Trade Preference Program Revival: Is The Past Prologue?

By **Everett Eissenstat, Ludmilla Kasulke and Genevieve Hubbard** (September 13, 2023)


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In his play, "The Tempest," William Shakespeare wrote that "what's past is prologue," implying that we can discern what will happen in the future by looking to the past. The Generalized System of Preferences is the oldest U.S. trade preference program, providing duty-free treatment to developing countries' exports of certain products into the U.S.

Congress created the program in 1974 with the Trade Act, to spur economic development in beneficiary countries by providing them with access to the U.S. market through trade, and to help support American importers. Since establishment of the GSP, Congress has reauthorized it 14 times, most recently on March 23, 2018, during the 115th Congress.

In this article, we look at what these past reauthorizations tell us about the prospects for reauthorization in the 118th Congress. We also explore how Congress can maximize the effectiveness of the GSP program, and how the GSP can help companies identify new markets from which they can export into the U.S. and de-risk their supply chains.

First, of the 14 times the program has been reauthorized, there have been significant gaps from expiration to renewal 10 times, ranging from the shortest gap of 36 days to the longest and most recent gap, which is 970 days and counting. There is consensus that the effectiveness of the GSP program is severely limited by these recurring gaps.

When the program lapsed prior to reauthorization in the past, Congress extended the program retroactively, allowing importers to receive refunds for the duties incurred during the gap that should not have applied under the GSP.

However, such a system results in an unnecessary burden on participating countries and American importers, which are left with increased tariffs and uncertainty about the future of the program and possible reimbursement. The Coalition for GSP estimates that between January 2021 and April 2023, U.S. importers paid over $2.6 billion in new tariffs that would have been GSP-eligible.[1]

Second, despite bipartisan support for the program, GSP reauthorizing legislation rarely moves on its own. For example, when Congress reauthorized the GSP on Aug. 20, 1996, during the 104th Congress, they combined the GSP reauthorization bill with legislation including provisions for small businesses and tax credits for families seeking adoption.

Congress has also attached GSP reauthorization to government funding bills, as it did in its most recent reauthorization in 2018. Congress has also paired the reauthorization bill with other trade legislation, like the African Growth and Opportunity Act, Trade Adjustment

Assistance program and the Andean Trade Preference Act.

And third, Congress often adds additional criteria that must be met by beneficiary countries in order to remain eligible. For example, on Oct. 30, 1984, during the 98th Congress, P.L. 98-573 expanded eligibility criteria to include whether that country is "taking steps to afford internationally recognized worker rights to workers."

On Aug. 6, 2002, during the 107th Congress, the GSP's eligibility criteria were revised to require the support of U.S. efforts against terrorism and to expand the definition of internationally recognized worker rights to include a prohibition on the worst forms of child labor.

Given the history of GSP authorizations we can indeed gain a glimpse into what might happen with GSP reauthorization, not only in the 118th Congress, but also in the future.

First, it appears highly likely that gaps between expiration and reauthorization of the program will continue in the future. In fact, the current GSP program expired on Dec. 31, 2020, and we are now experiencing the longest gap in the program's history. Thus, to maximize the future effectiveness of the program, Congress should extend the GSP for as long as possible. A 10-year reauthorization seems reasonable, and perhaps Congress should consider extending the program permanently.

As in years past, Congress will likely also amend the eligibility criteria for the program in its next reauthorization. In the 117th Congress, the U.S. House of Representatives and the U.S. Senate each passed legislation that would have reauthorized the program and amended the eligibility criteria.

The Senate-passed U.S. Innovation and Competition Act included new eligibility criteria for participating countries, including considerations related to the environment, human rights, women's economic empowerment, rule of law, poverty reduction, anti-corruption, and digital trade.

The House-passed America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength, or America COMPETES Act, would have similarly added new eligibility criteria, but stakeholders cautioned many of their provisions may have been too onerous and undermined the program's effectiveness.

Lawmakers were unable to reconcile the differences between the two trade provisions, and they were ultimately dropped from the final legislative package, the CHIPS and Science Act, which became law on Aug. 9, 2022. It is likely that a reauthorization of the GSP will include at least some of these new criteria, more likely leaning more toward the Senate's latest proposal.

Given that the number of eligibility criteria continues to increase, Congress should consider expanding product coverage or other benefits for beneficiary countries, such as trade capacity building, to make the program more attractive and thus more effective.

The GSP is unlikely to move through the 118th Congress on its own, and is likely to be packaged with other legislation and trade provisions. In fact, Ways and Means subcommittee ranking member Earl Blumenauer, D-Ore., recently introduced legislation to do just that — H.R. 4276 — tying reauthorization of the GSP to reauthorization of both the Miscellaneous Tariff Bill and the Trade Adjustment Assistance programs, along with increased Trade Adjustment Assistance funding and expanded eligibility.

Given the limited number of days left in the legislative calendar, moving the GSP legislation through regular order seems highly unlikely. Thus, Congressional House and Senate leadership should push members of both houses to preconference their legislative differences on the GSP so that agreed upon substantive provisions can be included as part of a broader end-of-year package during this Congress.

Finally, Congress consistently makes importers whole by applying the GSP retroactively to imports that entered the U.S. during the period in which the program lapsed. Thus, importers utilizing the GSP should carefully follow U.S. Customs and Border Protection guidance to continue identifying eligible products with the Special Program Indicator for GSP on import documents.

While the GSP program is essential to American importers and participating countries, neither can fully realize its benefits so long as it continues to lapse, and eligibility criteria continues to expand without corresponding increases in benefits. Nevertheless, companies interested in de-risking supply chains should continue to consider GSP-eligible countries.

For example, China is not eligible for the GSP, so shifting export production from China to a GSP-eligible country provides a significant opportunity to advance supply chain de-risking. Businesses need not wait for the GSP reauthorization to determine how the program could help them shift their supply chains to other countries and potentially benefit from significantly reduced tariffs.

Meanwhile, Congress should adopt longer-term reauthorizations for the GSP, consider making the program more attractive to beneficiary countries and seek to achieve early political consensus on any substantive changes to the program. After all, without taking steps today to change the future, the past will indeed continue to be prologue.

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[1] Coalition for GSP, "GSP lapse costs American companies $2.6+ billion through April 2023," June 14, 2023, https://renewgsptoday.com/2023/06/14/gsp-lapse-costs-american-companies-2-6-billion-through-april-2023/.