern Europe.

I remain very concerned about the three-year rule and the Administration's authority to self-initiate reviews. While I recognize the importance of flexibility for extraordinary circumstances, doing so is a tremendous financial burden to our domestic industries. It also creates the impression that the GSP program is a subjective process rather than objective, especially when domestic industry doesn't know what criteria is being used to make the decision.

In summary, I believe it's important for the Administration to continue the GSP program. However, the decision making process must be more credible and transparent. American industries should have the right to know how decisions are made and that they will stick.

Again, I thank you for the opportunity to testify on the GSP program and I look forward to working with you on reauthorization and addressing the concerns of domestic industry.

Attachment.

UNITED STATES SENATE,
Washington, DC, March 30, 1992.

Mr. CHARLES A. BOWSHER, *Comptroller General,*
U.S. General Accounting Office,
Washington DC.

Dear Mr. Bowsher: As members of the Small Business Committee, we respectively request the assistance of the General Accounting Office (GAO) to expeditiously investigate and report on the administration of the Generalized System of Preferences (GSP) program, including the portion conducted by the International Trade Commission (ITC).

This report is requested due to concerns expressed by our constituents regarding the White House decision to consider, as part of the Trade Enhancement Initiative for Central and Eastern European countries, new GSP petitions and the review of rejected petitions.

After full consideration by the Trade Policy Review Group the President on May 3, 1991, rejected petitions for inclusion on the GSP list of Goya cheese, mushrooms, grape wine and assorted manufactured items. On August 8, 1991, just 97 days after the President's rejection, the Trade Policy Staff Committee announced it would reconsider these articles. Granting of any of these petitions could make the item duty free for all 130 GSP eligible countries. We believe this would have an adverse economic impact on domestic business.

Specifically, we would like the report to address the following issues:

(1) The legal authority under which the President makes GSP decisions on a purely discretionary differential basis or a differential basis based on criteria other than those specified in the GSP law;

(2) An analysis of how the provisions of the GSP program come into play under the General Agreement on Tariffs and Trade (GATT) and whether GATT provisions allow for nongeneralized application of the GSP status absent a finding that specific countries do not meet established criteria in the national statute;

(3) Whether specific articles from specific countries have been excluded from GSP treatment by the U.S. on the basis of factors other than those contained in the statute; whether the ITC performed economic impact analysis on the basis of excluding countries specified by the USTR when such countries are not currently excludable on the basis of any criteria provided for in the statute; and, if so, the statutory authority for this practice;

(4) The extent to which, foreign government practices (e. g., equitable and reasonable market access, intellectual property rights protection) carried out by the GSP Beneficiary Countries are reviewed and assessed by the Executive Branch when viewing industry petitions to add or remove articles from the duty-free program and how much weight is given to these factors;

(5) Identification of public-sector information sources utilized by the GSP Subcommittee in examination of foreign government practices;

(6) Whether the GSP Subcommittee seeks the advice of Industry Sector Advisory Committees and Agricultural Sector Advisory Committees prior to the acceptance of petitions to add products to the Program or waive products that have exceeded the GSP's competitive need test;

(7) The criteria used in assessing injury to U.S. industry and the extent to which the GSP Subcommittee considers "threat of injury" when considering petitions to re-

move a product from the GSP Program, or a product from one or more GSP Beneficiary Countries;

(8) The extent to which the GSP Subcommittee considers outstanding trade actions (e. g., antidumping 'orders, etc.) during the review process; to what extent does the GSP Subcommittee review petitions to ensure they meet the current standards; have any been rejected and on what basis;

(9) The extent to which the GSP Subcommittee seeks the most current data from the ITC, which may have become available since the ITC recommendation and prior to the time the GSP Subcommittee reports to the Trade Policy Staff Committee and the Trade Policy Review Group;

(10) The extent to which the GSP Subcommittee coordinates its decisions with other trade policy initiatives—for example, does the GSP Subcommittee seek the advice of the Uruguay Round market access negotiations to determine whether imports which are subject to an industry petition are reviewed as "import sensitive" and to what extent would the U.S. be making unilateral tariff concessions which could have been valuable as negotiating points;

(11) Regarding the Central and Eastern European Special Review, why some petitions filed by these countries were accepted for review while others were not accepted—for example why the petitions from Hungary and Czechoslovakia to add industrial nitrocellulose (HTS 3912.20.00) to the Program were accepted for review; the consideration given by USTR and other GSP Subcommittee departments to the fact that in 1990 industrial nitrocellulose was removed by the President from the GSP for import sensitivity reasons and the ITC unanimously determined the U.S. industry was materially injured by reasons of less-than-fair value imports from seven supplying countries (including two GSP Beneficiary Countries);

(12) The voting record by the Departments of Commerce, State, Agriculture, Labor, Interior, and Treasury, since the 1986/87 General Review, on petitions to remove and to add products from GSP Beneficiary Countries, with regard to petitions to remove and add chemical and agricultural imports to the Program; and

(13) The extent to which a country who files the original petition for a product is the prime benefactor of the petition. Provide an accounting by originating country, all benefiting countries, listing product and volume for 1989 and 1990.

We would like to have the results of your report on this matter no later than June 1, 1992, if possible. If you have questions regarding this request please contact Russell Redding with Senator Harris Wofford's office at 224–6324.

Sincerely,

SENATOR ROBERT KASTEN
SENATOR HARRIS WOFFORD

PREPARED STATEMENT OF RUFUS YERXA

Mr. Chairman and Members of the Subcommittee, it is my pleasure to testify today with respect to the Administration's proposal to renew the Generalized System Preferences, or GSP, program. Last August, President Clinton signed legislation extending the GSP program for a fifteen month period, through September 30, 1994. At that time, the Administration noted its strong support for the long-term renewal of this program, and has spent the last year developing a legislative proposal for GSP renewal. Today, I would like to briefly outline this proposal.

But first, I would like to briefly discuss what the GSP program is, and why its renewal is so important. At this time, 147 countries are eligible to ship over 4,000 items duty free to the United States under GSP. Last year, duty free imports from all countries under GSP totaled nearly $20 billion.

This year marks the 20th anniversary of the GSP program's enactment as part of the Trade Act of 1974. That period has seen many changes in the program's operation, and the countries covered. The Administration believes that GSP continues to play a vital role in U.S. trade and foreign economic policy, and strongly supports the long-term renewal of the program. GSP remains important for several reasons.

First, GSP remains a key means of advancing development in beneficiary countries using trade instead of aid. GSP is one form of economic assistance that fosters and builds markets. This not only benefits the residents of beneficiary countries, but works to create new market opportunities for American firms and thus jobs for American workers.

Second, our GSP program is designed to encourage developing countries to adopt international trade and labor standards, which also fosters development. The Administration is committed to actively enforcing the eligibility provisions of the GSP law, and our record over just the past year indicates that our approach is yielding

substantial results. We believe that using GSP to foster greater adherence by developing countries to international rules of trade and labor is entirely consistent with its objective of economic development, since we believe that these standards themselves promote such development.

Because of its usefulness in promoting market based economic development, GSP has also become an important part of our economic policy toward "economies in transition" in Central and Eastern Europe and the former Soviet Union. Most of these countries are now GSP beneficiaries, and we believe that GSP preferences help foster opportunities for new entrepreneurs in these countries, as well as helping them to earn hard currency. In this way, GSP is helping foster political and economic stability in the former Soviet bloc.

Finally, GSP plays and important role in keeping literally hundreds of U.S. firms competitive in international markets. GSP enables U.S. companies in dozens of sectors the ability to source components and diversify their output at a lower cost, enabling them to better compete against firms in Europe, Asia, and elsewhere. To lose this advantage, especially when competing firms in other industrialized countries have the ability to benefit from GSP schemes in those countries, would dull the competitive edge of U.S. companies, and ultimately, cost jobs.

To better achieve these objectives, the Administration recently transmitted to Congress its proposal for a renewed GSP program. There are four major elements to the Administration's proposal.

First, our proposal retains the current criteria for country eligibility (with some minor modifications, including the removal of anachronistic provisions on communist countries and OPEC members). This is to ensure that countries receiving GSP are working to meet international standards on trade and on worker rights. As I have noted, we are committed to the effective enforcement of these provisions.

Second, the proposal lowers the program's thresholds for "graduating," that is removing,. both products and countries from GSP eligibility. This includes lowering the program's "competitive need limits" that govern how much of any single item a country is entitled ship duty-free under GSP. Lowering these limits will allow us to better monitor and control the use of GSP by the largest, most competitive beneficiaries, whose share of GSP benefits has increased significantly in the last several years. We would still allow countries and companies to petition for waivers of these limits. Our proposal also lowers the per-capita income threshold for "graduating" advanced countries from GSP.

Third, the Administration's proposal gives the President the authority to grant expanded benefits to the least developed countries. As with the lowering of the competitive need limits, this proposal is meant to better focus the program's benefits on the most truly needy countries. This provision is also in accordance with the Uruguay Round Ministerial Declaration on Measures in Favor of Least-Developed Countries.

Finally, and of no little importance to GSP beneficiary countries and petitioners, we propose to reform the GSP review process, including the establishment of clearer standards for the acceptance of petitions. A common comment and complaint about the GSP program is that the GSP regulations do not define clear informational standards for the acceptance of petitions for review. Our proposal would do that, which we believe will improve the transparency and predictability of the program's administration, to the benefit of both interested U.S. parties and beneficiary countries.

To conclude, GSP plays a unique role in U.S. trade policy. It has served both the United States and beneficiary countries well for nearly two decades. We strongly support the program's renewal, and want to continue our close work with this committee and Congress to achieve that goal.

COMMUNICATIONS

STATEMENT OF THE ENVIRONMENTAL AND ENERGY STUDY INSTITUTE

Mr. Chairman. I am Paul Speck, International Program Associate at the Environmental and Energy Study Institute. The Environmental and Energy Study Institute (EESI) is a non-profit organization established by Congressional leaders and dedicated to promoting environmentally sustainable societies.

For some time, EESI has been very active in the formulation and advocacy of creative policy proposals for integrating environmental and development needs in the context of trade policy. As part of these efforts, we have identified economically and politically feasible ways to promote sustainable development worldwide through the United States' Generalized System of Preferences program (GSP), which the Subcommittee is considering today.

According to the World Commission on Environment and Development, "sustainable development" is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. This definition contains within it two key concepts: (1) the concept of "needs," in particular the essential needs of the world's poor, to which overriding priority should be given; and (2) the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

As the most important program governing trade specifically with the developing countries, GSP clearly is a very important tool for promoting sustainable development worldwide. When Congress created GSP in the mid-1970s, it stated that GSP's fundamental purpose was to promote "economic development." This is crucial given, as we have seen, that a main goal of sustainable development is to satisfy human needs, especially in the world's poorest countries. In fact, some of the proposals which EESI has put forward for GSP have to do with increasing the extent to which GSP meets this imperative. Currently, only about one tenth of one percent of all GSP benefits go to the world's 40 or so "least-developed countries" (as designated by the United Nations). Most of these countries are in Sub-Saharan Africa. GSP should be reformed to affectively increase benefits for least-developed countries. Note that *limiting* benefits to the more advanced GSP beneficiaries—as the administration has proposed—*has* not previously, and probably will not in the future, lead to much if any redistribution of GSP benefits to the least-developed countries.

In order to promote sustainable development, GSP must further human development. At the same time, it must promote environmental protection. No mechanisms for reaching this goal have ever been included in GSP. Today, now that we know that development cannot be sustained if it degrades the natural resource base upon which all present and future development depends, we must reform GSP accordingly. Again, EESI's proposals address this need, first, by calling for an increase in GSP benefits to the least-developed countries (recognizing that poverty is a major source of environmental degradation and that primary commodity production, which many least-developed countries depend on, often is an environmental disaster) and, second, by calling for a mechanism in GSP to reward countries which take strong steps to protect the environment. Note in both cases that providing economic incentives in GSP for countries to protect their environment can be a very cost-effective complement to foreign assistance.

The attached report outlines EESI's proposals for GSP in more detail. Those proposal are that legislation reauthorizing GSP:

- clarify that the fundamental purpose of GSP is to promote environmentally sustainable development;
- improve the effectiveness of GSP in helping developing countries—including the poorest countries in Africa and elsewhere—to diversify their exports, so that

they may reduce their dependence on natural resource exports and improve long-term living standards; and

- establish a mechanism in GSP to reward developing countries for undertaking important environmental protection initiatives.

Importantly, these objectives recently were endorsed by various Members of Congress and 16 environmental organizations in letters to Ambassador Mickey Kantor, the U.S. Trade Representative.

The report provides more specific discussion of why each of the three proposals is important and how each may be incorporated in the bill reauthorizing GSP which Congress probably will vote on this summer. I strongly encourage you to consider this report when drafting the final GSP bill.

I am happy for the opportunity to present these ideas to you today, and I will be more than happy to answer any questions which the Subcommittee directs to me.

ISSUES IN

TRADE & SUSTAINABLE DEVELOPMENT

Issue Paper #2 June 1994

Promoting Sustainable Development in Poor Countries Through Trade:

Proposals for Reauthorizing the U.S. Generalized System of Preferences Program

This month, President Clinton plans to send Congress legislation renewing the main program governing U.S. trade with poor countries -- the United States' Generalized System of Preferences program (GSP). The program, which provides preferential access for certain "developing country" exports to the U.S. market, expires September 1, 1994.

In May 1994, officials of the U.S. Trade Representative's Office and Congress agreed to include President Clinton's GSP legislation in a bill implementing the recently concluded world trade or "GATT" agreement. The GATT bill will be considered by Congress under "fast-track" rules -- that is, with limited debate and no chance for amendment; thus, GSP legislation also is expected to be considered under fast-track rules.

Because GSP is the most important program governing U.S. trade with developing countries, it is a powerful tool for promoting sustainable development worldwide.

However, in its current form, GSP is failing to promote sustainable development. Moreover, a draft version of the GSP legislation which President Clinton recently shared with Congress fails to address this situation.

To promote sustainable development, GSP must:

- clarify that the fundamental purpose of GSP is to promote environmentally sustainable development;
- improve the effectiveness of GSP in helping the poorest countries in Africa and elsewhere to diversify their exports, so that they may reduce their dependence on natural resource exports and improve long-term living standards; and
- establish a mechanism in GSP to reward developing countries for undertaking important environmental protection initiatives.

Recently these objectives were endorsed by Members of Congress and 16 environmental organizations in letters to Ambassador Mickey Kantor, the U.S. Trade Representative.[i]

This report provides background on GSP and each of the three objectives above, and it provides specific recommendations for meeting the three objectives in the bill reauthorizing GSP which Congress probably will consider this summer.

Although the report focuses on the United States' GSP program, it is relevant to other developed country GSP programs, most notably the European Union's and Japan's, both of which are up for renewal in 1994.

Fig. 1) Poor Countries Participating in GSP

Albania	Burundi**	Egypt	Israel	Mauritania**	St. Kitts & Nevis	Thailand
Angola	Cameroon	El Salvador	Jamaica	Mauritius	Saint Lucia	Togo**
Antigua and Barbuda	Cape Verde**	Eq. Guinea**	Jordan	Morocco	Saint Vincent & Grenadines	Tonga
Argentina	Cntrl. Af. Rep.**	Estonia	Kazakhstan	Mozambique**	Sao Tome & Principe**	Trinidad and Tobago
Bahamas	Chad**	Ethiopia	Kenya	Namibia	Senegal	Tunisia
Bahrain	Chile	Fiji	Kiribati*	Nepal*	Seychelles	Turkey
Bangladesh*	Colombia	Gambia**	Kyrgyzstan	Niger**	Sierra Leone**	Tuvalu*
Barbados	Comoros**	Ghana	Latvia	Oman	Slovakia	Uganda**
Belize	Congo	Grenada	Lebanon	Pakistan	Slovenia	Ukraine
Benin**	Costa Rica	Guatemala	Lesotho**	Papua New Guinea	Solomon Islands	Uruguay
Bhutan*	Cote d'Ivoire	Guinea**	Lithuania	Paraguay	Somalia**	Vanuatu*
Bolivia	Croatia	Guinea Bissau**	Macedonia	Peru	Sri Lanka	Venezuela
Bosnia-Herz.	Cyprus	Guyana	Madagascar	Philippines	Suriname	Western Samoa*
Botswana**	Czech Republic	Haiti	Malawi**	Poland	Swaziland	Yemen (Sanaa)*
Brazil	Djibouti**	Honduras	Malaysia	Russia	Syria	Zaire
Bulgaria	Dominica	Hungary	Maldives*	Romania	Tanzania**	Zambia
Burkina Faso**	Dominican Rep.	India	Mali**	Rwanda**		Zimbabwe
	Ecuador	Indonesia	Malta			

Notes: * Denotes a country recognized as one of the world's "least-developed countries" under GSP.
** Denotes an African country recognized as one of the world's "least-developed countries" under GSP.

Source: *Harmonized Tariff Schedule of the United States (1994)* and USTR, GSP Information Office.

Environmental and Energy Study Institute ■ 122 C Street, N.W. ■ Washington, D.C., 20001 ■ 202-628-1400
Writer: Paul Speck, International Program Associate

BACKGROUND ON GSP

I. Origins of GSP

Three decades ago, all parties to the main treaty governing world trade, the General Agreement on Tariffs and Trade (GATT), were required to grant each other trade treatment no less favorable than that which they granted their "most favored" trading partner. Developing countries were expected to reciprocate trade concessions offered by rich nations, and rich nations were not encouraged to treat poor countries any better than rich ones.

Developing countries claimed that universal adherence to this "most-favored-nation" (MFN) obligation hindered their efforts to raise export earnings, diversify economically, and reduce dependence on foreign aid.

Thus, in 1967 and 1971, the GATT parties modified the impact of the MFN obligation on developing countries. First, they amended GATT to exempt developing countries from the MFN obligation. That is, they no longer required developing countries to reciprocate reductions in trade barriers which industrialized countries in the GATT undertook.[2]

Just as importantly, the GATT parties waived the MFN requirement for *developed* countries wishing to grant developing countries (as a group) trade preferences over other developed countries.[3] Thus, in 1971 the European Economic Community and most individual countries in the Organization for Economic Cooperation and Development (OECD) established preference programs for developing countries, and in 1974 the United States followed suit making the "generalized system of preferences" basically complete.

In 1979, GATT parties indefinitely extended the MFN waiver allowing industrialized countries to maintain GSP programs.[4] In the decision, they called for particular attention to be paid to the unique situation of "least-developed countries" -- the world's poorest countries as designated by the United Nations. In 1994, GATT parties similarly recognized "the plight of the least-developed countries" and called on GATT parties "to further improve GSP and other schemes for products of particular export interest to {them}."[5]

Today 27 industrialized countries operate "GSP" programs for the developing countries. To varying degrees, these programs grant special treatment to the least-developed countries.

II. The Current GSP Program and Clinton's Proposals

The United States' GSP program (referred to as "GSP" throughout this report) is codified in Title V of the 1974 Trade Act, as amended.[6] Essentially, this law allows the President to waive tariffs (i.e., import taxes or "duties") on imports of "eligible articles" from countries designated by the United States as "beneficiary developing countries" or, simply, beneficiaries.

Specifically, the GSP title:

1. **Authorizes the President to grant duty-free treatment to eligible articles from beneficiaries.** In practice, the Office of the U.S. Trade Representative (USTR), in the Executive Office of the President, implements GSP and makes recommendations to the President about discretionary decisions through several interagency committees which it heads (see discussion of "implementation" below). President Clinton's draft bill reauthorizing GSP[7] would not change the President's basic authority although it would modify some implementation procedures.

2. **Sets conditions by which countries are designated beneficiaries.** The President considers several "mandatory" and "discretionary" conditions when designating GSP beneficiaries. Mandatory conditions forbid the President from designating as beneficiaries, for example: communist countries, OPEC countries, countries that support international terrorism and countries which fail to afford internationally recognized worker rights. Discretionary conditions require the President to "take into account," for example: whether or not the countries want to be beneficiaries, the level of economic development of the countries, the extent to which the countries provide reasonable access for the United States to their markets and basic commodity resources, and (again) whether or not the countries afford internationally recognized worker rights.

In his draft bill reauthorizing GSP, President Clinton has proposed to modify the mandatory and discretionary criteria in several ways that are irrelevant from an environmental perspective. In the process of preparing this draft, the administration did consider adding a discretionary environmental criteria. Specifically, it contemplated requiring the President to consider the extent to which a country "has diminished the effectiveness of international fishery conservation programs and international programs for endangered or

threatened species" in designating beneficiaries.[8] However, this condition was not included in the draft GSP bill submitted for Congressional review in May 1994.

3. Sets conditions by which products are designated as eligible articles. The President is forbidden from designating a wide variety of products as eligible articles. These include: textile and apparel articles subject to textile agreements, watches, import-sensitive electronic products, import-sensitive steel products, most leather products, import-sensitive glass products, and any other products which the President determines to be import-sensitive in the context of GSP. "Import-sensitive" in the context of GSP means that "domestic injury or threat of injury results, at least to a substantial degree, from a provision of duty-free treatment under the GSP."[9] In determining injury, "employment, production, capital investment, capacity utilization, and profits in the U.S. industry [among other things] are taken into account."[10]

President Clinton's draft bill reauthorizing GSP would retain the present law regarding designation of articles with two major changes. First, with respect to the statutory exemptions, it would replace the present exemption for "products subject to textile agreements" with one exempting "textile and apparel articles not GSP eligible on January 1, 1994." Thus, U.S. textile producers will continue to be highly protected even as their products are finally incorporated into the GATT in accordance with the recent world trade agreement.

Second, the President's draft GSP bill would waive the statutory product exemptions on all articles exported from least-developed countries, except textile and apparel products, watches, and leather products. Although this change would seem to be in line with international commitments which the United States has made to grant least-developed countries special treatment in GSP, it is basically non-consequential. Virtually no least-developed country can export those exempted products (i.e., steel, electronics, and glass) for which -- under the President's plan -- it now would receive GSP treatment.

4. Places limits ("competitive need limitations") on the amount of each eligible article which may be imported from each beneficiary. The President is required to withdraw GSP treatment from a particular article exported from a particular country when U.S. imports of that article from that country the previous year exceed either: 1) an indexed monetary value (equal to $108 million in 1993) or 2) 50 percent of the value of all U.S. imports of that article. For example, if Ecuador's exports of a particular machine part to the United States exceeded $108 million or 50 percent of all U.S. imports of that product in 1993, then Ecuador would lose duty-free treatment for that product in 1994.

In addition, the President may on a discretionary basis withdraw GSP treatment for particular articles from particular countries when U.S. imports of those articles from those countries exceed a *lower* set of competitive need limits.

Importantly, the President may waive the application of "competitive need limits" if the countries involved assure the United States that they will provide access to their markets and basic commodity resources and that they will provide intellectual property rights protection. However, the President is restricted in the amount of waivers to GSP limits that he may grant both to individual countries and overall.

Also, least-developed countries are not subject to competitive need limits. This allowance is of little significance since least-developed countries seldom can export products in quantities that make them subject to such limits.

President Clinton's draft bill reauthorizing GSP would amend the present law regarding competitive need limits in three important ways. First, it would lower the indexed monetary limit beyond which countries are automatically subject to loss of GSP treatment for a product (from $108 million in 1993 to $75 million in 1995). Second, it would eliminate the lower set of (discretionary) competitive need limits which the President currently is allowed to impose. Third, it would remove current restrictions on the President's ability to grant waivers to competitive need limits.

Implementation. Regulations regarding the implementation of GSP are codified in Chapter XX of Volume 15 in the Code of Federal Regulations.[11] These regulations establish procedures for the administration to review petitions from "interested parties" to modify the list of eligible articles, consider a beneficiaries' status in light of the designation criteria, and to exercise the competitive need waiver authority. These procedures set strict requirements that interested parties must follow in submitting these petitions.

Along with his draft bill reauthorizing GSP, President Clinton has transmitted proposals for modifying the current GSP federal regulations. In that transmission, among other things, he has proposed limiting the ability of interested parties to request that items be *added* to -- but not deleted from -- the list of eligible articles. Specifically, he has proposed that parties be limited to requesting additions every three years but that they be allowed to request deletions at any time.

III. GSP in Practice

The United States offers GSP benefits to 120 developing countries[12], including 35 which are considered "least-developed," and it treats 4,400 products[13] in the U.S. tariff schedule as eligible for GSP treatment.

Figure 2 presents a break-down of imports from all GSP beneficiaries, from the most impoverished GSP beneficiaries (least-developed countries), and from the poorest GSP beneficiaries in Africa.[14] Along with import values broken up into several categories, the figure displays two important ratios for each country group (in bold). One is the proportion of imports from each country group which normally would be subject to import duties but which instead received GSP treatment. This ratio indicates how much of a country's export package is receiving GSP treatment. Second is the proportion of total imports from all beneficiaries for which each country group received GSP treatment. This ratio indicates how big each country group's benefits "package" is compared to the benefits package of developing countries overall.

Figure 2 reveals two important facts:

- **only about 15 percent of all developing country exports to the United States receive preferential treatment under GSP; and**
- **less than one-tenth of 1 percent of all GSP benefits accrue to the world's poorest countries, most of which are in Sub-Saharan Africa.**

Fig. 2) Imports from all GSP Beneficiaries, the Least-Developed Beneficiaries, and the Least-Developed African Beneficiaries ($, c.i.f.)

	Total Imports (GSP & Other)	Imports Subject to Duties	Dutiable Imports Covered by GSP	Covered Imports Denied GSP Treatment[1]	Imports which Received GSP Treatment	Proportion of Imports Subject to Import Duties which Receive GSP Treatment	Proportion of Imports from all Beneficiaries which Receive GSP Treatment
ALL BENFICIARIES							
1990	95,236,300,000	74,699,900,000	24,545,400,000	13,580,500,000	11,014,800,000	14.7%	100%
1991	95,969,800,000	74,039,400,000	26,907,000,000	26,907,200,000	13,675,000,000	18.5%	100%
LEAST-DEVELOPED BENEFICIARIES							
1990	1,596,400,000	1,112,600,000	96,800,000	40,800,000	55,900,000	5.0%	0.1%
1991	1,389,000,000	1,035,800,000	82,900,000	33,700,000	49,300,000	4.8%	0.0%
LEAST-DEVELOPED AFRICAN BENEFICIARIES							
1990	868,358,200	334,878,200	46,980,400	13,794,000	33,328,800	10.0%	0.0%
1991	771,780,300	307,913,300	33,816,000	10,617,100	23,379,300	7.6%	0.0%

Notes: 1. These were denied GSP treatment as a result of "competitive need" exclusions and -- in the case of the poorest countries, almost exclusively -- administrative problems.

Source: UNCTAD (1991). *Generalized System of Preferences: Replies by Preference-Giving Countries: United States of America*. TD/B/C.5/PREF/55.

THREE SUSTAINABLE DEVELOPMENT IMPERATIVES FOR THE GSP REAUTHORIZATION

I. Clarify that the Fundamental Purpose of GSP is to Promote Environmentally Sustainable Development

Legislation reauthorizing GSP should:

- State that the fundamental purpose of the United States' Generalized System of Preferences program is to promote environmentally sustainable development, recognizing that trade substantially influences economic and social structures and that such structures lie at the heart of many environmental and social problems; and

- require as a "general condition" that the President, in implementing GSP, have due regard for the positive or negative effects such action will have on the protection of natural resources and environmental systems of interest to all people.

In their recent agreement establishing a World Trade Organization (WTO), contracting parties to GATT recognized that "their relations in the field of trade and economic endeavour should be conducted ... in accordance with the objective of sustainable development."[15] Including this recognition in the GATT agreement was a primary objective of the U.S. government. Moreover, governments at the United Nations Conference on Environment and Development (UNCED) in 1992 agreed that they "should strive ... to make international trade and environmental policies mutually supportive in favour of sustainable development."[16]

Congress needs to bring GSP into conformity with these and other recent U.S. commitments to promote sustainable development through trade policy. When it created GSP in 1974, Congress specified that the primary purpose of GSP was "to promote the development of developing countries."[17] However, over the last 20 years, notions of "development" have changed. Today it is clear that economic development will be impossible to achieve if the natural resources upon which present and future generations depend are destroyed. This recognition must be incorporated into GSP.

II. Improve the Effectiveness of GSP in Helping the Poorest Countries in Africa and Elsewhere to Diversify their Exports

Legislation reauthorizing GSP should:

- Waive the application of all statutory product exemptions for least-developed countries (as designated by the United Nations) (§ 2463); and

- require the International Trade Commission to immediately recommend whether all articles not now designated as eligible articles should be designated, if such articles either: 1) have not been considered for designation previously or 2) have been considered and rejected for designation previously if the conditions which led to their rejection have changed.

The environmental cost for most countries of limiting GSP product coverage is obvious: continued economic reliance on raw natural resource exports. Most developing countries have no choice but to rely heavily on their export of natural resources such as timber and cotton. However, natural resource exports produce few economic benefits, and producing natural resources often is an environmental disaster. Timber production, unsustainable farming, mining, and over-fishing are at the root of many environmental problems of greatest concern in developing countries.

Poverty and environmental degradation caused by natural resource production in developing countries harm the United States. Clearly, this is true when environmental resources of interest to the United States (e.g., tropical rainforest and biodiversity) are destroyed. However, it is equally true when many people in developing countries suffer. On a recent Presidential mission to Africa, Representative Tony Hall (D. - Ohio) and Agency for International Development Administrator Brian Atwood determined that over-reliance on unsustainable cotton production, along with subsequent desertification and famine, was partially to blame for the humanitarian disaster which has taken between 200,000 and 500,000 lives in Rwanda this spring. According to Hall and Atwood, the United States can and should do everything it can to avoid other "Rwandas" in the future.

One way to avoid future Rwandas is to expand GSP benefits to developing countries which depend heavily on natural resource exports. Currently, GSP *unnecessarily* excludes from coverage many products of export interest to such poor countries in Africa and elsewhere.

GSP limits product coverage mainly because it *completely* exempts textiles, electronics, steel, leather goods, glass and other "import-sensitive" items from designation as eligible articles. This "across-the-board" exemption -- i.e., an exemption which affects all countries -- is a result of the program's unique history. When GSP was created, Congress recognized the need (at that time) to include all developing countries in the program. In order to limit damaging import surges from the more *advanced* beneficiaries, without excluding such countries from the program, Congress enacted the across-the-board product exemptions described above.

However, many developing countries (both individually and collectively) are unable to produce statutorily exempted products efficiently enough to harm firms in the United States. Specifically, the world's least-developed countries -- most of which are in Sub-Saharan Africa -- are unable to produce exempted products efficiently. The statutory product exemptions, therefore, are unnecessary in the case of least-developed countries.

GSP also fails to cover products of export interest to developing countries because of the way the program is administered. Products are not designated as eligible articles unless an appropriate party requests that they be so designated, USTR accepts this request, and the International Trade Commission determines that they are not import sensitive. Many developing countries do not understand how the U.S. designation process operates, and so they do not request that their export products be considered.

In order to ensure that GSP covers more products of interest to poor countries, *all* products automatically should be considered for listing as eligible articles, and only those articles found to be import sensitive should not be designated.

III. Establish A Mechanism in GSP to Reward Developing Countries for Undertaking Important Environmental Protection Efforts

Legislation reauthorizing GSP should:

- Require the President, in determining whether or not to waive competitive need limits, to "give great weight to" the extent to which the developing country has taken or is taking steps to protect environmental resources or systems of significance to the international community; and

- require the President to make a determination under the above paragraph after receiving the advice of the Environmental Protection Agency, the National Oceanic and Atmospheric Administration and the Department of the Interior on whether or not a country has taken or is taking such steps.

Current law requires the President to give primary consideration to two criteria in determining whether to waive "competitive need limits" on the amount of each product that each country is allowed to export to the United States under GSP in a year (see page 3). These criteria are "the extent to which the beneficiary has assured the United States that [it] will provide equitable and reasonable access to [its] markets and basic commodity resources" and "the extent to which such country provides [intellectual property rights protection]."

Today, more than ever, there is a need to find cost-effective ways of encouraging other countries to undertake environmental protection efforts, particularly ones in which the international community has as much or more of a stake than the individual countries, at least in the short-run.

Waiving competitive need limits to reward environmental protection initiatives would involve *no* government spending.

In addition, granting the President this authority promises to be very effective from an environmental perspective. Many of the countries which most frequently face limits on their GSP benefits (e.g., Brazil, Indonesia and Malaysia) harbor environmental resources -- including rainforests, the conservation of which is an important security interest of the United States.

More products are denied GSP treatment each year because of competitive need limits than enter the United States under GSP. Thus, granting the President this authority would create a very powerful mechanism by which to encourage protection of important resources.

SOURCES AND NOTES

1. Letter to Michael Kantor from U.S. Representative Ron Wyden (D. - Ore.) and nine other members of Congress, May 16, 1994; letter to Mickey Kantor from 16 environmental organizations (available from the Environmental and Energy Study Institute), April 15, 1994.

2. Part IV of the GATT: Articles XXXVI, XXXVII and XXXVIII.

3. GATT Decision of 25 June 1971, GATT Doc. (L/3545), GATT, 18th Supp. BISD 224 (1972).

4. GATT Contracting Parties Decision of November 28, 1979, *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*, GATT, 26th Supp. BISD 203 (1980).

5. Decision on Measures in Favour of Least-Developed Countries, *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Version of 15 December 1993)*, MTN/FA III.

6. Pub. L. 93-618, 19 U.S.C. Sections 2101-2487.

7. *Administration Proposal on Renewal of the Generalized System of Preferences (GSP) Program*, May 16, 1994, available from the Trade Subcommittee of the House Ways and Means Committee.

8. This condition tracks language in the "Pelly Amendment" to the Magnuson Fisheries Protection Act.

9. Nemmers & Rowland (1977), "The U.S. Generalized System of Preferences: Too Much System, Too Little Preference," *Law and Pol'y Int'l Bus*, 855: 865.

10. Staff of House Committee on Ways and Means (1980), *Report to the Congress on the First Five Years' Operation of the U.S. Generalized System of Preferences (GSP)*, 96th Cong., 2d Sess., 20-21 (Comm. Print 1980): 21.

11. 15 CFR Ch. XX (1-1-93 Edition), Part 2007.

12. This number does not include non-independent countries and territories nor associations of countries which are treated as one country.

13. These are products classified at the 8-digit level.

14. The data is for 1990 and 1991 because these are the last two years for which data was accessible.

15. *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Version of 15 December 1993)*, (Washington: U.S. Trade Representatives Office), MTN/FA II: 1.

16. UNCED (1992), *Agenda 21*, A/CONF.151/4 (Part I): 12.

17. Section 501(b)(1) of Pub.L. 98-573.

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For more information, contact Paul Speck at 202-628-1400 (phone), 202-628-1825 (fax).

EMBASSY OF JAMAICA,
Washington, DC, July 5, 1994.

Hon. MAX BAUCUS, CHAIRMAN,
Subcommittee on International Trade,
Senate Finance Committee,
U.S. Senate,
Washington, DC.

Dear Chairman Baucus: I am writing on behalf of the Government of Jamaica to express strong support for Congressional reauthorization of the Generalized System of Preference (GSP) this year.

The GSP program establishes important tangible mechanisms that support trade-based growth and economic reform throughout the Caribbean and the developing world. The GSP provides developing countries market access to the United States for many non-traditional exports, generating a critical source of foreign exchange. These earnings, in turn, help finance future imports or investment in productive capacity, stimulating job creation and advancing the cause of trade liberalization.

Moreover, the United States commitment to trade-based growth, evidenced by programs like the GSP, sends an unmistakable signal of the United States support for continued economic growth and trade liberalization throughout the developing world. To restructure their economies to take advantage of the benefits of increased United States trade links, Jamaica has reduced tariff and other import barriers, privatized state-owned entities, eliminated controls on prices and exchange rates, and lessened the hand of the government in the economy. We have established sound environmental policies, fair labor codes, and strengthened intellectual property protection. The resulting policy mix has allowed the private sector to become an engine of sustainable development and economic growth.

Ultimately, economic growth in the CARICOM region and throughout the developing world is important to the United States interests. The Caribbean Basin's experience with trade-propelled development provides an instructive model for the United States. As the Caribbean Basin economy has developed, for example, so too has the region's ability to import United States goods and services. From 1985 to 1993, United States exports to the Caribbean expanded by over 100 percent, leading to the creation of close to 16,000 United States job a year over the past decade. Finally, United States consumers benefit from greater access to the products of the developing world.

As congress continues to address its trade agenda this year, part of its attention must center on the mechanisms that enable foreign countries to remain healthy and vigorous trading partners of the United States. A sure mechanism to help achieve this goal is the Generalized System of Preferences (GSP).

Yours sincerely,

DR. RICHARD L. BERNAL, *Ambassador*

International Intellectual Property Alliance

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Eric H. Smith
Executive Director
and
General Counsel

February 28, 1994

The Honorable Sam M. Gibbons
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1136 Longworth House Office Building
Washington, DC 20515

Re: Request for Written Submissions on the Possible Extension of the Generalized System of Preferences (GSP)

Dear Chairman Gibbons:

The International Intellectual Property Alliance ("IIPA" or "Alliance") strongly supports the extension of the GSP Program.[1] In response to the Subcommittee's January 10, 1994 request, IIPA submits these comments which outline the important role the GSP Program has played in securing improved copyright protection in GSP beneficiary countries and suggests ways to improve the process by which intellectual property rights (IPR) issues are raised in the context of annual GSP reviews in order to reduce administrative burdens on both the government and on the private sector.

The IIPA is a coalition formed in 1984 and consists of eight trade associations, each of which represents a significant segment of the copyright industry in the United States. The IIPA consists of the American Film Marketing Association (AFMA), the Association of American Publishers (AAP), the Business Software Alliance (BSA), the Computer and Business Equipment Manufacturers Association (CBEMA), the Information Technology Association of America (ITAA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA), and the Recording Industry Association of America (RIAA).

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[1] See IIPA submission to this Subcommittee in support of the Renewal of the GSP Program (April 27, 1993).

The IIPA represents more than 1,500 companies that produce and distribute computers and computer software, motion pictures, television programs and home videocassettes; music and sound recordings, audiocassettes; textbooks, tradebooks, reference and professional publications and journals.

The core copyright industries accounted for $206.6 billion in value added to the U.S. economy (in real 1992 dollars), or approximately 3.6% of the Gross Domestic Product (GDP), and the total copyright industries accounted for $325 billion in value added, or approximately 5.6% of GDP. According to an October 1993 report prepared for IIPA by Economists, Inc. entitled Copyright Industries in the U.S. Economy: 1993 Perspective, the core industries grew at close to three times the annual rate of the U.S. economy as a whole between 1987 and 1991 (4.2% vs. 1.5%). Employment in the core copyright industries grew at over three times the average annual growth rate of the economy between 1987 through 1991 (3.0% vs. 0.97%). Over 5.5 million workers were employed by the total copyright industries, about 4.8% of total U.S. work force, in 1991. The core copyright industries contributed at least $36.2 billion in foreign sales to the U.S. economy in 1991, and preliminary data for 1992 indicate that foreign sales will exceed $39.5 billion, an increase of more than 9% over 1991.

The Critical Link between GSP and Copyright

The U.S. copyright-based industries represent one of the few sectors of the U.S. economy that regularly contributes to a positive balance of trade. Inexpensive and accessible reproduction technologies, however, have made it easy for U.S. copyrighted works to be pirated -- stolen -- in other countries. In addition to the worldwide problem of piracy, several foreign countries have erected market access barriers to U.S. copyright products.

To combat these dual problems in developing countries, the U.S. copyright-based industries joined with the Administration and Congress to fashion and implement trade legislation and negotiating tools that recognize that countries which condone piracy or other market access barriers to copyrighted products should not receive unilateral and concessionary trade benefits from the U.S. To this end, the Caribbean Basin Economic Recovery Act[2] and "Section 301" (and

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[2] See the Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, §§ 212(b)(5) and 212(c)(9) (codified at 19 U.S.C. §§ 2702(b)(5) and 2702(c)(9)). This Act is commonly referred to as the Caribbean Basin Initiative (CBI).

later "Special 301"[3]) provide expressly that failure to afford adequate protection to U.S. intellectual property is an unfair trade practice.

It is important to review briefly the history of the GSP Program and the role it plays in providing protection for U.S. copyrights. Title V of the Trade and Tariff Act of 1984, known as the GSP Renewal Act,[4] renewed the GSP Program which had been introduced in the Trade Act of 1974 [hereinafter "TA 1974"]. The GSP Program provides unilateral, non-reciprocal duty-free tariff treatment to approximately 4,300 articles imported from over 135 designated beneficiary countries and territories to aid their economic development through preferential market access.[5] In addition, the TTA 1984 amended Title III of the TA 1974 to provide expressly that failure to afford adequate protection to U.S. intellectual property was an unfair trade practice under Section 301 of the TA 1974.[6]

The GSP legislation requires the President to apply mandatory and discretionary criteria with respect to IPR protection as a condition to a country achieving "beneficiary" status under the GSP Program. The mandatory criterion prohibits the designation of a country from becoming a "beneficiary developing country" if, for example, "such country has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens." See Section 503(b)(4) of the GSP Renewal Act, codified at 19 U.S.C. § 2462(b)(4).

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[3] See Trade and Tariff Act of 1984, Pub. L. No. 98-573 (1984), as amended, Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418 (codified at 19 U.S.C. §§ 2411-2420) [hereinafter "TTA 1988"].

[4] See the Generalized System of Preferences Renewal Act of 1984, Title V, Pub. L. No. 98-573 (1984) (codified at 19 U.S.C. §§ 2461-2465). The GSP program was extended for eight and one-half years, that is, through July 4, 1993.

[5] Office of the United States Trade Representative, A Guide to the U.S. Generalized System of Preferences (GSP), at i (August 1991).

[6] See Pub. L. No. 98-573 (1984), codified at 19 U.S.C. §§ 2411-2420.

The GSP Renewal Act added as a discretionary criterion, in determining whether to designate a developing country as eligible to receive GSP duty-free trade treatment, that

> the President shall take into account ... the extent to which [each] country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights.

Section 503(c)(5) of the GSP Renewal Act, codified at 19 U.S.C. § 2462(c)(5). The Senate Finance Committee Report explained that:

> To determine whether a country provides "adequate and effective means," the President should consider the extent of statutory protection for intellectual property (including the scope and duration of such protection), the remedies available to aggrieved parties, the willingness and ability of the government to enforce intellectual property rights on behalf of foreign nationals, the ability of foreign nationals effectively to enforce their intellectual property rights on their own behalf, and whether the country's system of law imposes formalities or similar requirements that, in practice, are an obstacle to meaningful protection.

S. Rep. No. 98-485, 98th Cong., 2d Sess. at 11 (1984). The Senate Report also noted:

> In delegating this discretionary authority to the President, it is the intent of the Committee that the President will vigorously exercise the authority to withdraw, to suspend, or to limit GSP eligibility of non-complying countries. ... Where valid and reasonable complaints are raised by U.S. firms concerning a beneficiary country's market access policy or protection of intellectual property rights, for example, it is expected that such interests will be given prominent attention by the President in deciding whether to modify duty-free treatment for that country.

Id. at 12-13 (emphasis added). The House Ways and Means Committee stated that "countries wishing to reap the benefits of preferential duty-free access to the U.S. market must fulfill international responsibilities" in the intellectual property area. House Rep. No. 98-1090, 98th Cong., 2d Sess. at 12 (1984).

The GSP Program is compatible with the GATT and will remain compatible under the WTO (World Trade Organization). This Program will therefore continue to be a key trade tool to address piracy of U.S. copyrighted works. Last year the GSP

Program was extended for 15 months; its authorization is scheduled to expire on September 30, 1994.[7] The IIPA heartily supports Congressional extension of the GSP Program.

Use of the GSP Program to Improve Copyright Protection

The leverage provided by the prospect of the U.S. halting or limiting GSP privileges to those beneficiary countries which refuse to stem illegal piracy or open their markets to U.S. copyrighted products and services has been crucial in achieving the goals of the GSP Program. The need for this leverage has not diminished since 1984. Retaining GSP benefits has figured prominently in the decisions by a number of countries to improve their IPR protection and the IIPA actively used the GSP petition process as a means to directly encourage countries with high levels of piracy and market access barriers to U.S. copyrighted products to improve their copyright protection, enforcement and market access schemes.

Indeed, these concerted efforts by the U.S. government and the IIPA to use GSP leverage has proved successful in several cases, for example: Singapore, Malaysia and Cyprus. However, in other cases, results under the GSP Program have been mixed, and the IIPA and its members have relied on the Special 301 procedure (discussed below) in order to call attention to deficiencies in copyright protection and enforcement experienced by our industries in foreign countries.[8]

However, in the last year, GSP leverage has become a more credible trade tool. On April 19, 1993, USTR General Counsel Ira Shapiro testified before the Subcommittee on International Trade of the Senate Committee of Foreign Affairs that the Administration intended to move swiftly with all available trade tools, including GSP, to use against countries which do not provided adequate and effective copyright protection and enforcement. IIPA filed GSP Petitions against six countries on June 1, 1993. USTR accepted IIPA's petitions against Cyprus, Egypt, El Salvador, Poland and Turkey. IIPA later withdrew its petition against Venezuela because it passed a new and comprehensive copyright law. USTR completed an

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[7] Section 13802 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (Aug. 10, 1993).

[8] The IIPA remains very concerned that the "vigorous exercise" of "authority to withdraw" GSP benefits contemplated in the above-cited Senate Report has not occurred. While IIPA does not at this point recommend turning the now "discretionary" criterion into a "mandatory" criterion, it reserves its right to later propose such a legislative change.

"expedited review" against Cyprus and decided to suspension its GSP benefits; this suspension has been deferred, however, because the new Cypriot copyright law entered into effect on January 1, 1994. A final decision on this deferred suspension is due no later than July 31, 1994. In the other four countries, legislative reform is moving forward (in some cases more rapidly than others) and commitments from many of these governments to improve enforcement efforts are being made. For a more complete discussion of these targeted countries, see Appendix A.

Suggestions for Improving the GSP Petition Process

While the intellectual property rights criteria in the GSP Program have provided leverage in encouraging other nations to improve their copyright protection and enforcement, the IIPA believes this process must be significantly improved and more aggressively used. The discussion below reviews some of the regulatory hurdles which need to be streamlined, perhaps by legislative action.[9]

To review the GSP process, during annual GSP reviews challenges may be brought against either a country's overall beneficiary status or against product-by-product eligibility.[10] The vast majority of GSP petitions address product eligibility. These petitions require the submission of sometimes voluminous evidence, including for example, production figures and capacity, employment data, sales statistics, export values, company profitability and analyses of the effect of GSP duty-free imports on market competition. See e.g. 15 C.F.R. § 2007.1(b).

Any person may file a petition with the GSP Subcommittee of the interagency Trade Policy Staff Committee (TPSC) requesting to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in Subsections 502(b) or 502(c) of the TTA 1984 [19 U.S.C. § 2462 (b) and (c)]. See 15 C.F.R.

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[9] See also IIPA Comments before the GSP Subcommittee on the Renewal of the GSP Program (May 6, 1992).

[10] The regulations provide that the deadline for the acceptance of petitions for GSP review is June 1st (unless specified otherwise by Federal Register notice). If the petition is accepted by the TPSC (usually in mid-July), then the review process begins, hearings are held, and a decision is announced on April 1 (or as published in the Federal Register). See 15 C.F.R. § 2007.3(a).

§ 2007.0(b) (1992). It is this provision that the IIPA and its members have used to challenge the IPR practices of the countries discussed above.

If GSP petitions are accepted by the TPSC, full review, including submissions of comments and hearings, will be required. While this detailed examination process is necessary in GSP product cases, it is unnecessary and unduly burdensome in cases involving challenges to a country's beneficiary status resulting from the lack of adequate and effective IPR protection. Such a de-designation petition does not target any specific products. As in the case under Special or regular 301 and as discussed further below, only at such time when USTR determines that a sanction (such as de-designation) must be imposed is it necessary to request extensive comments and hold full-blown hearings, thereby giving the public and the affected importers of GSP products a full opportunity to be heard.

Based on the IIPA's experiences with the GSP Program, we offer a proposal to improve the efficacy of the GSP petition process where challenges to a country's beneficiary status are based on the mandatory or discretionary criteria affecting copyright protection. These comments are preliminary only and the IIPA may wish to make additional legislative and/or administrative recommendations at a later time.

1. Petitions to de-designate countries from GSP beneficiary status for IPR reasons should be considered within the context of "Special 301" submissions and on a similar timetable.

Along with the GSP IPR provisions, there is another mechanism for USTR and the interagency team to review whether adequate and effective copyright protection is being afforded to U.S. copyright owners by foreign countries. The "Special 301" provisions require USTR to identify those foreign countries that "deny adequate and effective protection of intellectual property rights, or deny fair and equitable market access for United States persons that rely upon intellectual property protection."[11]

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[11] Regarding "Special 301," see Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, Section 182. Regarding Section 301, see Trade and Tariff Act of 1984, Pub. L. No. 98-573, Section 304 (codified at 19 U.S.C. § 2411 et seq.). In identifying Priority Foreign Countries, the USTR shall target those countries "that have the most onerous or egregious acts, policies, or practices" that deny adequate and effective protection of IPR or fair and equitable market access.

The IIPA proposes that petitions challenging a country's GSP beneficiary status due to the lack of adequate and effective copyright protection should be permitted to be filed simultaneously with Special 301 petitions.

The Special 301 review procedure and the GSP beneficiary designation procedure involve the same kind of review by USTR into the adequacy and effectiveness of a foreign country's IPR protection. Combining both the GSP and the Special 301 country reviews would significantly reduce overlapping reviews (and negotiations) by USTR on IPR matters. The same underlying facts must be provided by the private sector in both cases. Furthermore, the intellectual property review process under Special 301 does not require extensive submissions and such procedural requirements need not be required for GSP country de-designation purposes. In short, country de-designation petitions would be submitted by affected companies and industries along with Special 301 recommendations in February, rather than in June as at present.

This proposal would work as follows. The IIPA, for example, would request that Country Alpha be designated as a Priority Foreign Country and, where applicable, that Alpha's GSP benefits be withdrawn. If Country Alpha is so identified, a six-month (or in certain circumstances, nine-months) 301 and GSP investigation would commence (usually in late May). If the policies or practices that were identified have not been resolved by the end of that time period, USTR would decide what action to take; trade retaliation is one possibility. Even under current practice, if USTR makes an unfairness determination under Special 301, the GSP beneficiary status of a country can be withdrawn completely or GSP-eligible products can be withdrawn, limited, or suspended from eligibility. At that time, a public notice in the Federal Register must be published and a hearing must be held before any sanction, either under GSP or 301, can be taken.

The same mechanism would apply to countries to be placed on the "Priority Watch List" or the "Watch List," though under different timetables. IIPA might recommend that Country Beta be placed on the "Priority Watch List" (or the "Watch List"). In addition, IIPA or any other affected industry or company might also decide to request that Country Beta should lose its GSP beneficiary status because of its failure to provide "adequate and effective" copyright protection, as specified in the GSP Renewal Act. In April, USTR might then decide to place Country Beta on the "Priority Watch List." At the same time, it would also decide, in its discretion, whether or not to accept the GSP request for review as well.

Where a GSP petition is accepted, we would propose an eight-month investigation period through January of the

following year at which point a decision would be made whether to withdraw benefits. This time period approximates the nine-month investigation currently applicable in GSP cases (mid-July to April, according to 15 C.F.R. § 2007.3). This means that a GSP petition initiated simultaneously with a Special 301 recommendation must conclude in late January of the following year, prior to the February deadline for next year's Special 301 recommendations.

The clear advantage of this procedure is that it would streamline the entire process for reviewing a country's IPR practices. Furthermore, it would eliminate the need for unnecessary submissions and hearing requirements until the end of the process -- until USTR has made a determination to sanction a country. At this point, a public hearing would be afforded to permit all those affected, by either 301 or GSP sanctions, to be fully heard. Of course, product specific petitions would be dealt with under the current petition structure.

IIPA believes that this more consolidated approach toward accepting petitions limited to cases involving country eligibility challenges based on IPR deficiencies will better meet the intent of Congress and, just as importantly, the ability of USTR to implement Congressional goals. This proposal to integrate the filing procedures under GSP with the Special 301 mechanisms, however -- with respect to the country eligibility issue -- should in no way be understood to diminish the independent functioning of either of these trade programs. We do not believe that the implementation of such a system would require major modifications to the current GSP legislation.

2. GSP petitions to de-designate a country based on a country's lack of adequate and effective intellectual property protection should be permitted at any time

Instances of completely inadequate copyright legislation or significant piracy problems in GSP beneficiary countries may arise suddenly and have a severe economic impact on U.S. IPR owners unless halted immediately. To require the adversely affected U.S. copyright owners, for example, to wait until the next annual filing deadline, plus the time required for the investigation, would permit too much time to pass in which severe damage could be inflicted. There are a variety of potential situations which could arise suddenly and which, unless stopped immediately, could severely injure U.S. copyright owners in foreign countries. For example, a new compact disc manufacturing plant may appear in one country -- in August, for example -- threatening the region with a potential torrent of exported pirate CDs. Without immediate action to stop these infringing activities, the legitimate

market for such products could be completely disrupted before U.S. copyright owners would be entitled to file an annual petition in February, hope for its acceptance, participate in the GSP investigation, and anticipate a favorable outcome under the threat of strong sanctions.

We propose that in order to reduce the damage caused by such delays, petitions requesting the de-designation of a country's beneficiary status should be able to be filed with the TPSC at any time. In such cases, private industry would have to make a showing that the unexpected nature of the copyright problem and the potential for severe harm to U.S. copyright owners was such that significant harm would occur if the problem was addressed under the annual filing procedure.

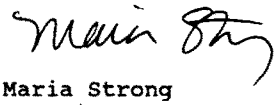
IIPA recommends that the legislation extending the GSP Program expressly permit that such GSP petitions based on these criteria be permitted at any time. In the alternative of specific legislative reform, IIPA recommends that USTR revise Section 2007.0(b) of its regulations to permit GSP petitions for country de-designation based on the mandatory and discretionary criteria in Section 502(b) or 502(c) [19 U.S.C. § 2642(b) and (c)] to be filed, if the circumstances noted above are present, at any time.

Conclusion

The GSP Program is a critical element of the U.S. bilateral trade program. Now that the Uruguay Round has ended and a Trade-Related Aspects of Intellectual Property (TRIPS) Agreement has been completed, GSP will become an even more important bilateral tool. The IIPA strongly supports the renewal of the GSP Program and its vigorous application by USTR and the Administration.

While the GSP Program has proven to be a useful tool for encouraging strengthened intellectual property protection, improvements can be made to reduce administrative burdens in the GSP petition process for both the private sector and the government. The IIPA stands ready to assist in developing improvements to the GSP Program and offers our support to extend the reauthorization of this valuable program.

Respectfully submitted,



Maria Strong
Associate General Counsel
International Intellectual
Property Alliance

APPENDIX A

Use of the GSP Program to Improve
Copyright Protection in GSP Beneficiary Countries

The leverage provided by the prospect of the U.S. halting or limiting GSP privileges to those beneficiary countries which refuse to stem illegal piracy or open their markets to U.S. copyrighted products and services has been important in achieving the goals of the GSP Program. Retaining GSP benefits has figured prominently in the decisions by a number of countries to improve their IPR protection.

The following briefly reviews IIPA's and its members' experiences under the GSP Program on a country-by-country basis, in chronological order:

Mixed Results under GSP: 1986-1992

Singapore: The threat of possible withdrawal of GSP privileges proved essential in Singapore; a copyright law was passed in February 1987 and Singapore entered into bilateral copyright relations with the U.S. in April 1987. Singapore changed from being the "world capital of piracy" (in 1985) to being a model country for the establishment and enforcement of intellectual property rights.

Malaysia: After extensive trade discussions with the U.S., Malaysia adopted a new copyright law in December 1987 and amended its copyright law to afford protection for foreign works and joined the Berne Convention in 1990.

Indonesia: On June 1, 1986, IIPA petitioned to deny GSP benefits to Indonesia as a result of massive piracy of U.S. copyrighted works there. The GSP review process advanced broad copyright reform when Indonesia passed significant amendments to its copyright law in 1987, thus permitting it to remain in the GSP Program. Indonesia then entered into bilateral copyright relations with the U.S., effective August 1, 1989.

However, despite years of discussions prompted by this GSP petition and Special 301 action, Indonesia remains unwilling to eliminate its protectionist policies and open up its market for the importation, production and distribution of sound recordings and the importation, distribution and exhibition of films and video to companies other than those that are 100 percent Indonesian-owned.

Thailand: On June 1, 1987, IIPA petitioned the President to review the GSP eligibility of Thailand and to deny GSP benefits as a result of that country's failure to provide adequate and effective copyright protection to U.S. copyright owners. Although USTR did accept IIPA's petition to de-designate Thailand from the GSP Program for lack of adequate intellectual property protection, de-designation was not ordered. Instead, Thai intellectual property practices continued to be reviewed through the end of 1988

and in January 1989, President Reagan announced his decision to deny duty-free entry to only approximately $165 million in Thai exports to the U.S. This "minimal" sanction was virtually ignored by the Thai government.

IIPA and the U.S. government have pressed for further reform in Thailand through the use of Section 301 as well as Special 301. In November 1989, after another year of Thai inaction, the IIPA, MPAA and RIAA filed a Section 301 petition against Thailand. A one-year investigation commenced and Ambassador Hills made an "unfairness" determination against Thailand in December 1991. Ambassador Hills terminated the 301 action and stated that the situation would be monitored further. In April 1992 and April 1993, USTR announced that Thailand would remain a Priority Foreign Country. The threat of retaliation -- which could include the loss of GSP benefits prompted Thailand to move forward to address the concerns of the IPR industries.

Because enforcement efforts in the video and audio area improved during 1993, Ambassador Kantor revoked the "Priority Foreign Country" designation and on September 31, 1993 moved Thailand to the "Priority Watch List." Thailand has yet to punish a major pirate at a level sufficient enough to deter piracy. The Thai Government is working toward passing a new copyright law this spring. IIPA has raised several significant substantive problems in the latest draft which must be corrected before final adoption.

The Philippines: On June 1, 1989, IIPA requested that GSP benefits be denied to the Philippines because of high levels of piracy and an inadequate copyright law which includes a compulsory license which is incompatible with the Berne Convention and has destroyed the market for books in that country. At the request of USTR, the IIPA withdrew its GSP de-designation petition on August 4, 1989, on the basis of commitments made by the Philippine government to improve its level of copyright protection. After three more years of unfulfilled commitments by the Philippines and mounting losses due to piracy, pressure in early 1993 under Special 301 led to positive results. On April 6, 1993, the Philippine government entered into an agreement to raise its level of IPR protection to internationally-accepted standards and increase enforcement efforts. IIPA will be monitoring Philippine compliance with the commitments it made in that agreement.

Malta: In 1991, MPEAA (the Motion Picture Export Association of America) petitioned that GSP trade benefits to Malta be denied because of rampant video piracy in that country. Extensive submissions were made, hearings were held, and the U.S. and Maltese governments engaged in negotiations aimed at resolving the problems of piracy and inadequate copyright protection. The Maltese government made commitments to step up enforcement activities and pass legislation to amend its copyright law. This GSP investigation was extended in 1992. Under the imminent threat of GSP withdrawal, Malta recently passed amendments to its copyright

law to increase penalties and moved forward the implementation date of this law to January 1, 1993. Malta also adopted regulations which would enhance enforcement efforts. As a result of this positive action, MPEAA withdrew its GSP petition on January 29, 1993.

Guatemala: In June 1991, MPEAA filed a petition against Guatemala because of that country's failure to provide adequate and effective protection for U.S. motion pictures, television programming and videocassettes. The interception and unauthorized retransmission by cable systems of U.S. satellite signals carrying U.S. copyrighted programming has been a significant piracy problem in Guatemala. This investigation has been extended twice (in 1992 and 1993) by the U.S. Government in order to evaluate the adequacy of Guatemala's copyright regime and enforcement practices.

Progress has been slow. However, MPEAA is encouraged by recent developments by the Guatemalan Government and the Guatemalan private sector to eliminate piracy of U.S. programming. Most cable operators in Guatemala City have made efforts to stop piracy and have joined the MPEAA Quitclaim Program (a program where cable operators in the Central American region have an opportunity to legally retransmit certain non-premium U.S. programming). Implementing regulations of the cable law have been issued but strict enforcement remains a high priority. Guatemala has also indicated that it intends to submit a "world class" copyright law to its legislature by the first half of 1994.

Honduras: In June 1992, MPEAA filed a petition against Honduras because of its failure to provide adequate and effective protection for U.S. motion pictures, television programming and videocassettes. Progress was slow and the GSP investigation was extended in 1993. In September 1993, Honduras passed a new copyright law. Unfortunately, several substantive points in the law must be amended and clarified. The enforcement system must be significantly strengthened and amendments must be made to the penal code to provide deterrent penalties for copyright infringement.

The Dominican Republic: MPEAA filed a GSP petition against the Dominican Republic in June 1992 because of that country's failure to provide adequate and effective protection for U.S. motion pictures, television programming and videocassettes, and in particular, because of the unauthorized retransmissions of U.S. satellite signals and video piracy. While the Dominican Republic has enacted cable and video regulations, these regulations require revision. The Government also must take aggressive enforcement actions to shut down pirate TV and cable systems.

More Encouraging Results under GSP: 1993 to Present

IIPA filed petitions with USTR on June 1, 1993 targeting six countries for their failure to provide "adequate and effective

protection" to U.S. copyrights as required by the 1974 Trade Act in order for these beneficiary countries to receive preferential trading benefits. On September 21, 1993, USTR announced an "expedited GSP review" for Cyprus, and on October 5, 1993, USTR accepted IIPA's GSP petitions against Egypt, El Salvador, Poland and Turkey. IIPA withdrew its petition against Venezuela because it passed a modern and comprehensive copyright law which entered into force on October 15, 1993.

All these countries have responded to these GSP petitions and to a clear and unequivocal U.S. message that their GSP benefits (and, in the case of El Salvador, CBI benefits) are in jeopardy if progress is not made.

Cyprus: On June 1, 1991, the MPEAA filed a petition to deny GSP benefits to Cyprus because of widespread video piracy and unauthorized public performances taking place on the island. Again, at the request of USTR, MPEAA later conditionally withdrew its petition based on Cyprus' public acknowledgement of its role as a major transshipping center for pirate videocassettes and its commitment to confiscate pirate materials and adopt new copyright legislation by January 1992. Unfortunately this commitment was not met.

Under increasing Special 301 pressure in 1993, the Cypriot House of Representatives passed amendments to its copyright law which entered into effect on May 7, 1993. The implementation of these amendments (which included improved criminal penalties) was delayed until January 1, 1994. At the same time, the House suspended all criminal penalties available for copyright infringement until the new law took effect. On September 21, 1993, USTR announced an "expedited" GSP review against Cyprus. Ambassador Kantor noted that "suspending criminal copyright penalties is unprecedented, and we view it with the utmost seriousness."

On December 22, 1993, Ambassador Kantor announced his decision to suspend GSP benefits to Cyprus; he also announced that this suspension would be deferred while the U.S. monitors Cyprus' enforcement of its new copyright law (which entered into effect on January 1, 1994). The U.S. Government is monitoring Cyprus' implementation of the new law and if it concludes, at any time, that such implementation is inadequate, it will immediately publish a notice of the suspension of GSP benefits within 30 days. A final decision by USTR on this deferred suspension of GSP benefits will be made no later than July 31, 1994.

Egypt: Although amendments were made in 1992 to improve Egypt's copyright law, significant deficiencies remained in it. While several decrees had been issued to implement these amendments, none of them addressed the substantive deficiencies in the law (e.g. inadequate term of protection for computer programs, no rental rights for sound recordings or computer programs, unclear provisions regarding retransmission by cable or broadcast). Because no action was forthcoming, IIPA filed its GSP Petition in June 1993. In December 1993, two draft decrees were proposed to address many of the outstanding deficiencies in the law. We are awaiting the passage of these decrees. Effective enforcement of the copyright law remains a major challenge.

El Salvador: IIPA filed the petition to deny both GSP and CBI benefits to El Salvador because of rampant piracy in El Salvador and its role as an exporter of pirated products throughout the region. The draft copyright law continued to contain deficiencies and was not close to passage. Between the June 1 petition and the end of 1993, the Government of El Salvador took several positive actions, including: (1) passage of a new copyright law; (2) passage of amendments to its penal code to increase penalties for copyright infringement, and (3) submitting documents to its Legislative Assembly for ratification of the Berne Convention (the entry into force of this Convention in El Salvador is February 19, 1994).

Unfortunately, the Legislative Assembly unanimously voted on February 2, 1994 and passed a decree which extends the "grace period" for the effective date of the copyright law for audiotapes and videotapes for four more months, until June 15, 1994. This in effect condones four more months of piracy. The U.S. Government has protested this action. IIPA has recommended that El Salvador be elevated from the Special 301 "Watch List" to the "Priority Watch List" and that the GSP/CBI review continue.

Poland: The effort to obtain a new copyright law in Poland has been hard fought. U.S. and Polish government officials engaged in several rounds of consultations over different versions of draft laws over the past three years. In an effort to press for passage and improved enforcement efforts, IIPA filed its GSP Petition on June 1, 1993. On February 14, 1994, President Walesa signed the law and it will enter into effect three months after its official publication. Poland still must adhere to the 1971 text of the Berne Convention to meet its committee in the 1990 Business and Economic Relations Agreement with the U.S. In addition, it must adhere to the Geneva Phonograms Convention in order to protect U.S. sound recordings. Improvement enforcement is also needed.

Turkey: IIPA first targeted deficiencies in the Turkish copyright law and problems with weak enforcement in 1988. In the past two years, numerous versions of draft copyright laws and proposed amendments to the current copyright law have been developed. Because of inadequate copyright protection and poor enforcement, IIPA filed its GSP Petition on June 1, 1993. To date, draft amendments to the copyright law are still under consideration by the Turkish Government.

For further information regarding the legislative reform, piracy and enforcement in these countries, see IIPA's February 18, 1994 "Special 301" submission to USTR.

STATEMENT OF TEKSID, INC.

Mr. Chairman:

Mr. Chairman and Members of the of the Subcommittee on Trade of the Senate Finance Committee, My name is Leslie Alan Glick, and I am a partner in the law firm of Porter, Wright, Morris & Arthur in Washington, D.C. I am submitting this statement today on behalf of my client Teksid, Inc., a United States corporation located in Farmington Hills, Michigan. Teksid has 19 full time employees located in Michigan. Teksid is engaged in the importation of certain aluminum cylinder heads from Brazil that are essential to its operations. Teksid strongly supports the long term continuation of the Generalized System of Preferences ("GSP") program past its current expiration date.

Teksid also manufacturers aluminum cylinder heads in its plant in Tennessee and employs over 400 workers there. Thus

Teksid, although an importer from Brazil, is also a U.S. producer and employer. In the case of aluminum cylinder heads the U.S. production cannot meet the demand as the auto industry is switching to more and more aluminum. Therefore, imports are essential to meet the needs of the U.S. automotive manufacturers themselves for these parts and the GSP program could help keep their costs down.

Teksid believes that the GSP program is beneficial to the U.S. as well as the developing countries that benefit from it. Brazil, particularly with its significant social and economic problems, needs to be continued on the GSP program. It would be a grave mistake to eliminate Brazil and some of the larger GSP beneficiary countries in the misguided effort to give more benefits to smaller countries. Most smaller countries are already receiving duty free benefits in the U.S. through various regional preference programs such as the Caribbean Basin Initiative, that covers most of the Caribbean and Central American countries, and the Andean Trade Preference Act that covers the Andean countries. Mexico, a significant competitor of Brazil recently received special preferences under the North American Free Trade Agreement that go beyond those previously available under the Generalized System of Preferences.

If Brazil is to maintain its already fragile position in the world economy, it cannot afford to lose the benefits of the Generalized System of Preferences. Brazil has very high unemployment and underemployment. Inflation in 1993 was 1,592% up from 1,149% in 1992. Brazil has had a decline in real growth of Gross Domestic Product in two out the past four years. Recently, the Wall Street Journal quoted former Brazilian President Jose Sarney to the effect that "The national crisis has exceeded all limits. It requires heroic decisions." (Wall Street Journal, October 28, 1993 at A8).

We understand that in recent years, GSP benefits have been linked to other issues, particularly the protection of intellectual property rights. In this regard, Brazil as you may know has made major strides. The U.S. Trade Representative had at one time designated Brazil as a Priority Foreign Country under the Special 301 provisions of the Trade Act of 1974. On February 25, 1994, Trade Representative Kantor terminated the Special 301 investigation of Brazilian intellectual property Rights Practices noting; "I applaud the Government of Brazil for its continued progress in improving protection of intellectual property rights in the context of its economic reform program.....Brazil is demonstrating its leadership role through the early implementation of the Uruguay Round Intellectual Property provisions.....The steps that the Government of Brazil is undertaking will substantially improve economic relations between our two countries." (United States Trade Representative, Release No. 94-12, February 25, 1994).

In view of these facts, we strongly urge you both to renew the GSP program, without significant changes, and particularly to continue the status of Brazil as a GSP eligible country. One additional comment we wish to submit concerns the so called "3 year rule". Current USTR practice does not allow resubmission of a product addition submission if it has been accepted for review and then denied after a full review (hearings, briefs, etc.) If this regulation is codified into law it should be careful to continue the sames policy of applying the 3 year exclusion policy of applying the 3 year exclusion only to products that have been accepted for review and then rejected. Products that have petitioned for review but not been accepted for consideration (e.g., because the information was incomplete) should not be barred from applying the next year.

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