Free trade needs revamp of GSP

Every year for the past several years, something between the National Day and the World Series, a new Congressional "rite of passage" has ensured the operation of the Generalized System of Preferences (GSP) and the failure of Congress to renew it in a timely fashion. In a move that typifies the prevailing schizophrenic mood of GSP, this year on the same day that the President signed a proclamation modifying the GSP program (June 30), Congress allowed GSP to expire.

Although the lapse of GSP has become an annual occurrence, and it is normally renewed with retroactive application, the confusion resulting from its expiration has never come without a cost. By way of background, GSP was instituted on Jan. 1, 1976, and was authorized under the Trade Act of 1974 for a 10-year period. It was renewed through 1992 by the Trade and Tariff Act of 1984. Since July 1, 1993, the program has been renewed only on a roughly annual basis. Nonetheless, on various occasions as demonstrated by the current status of the program, Congress has never allowed GSP to expire, later legislating its renewal with retroactive application.

On-and-off treatment is destructive to trade.

The issue here is not in the changes made by the President's recent proclamation, since those are made regularly. Nor is it a political one concerning the GSP program itself and the preferential treatment it affords. The real rub of the problem is the regularity with which Congress allows the GSP program to lapse. As a result, what has become an annual basis, and the repercussions that result.

By design, the GSP program provides preferential duty-free entry to thousands of products from over a hundred designated countries and territories around the world. The primary objective of GSP is to promote the industrialization of underdeveloped countries by increasing their level of exports, thus resulting in economic growth. For this reason, an article to qualify for duty-free treatment under GSP, it must be the "growth, product or manufacture of a beneficiary developing country." Practically speaking, the article must be included in the list of GSP eligible products; be from a designated "beneficiary developing country" (BDC), be imported from a BDC that is eligible for GSP treatment for that particular product, be imported directly into the United States from the BDC, and meet certain value-added requirements.

The value-added requirements from GSP mandate that at least 55% of the value of the article in question must be added in a single BDC. If the product includes foreign components, they may be included in the 55% value-added requirement so long as they are substantially transformed into new and different materials of which the article itself is composed.

The U.S. government conducts an annual review of the articles and countries eligible for duty-free treatment. There are certain articles, however, which are prohibited from preferential treatment. Such items include certain textile and clothing, shoes, footwear, handbags, luggage, flat wares, gewgaws, and other leather apparel. In addition, certain import sensitive articles (e.g., steel, glass and electronic articles) are ineligible for GSP treatment.

Similarly, certain products from a particular country may be ineligible for GSP treatment. For example, the country may fail to meet the value-added requirement discussed above, or to supply complete documentation or meet other U.S. Customs requirements. A country may also be ineligible due to graduation (i.e., the removal of GSP eligibility in certain circumstances) or if the product and the country exceed competitive need limitations (i.e., a ceiling on GSP benefits).

While GSP is somewhat complex and features a host of substantive restrictions, one of the most significant disadvantages of the program has become procedural; i.e., the annual debate which occurs concerning its expiration and subsequent renewal.

Generally, the loss of continuity which results from the lapse of the program creates administrative burdens, as well as out-of-pocket expenses borne solely by importers of GSP eligible merchandise.

Each year, when GSP expires, Customs is charged with promulgating and enforcing administrative procedures to ensure that duty is paid on normally GSP-eligible imports, and that records are kept as to the payment of such duties to ensure that Customs issues proper refunds upon renewal of the GSP program.

Customs required to calculate in two ways.

This forces Customs not only to spend time and effort on implementing procedures in collecting duties which are normally not owed, but also forces the agency to continue monitoring entries of GSP eligible merchandise throughout its period of expiration.

The ultimate party harmed here is the importer, as he is the one forced to pay duties that he likely planned would be credited at the time of purchasing the goods. This problem can also result in issues which Congress, Customs, the importer or any other party involved could have.

A classic example of the detriment resulting from allowing GSP to expire, later renewing it and providing for retroactive application can be found in the renewal of GSP for the 1995-1997 period.

Last year, on June 30, 1998, GSP expired. On October 21, 1998, Congress passed legislation renewing GSP and providing for retroactive application back to July 1, 1998. This renewal legislation has become standard format and is essentially a "holster stamp.

Last year, however, on the same day that GSP expired, the Office of the United States Trade Representative (USTR) issued a notice reinstating GSP eligibility for certain products from Thailand (notably certain gold jewelry, a fairly substantial amount of which had been imported).

Probably because of a standard waiting period the agency uses, the USTR did not make its action effective until July 15, 1998.

On its face, the issue appears simple. Congress made GSP retroactive from July 1, 1998, through Oct. 20, 1998. As the import Thai jewelry was GSP eligible on July 15, 1998, presumably, all entries of such merchandise between July 15, 1998, through Oct. 20, 1998 would be eligible for duty-free treatment under the GSP program.

Customs initially made such a determination and issued refunds upon the renewal of GSP to all entries of qualifying

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